Ch 6 Political Mandates.

What is a mandate and what is its source

Mandate: a claim for authority to exercise political and legal power within a state or nation
↳ claimed in a liberal democracy by winning elections - authority granted by the people

Political Mandates in Theory:
- Thomas Hobbes' 'Leviathan'
  ↳ without state control of law + order, life would be 'solitary, poor, nasty, brutish and short!'
  ↳ ∴ people must submit some freedoms to a sovereign.
  ↳ 'social contract' between state + people: people surrender some freedoms and follow state's law. State protects lives + freedoms, upholds law.
- Enlightenment
  ↳ prior kings claimed mandate from God 'Divine Right'
  ↳ Rousseau, Locke + Kant developed 'social contract' to say sovereignty not granted by God, but by the people.

How do people delegate and redelegate their sovereignty in a liberal democracy?

- Representative democracy
  ↳ people delegate their sovereignty to their representatives who exercise sovereign power on their behalf
  ↳ requires regular elections
- Re-delegating sovereignty
  ↳ if a govt fails to uphold its contract
  ↳ violently through revolution eg. France, Russia
  ↳ peacefully through elections (liberal democracy)
  • sovereignty always rests with the people, but is DELEGATED to representatives

How is popular sovereignty represented in Australia's political and legal system?

- Popular sovereignty in Australia
  ↳ Westminster Chain of Accountability links the govt to the people's sovereignty
  • legislative power linked to the people through elections around every 3 years.
  • executive power linked to the people through the HoR. *indirect.

A claim to authority to exercise political and legal power within a state or nation. Lib dem → winning elections, vote of pp

Based on
- representative democracy: delegate sovereignty to govt at regular elections, for limited period of time
- popular sovereignty: sovereignty rests w/ people represented through Westminster chain

People ⟶ Legislature ⟶ Executive

Define the will of the majority mandate

Will-of-the-majority mandate: held by the govt, claimed upon winning an election. Claim that the people have delegated their sovereignty to the govt, who should be able to implement its policies and specific laws.

Differentiate between a specific and a general mandate, give examples of both

- Specific mandates: a claim by govt to have authority to implement policies/promises that were part of campaign
  - ↳ election promises reference a specific policy/law
    - pass specific new laws eg. Turnbull 2016 ABCC Bill.
    - repeal specific, old laws eg. Abbott 2013 carbon Tax.
  - ↳ most successful of all claims to a mandate.
- General mandates: a claim by govt to have authority to implement policies that reflect its ideology
  - ↳ election promises don't reference a specific policy/law
    - general policy approches in a specific area eg. stop the boats - Abbott 2013.
    - broad changes designed to accomplish a goal eg. Abbott 2013 'budget repair' and surplus.
  - ↳ general mandates may justify breaking election promises eg. 2013 Abbott promised not to reduce health, ABC, education funding, but cut $80b from education in 2014 etc
    - said they were unaware of state of nation's finances before taking office, and that cuts were necessary.
    - part of Liberal 'economic conservatist' ideology.

Define the balance of power mandate

Balance of Power mandate: claimed by the parties or independents with the balance of power in either house (usually Senate), and the justification for amending, passing or repealing bills in the parliament.

State arguments

- Arguments in favour:
  - ↳ voters directly elect the Senate ∴ it has a democratic mandate to determine legislation. s7 constitution
  - ↳ ~15% voters are dual voters (vote for major party in HoR and a different party/independent in Senate). Expresses democratic intention to hold govt to account through Senate 'balance of power'

WHY NOT?

Support for non-major party candidates in 2013:
21.1% in House
32.2% in Senate

State arguments against

- Arguments against:
  - ↳ preference harvesting in Senate elections: last 2-3 candidate of the 6 elected are determined by preference flows. Before 2016 reforms, parties would make preference flow deals to ensure at least one minor party achieved a seat, and thus elected Senators only represented a tiny proportion of voters, weakening their democratic mandate eg. Motoring Enthusiasts Party's Ricky Muir won 0.5% vote, but achieved 14.3% quota

Will of the Majority: govt claimed by winning election - hold sovereignty of the people
- Specific: promises @ elections most successful
  eg. Abbot Carbon Tax
  Labor $1bn cancer treatment.
- General: policies align w ideology
  eg. Labor 2019 'strong' economy

Balance of Power: minor parties/independents.

In favour
- Senate democratic mandat s7
- Dual voters ~15% intent to hold to account
- More accurate breakup of votes

Against
- Preference harvesting
- Malapportionment

↳ Malapportionment in Senate means voters from smaller states hold larger voting power eg. Tas voters have 12.8 times voting power of NSW voters. Thus, if small-state senators hold balance of power, they represent only a tiny portion of voters eg. Senator Brian Harradine independent 1994-1999, max poll numbers were 21.3% of Tasmanian voters, meaning only 0.12% of all Australian voters. However technically he still held mandate to refuse passage of Bills 1994-99.

Explain structurally conflicting mandates

Conflicting mandates.
- Structural conflicts: govt may hold 'will of majority' mandate in lower house, while cross-bench may hold 'balance of power' mandate in Senate
- Philosophical conflicts: liberalism v democracy.
  ↳ liberalism: distrust of and need to check govt, require representation of minorities from 'tyranny of majority', therefore support the balance of power mandate
  ↳ democracy: emphasises collective will of the people, supports the will of the majority mandate.
  ↳ combination of both creates Australia's modern liberal democracy eg. Senate (liberal) + HOR (democratic)

Explain the values of liberalism and democracy, and how these affect views of mandates

What is the source of the right to oppose

The Right to Oppose
- Westminster theory that Opposition is loyal to the system of govt → gives Opposition mandate to oppose govt.
  ↳ especially if govt is minority govt, or only small majority govt. ie. Opposition is loyal to democracy
- Shorten Opposition: opposing majority govt.
  ↳ Abbott govt budget contained education cuts, $7 Medicare payment.
  ↳ had no specific mandate, but claimed general mandate (fix budget)
  ↳ ALP opposed, used senate crossbench's balance of power to reject many budgetary measures.
- Abbott Opposition: opposing minority govt
  ↳ Opposition challenged legitimacy of minority govt
  ↳ govt relied on Greens' Adam Bandt: forced Gillard to introduce 3-yr fixed price on carbon: 'carbon Tax'
  ↳ Gillard previously promised no carbon tax
  ↳ Abbott Opposition emboldened by weak minority govt and broken election promises.
  ↳ exploited carbon Tax to see scalp of Gillard + election loss.

Discuss how the Shorten Opposition challenged a government mandate

Describe how the Abbott Opposition challenged a government mandate

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Liberalism: check + hold govt to account

Right to oppose
- Loyal to system of govt, be viable alternative esp. if minority govt.

Shorten: oppose majority govt
Use Senate to block parts of budget

Democracy: collective will of the people, minority should not inhibit majority will

Abbott: oppose minority govt
Gillard promised no carbon tax, minority govt = weak mandate → opposed

The argument for mandates:
- Mandates are not legally binding or enforceable - only persuasive
  - ↳ govts may be able to force a bill through parliament
    - eg. Howard exec dominance of both houses - forced through WorkChoices legislation
  - ↳ if new Opposition recently seriously lost election may have more respect for new govt mandate, and allow new Bills to pass that they usually wouldn't
    - eg. Nelson/Turnbull Opposition's compliance with Rudd govt
  - ↳ if a govt is weak/minority Opposition will exploit to ignore mandate claims
- Westminster System provides most checks + authority for power and its institutions limit power.
  - ↳ parliament limits executive power, especially in the Senate, who can block Bills regardless of govt mandate eg. Liberal + Green Opposition to Rudd govt's 'specifically mandated' Carbon Pollution Reduction Scheme

Right to Oppose: Nelson, Turnbull, Abbott Oppositions
- Against PM Rudd (Labor)
  - ↳ swept to power 2007 after Liberal Howard's govt suffered downfall due to WorkChoices in a 'friendly Senate' - Howard lost own seat
- Nelson Opposition respected WorkChoices repeal mandate
  - ↳ repeal Bills largely uncontested - even some Liberal Senators supported it
  - ↳ Brendan Nelson: Liberals had 'lived and learned' that WorkChoices was 'dead'
  - ↳ respected strong mandate to repeal WorkChoices
- Abbott Opposition respects WorkChoices mandate, rejects Carbon Pollution Reduction Scheme mandate
  - ↳ Abbott turned against CPRS mandate, used Liberal-Opposition + Greens support to block in Senate
  - ↳ continued to support WorkChoices repeal: respect for mandate/recognition that voters would never support WorkChoices

Respect mandates:
- Rudd 2007 repeal WorkChoices (Howard) highly unpopular

- Nelson Opposition respected repeal mandate - strong

Abbott Opposition: reject CPRS mandate, used Lib + Greens in Senate to block, still supported repeal of WorkChoices

Power is relational: depends on power relationships btw/within parliament

Mandates not legally binding.

Ch7 The Judiciary

Chapter 3:
- Creates federal judiciary, vests judicial power over Commonwealth in a High Court.
- Creates exclusive power for federal parliament to establish federal courts.
- Establishes judicial independence
- Defines judicial powers (jurisdiction)
- Provides constitutional protection for right to trial by jury for indictable federal offences.

Judiciary: branch of govt which adjudicates disputes by interpreting and applying laws to court cases. An appointed, not elected, arm of govt. Created by Ch 3 of the Constitution, and must remain independent of the other 2 arms of govt.

Judicial power: the power to adjudicate, make decisions that have the force of the law, and are legally binding. It is final and exercised in Australia by the courts.

Judicial authority:
- Sources of judicial authority:
  - ↳ the Constitution
  - ↳ Judiciary Act 1903 (sets out court framework)
  - ↳ common law (guides exercise of judicial power)
  - ↳ norms + maxims eg. stare decisis, natural justice
  - ↳ accountability through appeals.
  - ↳ tradition: history of seeking justice, which has created fundamental legal principles eg. common law.
- Judicial power is inferior to legislative power.
  - ↳ parliament may override courts in almost all matters except High Court constitutional interpretation
  - ↳ preserves popular sovereignty of elected parliament.
  - ↳ people generally have more trust in courts than in executive or legislature - most probably due to political neutrality, traditionality.

Judiciary Act 1903:
- grants HC ability to decide which appeals to hear

Ch 3
- Creates federal judiciary Cwth judicial power vested in High Court
- exclusive power to create federal courts
- Judicial independence
- Defines jurisdiction
- Protects right to trial by jury in indictable fed offence

Sources of J. A.
- Constitution
- Judiciary Act 1903 (court structure)
- Common law (guides exercise of judicial power)
- Norms/maxims eg. stare decisis
- Appeals: accountability
- Tradition: pursuit of justice = legal principles

Brandy's Case (1995) vs Human Rights and Equal Opportunity Commission

- Brandy had HREOC order against him
- HREOC not a court ∴ could not enforce decisions - but Act it was under allowed its decisions to be registered with courts and thus legally enforcable
- Brandy said this mean HREOC held judicial power - H.C. agreed

s71 - Creating the federal judiciary

- Creating the High Court
  - ↳ judicial power of Cwth vested in a 'Federal Supreme Court' called the 'High Court of Australia'
- Allows for creation of other federal courts
  - ↳ parliament exclusive power to create courts.
  - ↳ has been used to create a federal court hierarchy of 'Chapter 3 courts'
  - ↳ few courts created pre-1970
    - 'cross-vesting' allowed most federal matters to be referred to state courts
  - ↳ superior courts (equivalent to state Supreme Courts)
    - Family Court created 1975: deals with family law from all states/territories except WA
    - first Federal Court created 1976 to relieve caseload of the High Court.
  - ↳ inferior courts: now intermediate courts.
    - Federal Magistrates Court created 1999, renamed Federal Circuit Court in 2013. Made to handle increasing workloads of Federal Court.
- Permits cross-vesting: giving state courts the power to hear federal cases/jurisdiction, and vice versa.
  - ↳ reduces time + cost of having to establish federal court hierarchy in each state. eg. airports - federal jurisdiction
  - ↳ Jurisdiction of Courts (Cross-vesting) Act 1987
  - ↳ heavily used until 1970s, when federal courts created
- Interpreting judicial power in s71
  - ↳ High Court has been required to interpret meaning of judicial power in s71 to ensure only High + federal courts can exercise judicial power.
  - ↳ eg. Boilermakers Case 1955-56. Parliament had established Court of Conciliation and Arbitration to adjudicate industrial disputes. - vested judicial power. Was challenged as breaching SoP, as exercised a legislative power of arbitration of industrial disputes (defined in s51) and a judicial power of adjudication. High Court ruled that judicial power must remain with Chapter 3 courts.
    - ↳ ie. cannot adjudicate, only arbitrate

*Brandy's Case 1995

s71 Create HC	Create Fed Courts	Permits cross-vesting:	Interpret judicial power
	- exclusive power - used extensively after 1970s - superior eg. Family Court - inferior eg. Federal Magistrates Court	- reduces time + cost for federal cases. - used extensively until 1970s: less relied upon now.	- Brandy's case - ensure judicial power only with courts

s72 - Guaranteeing judicial independence
- executive appoints judges
- only parliament may remove judges on grounds of 'proven misconduct or incapacity'
  ↳ vague wording makes it difficult to dismiss a judge eg. 'incapacity' could be physical/financial, 'proven' doesn't mean legally proven in a court
- executive can't reduce a judge's pay to coerce or bribe them.

Jurisdiction: 'where the law speaks' - refers to the areas of law in which a court can adjudicate.

s73: Appellate jurisdiction of the High Court
- Appellate jurisdiction: the types of cases/areas which a court has power to hear on appeal from another court. Original decisions can be reviewed and reversed if they are found to be wrong. Judges + courts are held to account through the appeals process.
- High Court can hear appeals on all civil + criminal matters from lower courts in all hierarchies. May also hear appeals from single-judge High Court cases.
- Parliament is granted power to determine which appeals the High Court hears.
- Judiciary Act 1903 allows High Court to determine which appeals it will hear by granting Special Leave to Appeal
  ↳ thus, no automatic right to appeal to HC
  ↳ most cases appealed to HC will have already been appealed to Supreme/Federal Court.
  ↳ High Court will usually accept appeals if:
    - there has been a supposed miscarriage of justice
    - there is a new question of law which may create a new common law precedent
    - there has been a conflict between courts.
  ↳ if HC rejects appeal, case ends + decision is upheld

s74: Previously, appeals from High Court → Privy Council
- Privy Council Act 1975 ended High Court appeals to PC
- Australia Act 1986 ended Supreme Court appeals to Privy Council - final judicial independence from Britain

s72: judicial independence
- exec appoints judges (council of AG)
- parliament dismisses proven misconduct (vague)
- exec can't reduce pay.

s73: appellate juris.
- all civil/criminal cases lower courts in all hierarchies
- hold courts accountable

s74: spent clause, appeals to Privy Councils: Privy Council Act 1975 ended appeals:
- Australia Act 1986, end Supreme Court appeals to Privy Council (final judicial independence)

s75 and s76: Original jurisdiction of the High Court

- s75:
  - ↳ grants HC original jurisdiction inc. international treaties, cases involving the states or Cwth as parties
  - ↳ cases btw govts: inter se cases
  - ↳ grants HC jurisdiction to adjudicate writs of Mandamus: a remedy that compels a govt official to perform a specific task.
  - ↳ can adjudicate prohibitions and injunctions: remedies that prohibit a govt from doing something
- s76:
  - ↳ allows parliament to grant additional original jurisdiction to the HC - allow for flexibility
  - ↳ grants original jurisdiction in constitutional cases - however is subject to parliament's approval ie. theoretically parliament can remove

Parliament can decide roles of the High Court.

Roles of the High Court

1. Determining constitutional cases
   - Australian constitutional system - combines written + unwritten law
     - ↳ unwritten Westminster conventions are non-justiciable (cannot be adjudicated by a court)
     - ↳ Constitution is justiciable - must be interpreted
   - Interpreting the constitutional scope of legislative power
     - ↳ HC can only act ex post facto - after a law has been made
     - ↳ eg. after federal govt amended Financial Management and Accountability Act 1997 (to provide funding for school chaplains), HC ruled amendments invalid as did not bring 'benefits to students' under s51(xxx3A).

'Williams no2'

   - Interpreting the constitutional scope of executive power.
     - ↳ executive has common law power to exercise prerogatives of the Crown without parliament's approval
     - ↳ power to fund chaplaincy program was claimed under s61 (grants executive power) rather than by an Act of Parliament. Funding ruled unconstitutional, as HC said s61 doesn't include a power to do independently, what the parliament could authorise the executive to do.

'Williams no1'

   - Discovery of implications in the constitution
     - ↳ implied right to vote: s7 and s24 state that both houses shall be 'directly chosen by the people'
     - ↳ implied right to political communication: if people are required to choose representatives, then free political communication is necessary.

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s75: Original Jurisdiction
- international treaties
- inter se / govts as parties
- writs of mandamus
- prohibitions/injunctions

s76 parliament grants additional original jurisd. inc. constitutional

Constitutional matters
- interpret written justiciable constitution
- legislative power eg. Williams no1: 'benefits to students'
- executive power eg. Williams no2: s61 doesn't permit exec to do what parliament could authorise it to do.
- implied rights: to vote, communication

② Hearing appeals → may lead to common law changes
- The creation of a third sex
  ↳ 'Norrie' person of non-specific sex, sought to be registered as sex 'non-specific' under Births, Deaths and Marriages Registration Act 1995 (NSW)
  ↳ Registrar decided act only allowed male/female
  ↳ Norrie lost an appeal to NSW Administrative Decisions Tribunal, but won an appeal to NSW Court of Appeal
  ↳ NSW Registrar appealed to HC. to interpret Act
  ↳ HC found that while Act only allows male/female classification, this doesn't have to apply to everyone. Said Registrar's role was to record information about members of the public, not make moral judgements about success of sex transformation surgery
  ↳ changed common law to create new 'non-specific' category of sex

Factors affecting roles of the High Court.
- Judicial discretion: the freedom of a judge to use their own experience and understanding to interpret statutes and precedents. Usually, judges fall into one of the following approaches/ideologies:
  ↳ legalism and literalism
    - legalism: strict use of customary legal rules + maxims of interpretation. Narrow legal aspects of case examined without reference to broad community concerns or evolving social and cultural norms.
    - literalism: actual words of the law + their plain meanings used with little consideration of outside sources
  ↳ activism/progressivism:
    - purpose/intention of law is just as important as words
    - implications exist within laws
    - the broader social impact of interpretation is a valid consideration.
    - judges attempt to read law in ways that keep it up to date with contemporary circumstances.
    - moral/political arguments can arise, as there is no way for the people to hold a 'legislating judge' to account, and no judge has ever been removed for being too adventurous in their decisions

Appeals: to create new common law changes eg Norrie

Judicial discretion
↳ legalism: strict legal basis (rules/maxims) } little concern for social/cultural norms
↳ literalism: literal words of the law

↳ activism/progressivism: intent/implication of law considered, law must keep up to date with modern world, consider social implications

Ch 8 — Influencing Lawmaking

Law: a set of rules or codes that are enforced by the institutions of a nation's government.
- ↳ universal: applies equally to all, at all times.
- ↳ enforced by the state's coercive power (eg. police)

- Differ from:
  - ↳ customs + traditions: behaviours which are learned by immersion in a particular culture
  - ↳ morals: codes of right conduct, often embedded in culture or religion and reflected in laws.
  - ↳ rules: guidelines that apply to specific persons in particular circumstances.

Classification of Laws.
- Superior/Fundamental law: found in constitutions.
- Statute law: laws made by parliaments. Being made by elected MPs it has democratic legitimacy and thus overrides common law. Written in broad terms. Must pass both houses of parliament and receive royal assent to become statute law.
  - ↳ policy legislation: implement the executive govt's programme of policy eg. Clean Energy Legislation (Carbon Tax Repeal) Act 2014 – Abbott govt
  - ↳ financial legislation: 'money/supply/appropriation Bills'. Authorise raising of taxes and govt spending eg. annual budget. Must commence in HoR (s53)
  - ↳ amending legislation eg. Renewable Energy Amendment Act 20
  - ↳ consolidating legislation: consolidates existing Acts' provisions into one Act: eg. proposed consolidation of discrimination, Human Rights + Fair Work Acts in 2010
  - ↳ repealing legislation: sole purpose to repeal existing Ac
- Common Law: judge-made law, when court decisions give rise to need for new decisions or precedents. Apply doctrine of precedent, based on stare decisis. Precedent formed by ratio decidendi are binding on all lower courts in the same hierarchy. Persuasive for higher or equal courts. Inferior to statute law
- Delegated legislation: law making power granted by parliament to the executive to maximise efficien eg. annual indexation of pensions + benefits. Executive can make regulations + ordinances. Parliament closely oversees lawmaking, may withdraw authority to avoid breaching Separation of Powers.

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laws: enforced by state
- customs/traditions learned by cultural immersion
- morals: codes of right conduct, embedded in law
- rules: apply to particular people, particular place

- superior: constitution
- statute: parliaments
  - ↳ democratic legitimacy ∴ abrogates common la
  - ↳ both houses + royal assent
  - ↳ policy, financial, amending, repealing, consolidati
- common law: judge-made
  - ↳ new questions of law
  - ↳ doctrine of precedent, stare decisis
  - ↳ ratio decidendi binding all lower courts,
  - ↳ inferior to statute law
- Delegated legislation: parliament grants exec power to make law - may withdraw

Law-making Authorities.

- Parliament
  - ↳ democratic: chosen by the people (s7 and s24)
  - ↳ sovereign: parliament is ultimate legal authority, due to its democratic legitimacy.
    - parliamentary sovereignty: the concept that the parliament is the representation of the people's sovereignty, and is subject to no authority but the people themselves.
  - ↳ superior: to all other law-making institutions due to democratic + sovereign nature.
  - ↳ flexible, responsive + proactive:
    - can legislate, repeal + amend
    - general, broad, predictive 'in future'
    - parliament responsive + accountable to the people
- Courts
  - ↳ authoritative:
    - rely on legal maxims + traditions
    - hierarchy → superior courts only can create new common law
  - ↳ apolitical + independent.
    - tend to interpret laws literally + legalistically.
    - respect SoP, have to be politically uninvolved
  - ↳ inferior
    - subject to rule of law
    - subject to statute law (democratic legitimacy) so parliament may abrogate common law.
  - ↳ incremental and reactive
    - common law develops through cases over time
    - occurs after the facts of the case (ex post facto)

Parliament
- ~~Authoritative~~
- Democratic
- Sovereign
- Superior
- Flexible, responsive acts in future, broad

Courts
- authoritative
- inferior
- apolitical + independent
- literal + legalistic
- incremental and reactive

Individuals' Influence on Lawmaking.

- Individuals seeking to influence the law is a form of political participation.
- Individuals are rarely successful because:
  - ↳ they lack financial/time resources.
  - ↳ they lack access to key govt decision makers eg. Ministe
  - ↳ they lack organisational support / are acting alone.

CASE STUDY: Williams Cases
- Ronald Williams
  - ↳ Queensland father of 6
  - ↳ successfully challenged constitutionality of Nationa Schools Chaplaincy Program twice.
- Williams v Commonwealth of Australia 2012 (Williams no 1)
  - ↳ High Court found that s61 (executive power) did not grant govt power to fund NSCP without legislation
    - limit on prerogative powers of the executive
    - exec cannot fund programs that parliament has power to legislate for but has not.
  - ↳ forced govt to rush through new laws to cover all relevant program funding - around 5-10% of total govt expenditure.
- Williams v Commonwealth of Australia 2014 (Williams no 2)
  - ↳ as a result of 2012 HC decision, govt passed laws under s51(xxiiiA) 'social services' power to continue funding NSCP: amended Financial Management and Accountability Act 1997.
  - ↳ Williams challenged again in HC
  - ↳ HC found that payments were not 'benefits to students' and were not payment straight to the beneficiaries but rather to the Scripture Union of QLD.
  - ↳ as a result, subsequent governments have had to fund NSCP through tied grants to states - gives states greater power
- Reasons for Williams' success:
  - ↳ able to finance legal expenses, as received many donations from parents and supporters of secular non-religious education.

Williams
1: s61
2: s51(xxiiiA)

- financial resource
- standing

Antony Green
- psephologist: studies elections
- 2014: made submission to Joint Standing Committee on Electoral Matters, relating to preference whispering in senate - abolition of group ticket voting, optional preferential below the line
- Success:
  - ↳ respected, public profile @ABC
  - ↳ JSCEM respected expert opinion

David Manne: individual pressure group.
- Human rights lawyer, migration agent, works for Refugee and Immigration Legal Centre RILC
- Headed successful HC legal challenges six times
  - ↳ eg. Plaintiff M61: regarding offshore processing
- Success: has standing in cases - represents his clients. Receives legal/financial resource from RILC and refugee advocates. Has great legal training, skills and moral motivation

Parties' Influence on Lawmaking.

Political parties: associations of individuals with broadly similar ideological views that tend to have a broad focus and seek to win seats in Parliament with the express purpose of influencing legislation. Done through:
- winning government (major parties)
- by forming coalitions with a major party
- holding balance of power in Senate to exercise influence over the passage of legislation
- engaging in preference deals with other parties prior to elections in return for influence over policies.

Types of political parties
- Major parties: political parties capable of winning a HoR majority in their own right or in a coalition with a minor party. Capable of forming government.
  - ALP eg. Rudd government (2007-2010)
  - Liberal Party (in coalition with Nationals) eg. Morrison 2018-
- Minor parties: political parties capable of winning seats in parliament but not capable of forming government in its own right. May seek coalition (eg. Nationals) or seek the balance of power in the Senate (eg. Greens)
- Micro parties: a political party which may win a seat or only a few seats in parliament, which may only win a seat for a single term of Parliament and may never achieve representation again
  - eg. One Nation: 4 senators, Liberal Democratic Party NSW senator David Leyonhjelm.

Ideology: a set of beliefs about how society should be organised.
- Left
  - based on fairness and equality, social justice
  - larger role of govt in society.
  - regulate economic activity.
  - socially progressive eg. marriage equality, refugee rights
  - ie. Labor and The Greens.
- Right
  - individualism + reward for effort
  - smaller role of govt in society.
  - deregulation of the market
  - socially conservative - traditional values
  - ie. Liberal Party and The Nationals.

Major: can win HoR majority in own right/coalition
Minor: can win seats but not majority in own right. Coalition, balance of power, preference deals
Micro: may win one or a few seats for a short period

Left:	Right
-progressive	-conservative
-larger govt	-smaller govt
-fairness/equality	-individualism, reward for effort
-regulate economy	-deregulate economy

Winning elections:
- ideological policies/parties don't win elections.
  ↳ eg. 2015 downfall of Abbott govt due to Treasurer Joe Hockey's quest to 'End the Age of Entitlement' eg. Medicare co-payment, cuts to welfare, education + health.
  ↳ late 2015, Malcolm Turnbull removed some of more extreme policies eg. removed ban on funding wind power technology → move more towards centre.
- pragmatism wins elections
  ↳ ie. adopting policies that are common sensical, achievable, and won't alienate the voters
  ↳ may mean abandoning ideology and moving to the centre of the political spectrum. → known as 'ideological convergence'
  ↳ means lawmaking by both parties is generally similar eg. Hawke ALP govt and Keating ALP govt had more 'centre-right' economic policy eg. privatisation of Commonwealth Bank, reducing 'import' tariffs.
  ↳ eg. after moving policies towards 'centre' Malcolm Turnbull's popularity reached over 60% in the 'preferred prime minister' polls.
- Modern pragmatism and ideology
  ↳ centre-left to centre-right attracts both major parties.
  · most voters sit here on the spectrum
  · many voters are 'swinging voters' ie. less loyal to a particular party, may swing between elections. Swinging voters decide elections: major parties both attempt to convince them
  ↳ recent return to ideological politics
  · eg. 2010 Gillard govt highly leftist, moreso than previous Rudd govt. eg. National Disability Insurance Scheme: high levels of govt support for disabled people. Contrasted Abbott, far-right on spectrum, eg. opposed Marriage Equality
  · ideological governments tend to be short-lived.

Ideology loses elections
-eg Abbott 2015 'end the Age of Entitlement', Medicare, health, education + welfare cuts - unpopular
-Turnbull more centrist eg. removed ban on wind power funding - popularity > 60% PPM
-recent return to ideology
Gillard leftist: NDIS
Abbott rightist: opposed marriage equality

Pragmatism wins elections
-ideological convergence
-centre where most voters sit
-swinging voters decide elections
∴ similar lawmaking from both parties

Factors influencing a party's power in influencing legislation

- Winning a general election and forming government:
  - ↳substantial power
  - ↳usually complete exec dominance over HoR - guarantees passage of govt Bills through lower house.
  - ↳provides party with democratic mandate - can be used to persuade Opposition / balance of power parties in senate to vote with govt policies.
  - ↳ensures dominance over legislative agenda eg. in 2015, of total Bills presented, 92% were govt Bills.
  - ↳HOWEVER: may be limited by being a minority govt → reduces power. eg. Gillard govt
- Being junior party in a coalition.
  - ↳may gain some Cabinet positions and participate in joint party room meetings to discuss policy
  - eg. Nationals blocked sale of Graincorp to American company Archer Daniels Midland despite Liberal support
- Being a minor party supporting a minority government
  - ↳has significant leverage over minor party.
  - eg. Greens' Adam Bandt ensured Gillard minority govt confidence + supply. In return, forced govt to introduce policies such as Carbon Tax.
- Being a minor party with the senate balance of power
  - ↳occurs when Opposition opposes a govt Bill
  - ↳minor party possesses sufficient Senators that they could vote with govt to pass Bill, or with Opposition to reject Bill.
  - ↳gives minor party moderate power to negotiate amendments eg. Greens managed to negotiate amendments to Electoral Amendment Act 2016.
- Being a major party forming Opposition
  - ↳may be able to ally with balance of power parties in the senate to block or amend Bills.
  - eg. ALP rejecting parts of Abbott's 2014 budget.
  - ↳limited power without help of 'balance of power'
- Being a micro party.
  - ↳influence usually short-lived: struggle to maintain unity, may not be re-elected
  - ↳eg. Palmer United Party suffered defections from all but 1 member → most recent election, no HoR candidates, none elected in Senate.
  - ↳'preference lottery' may have temporarily granted micro parties a seat - 2016 reforms eliminated this preference harvesting.

eg. One Nation - may have to be negotiated with in 2019 senate - govt needs 4, 3 PHON members

Winning election	Coalition	Balance of power	Minority govt	Opposition
-exec dominance guarantees passage of Bills in LH -dominate legislative agenda, eg 2015 92% govt Bills -mandate = convince balance of power -limited if minority govt	-some cabinet positions, joint meetings eg. Nationals block sale of Graincorp	- If opposition votes against govt -significant leverage eg. Adam Bandt (Greens) 2016 -negotiate amendments eg. Greens EAA 2016	-supply + confidence negotiate power eg. Adam Bandt	-ally w/ balance of power to reject govt Bills

- Being a micro party engaged in preference deals.
  - ↳ preference deals: allow minor/micro parties to negotiate with major parties in return for their preference flows
  - ↳ preferential voting → flow of 2nd, 3rd, 4th preferences may determine who wins 50% + 1 in a HoR seat.
  - ↳ major parties may be accommodating to minor parties' negotiations + minor parties list them in their HTV cards as a high preference
  - ↳ power is growing: 20-25% of voters place 1st pref for a minor/micro party in HoR.
  - ↳ however no way for minor party to check that major party upholds its part of the deal.

How parties influence lawmaking in parliament:

- Introducing Bills
  - ↳ any member can introduce Bills, however PMBs rarely progress past 1st reading stage.
  - ↳ however, PMBs may bring an issue to light and force a govt to respond by changing law in the future eg. Bill Shorten → Marriage Equality by introducing PMB to amend Marriage Act 1961 in 2013.
- Debating Bills
  - ↳ parties can seek to change content of Bill during debate
  - ↳ govt can use gags + guillotines
  - ↳ Senate debate ∴ more effective eg. long-winded Senate debate of Electoral Amendment Act 2016.
- Seeking amendments during committee stages
  - ↳ HoR: consideration-in-detail stage
  - ↳ Senate: Committee of the Whole
  - ↳ less adversarial debate, more cooperation - allows party representatives to negotiate amendments
  - ↳ Senate legislation committees are referred to if a Bill requires deeper scrutiny. Have specific knowledge + power over certain portfolio areas eg. Community Affairs committee → Health, social services etc.
  - ↳ minor/micro parties have significant representation in committee
- Voting on Bills
  - ↳ Senate, non-govt parties have more power over voting outcomes
- Launching a challenge to laws/policies in Court.
  - ↳ eg. 2016, SA Senator Bob Day challenged Electoral Amendment Act
  - ↳ eg. 1951, Communist Party of Australia challenged law pass for its dissolution - High court struck down the law

Introducing Bills
- may bring an issue to light
- eg. 2015 Marriage Equality

Debating
- seek to change content
- Govt tactics.

Committees
- Consideration-in-detail (HoR)
- Committee of the Whole (Senate)
- less adversarial
- Senate legislation committees specific portfolios.
- Significant representation minor parties.

Voting on Bills

Legal challenges
2016 SA Sen Bob Day challenged EAA

Pressure Groups' Influence on Lawmaking

Pressure groups: associations of individuals with broadly similar views that tend to focus on a narrow set of objectives and seek to influence lawmaking by lobbying, taking direct action, using courts, using media etc.

Types of pressure groups
- Sectional pressure groups: represent the self-interest of sections of the community. eg. business, labour
  eg. Australian Council of Trade Unions.
- Cause groups / promotional groups / altruistic groups: motivated by a principle/aim that they perceive to be of benefit to the whole of society. eg. The Australian Conservation Foundation - environmental protection
- Hybrid groups: combine features of sectional + cause groups. Advocate for interests of a particular group but also related policies that they believe are in the wider interests of society. eg. RSL: advocates for better treatment of returned soldiers, also promotes defence in the national interest.
- Peak bodies:
  - ↳ pressure groups may belong to a larger association of similar pressure groups eg. National Farmers' Federation
  - ↳ peak bodies possess greater influencing power, due to greater resources and representation at national level

Insider v Outsider Groups
- Insider groups: groups that represent important sectors of society and are considered legitimate by government
  - ↳ greater influence over govt and party policy.
  - ↳ often better resourced - membership fees, can employ professional staff, run almost like businesses
  - ↳ eg. NFF closely tied to The Nationals.
- Outsider groups: represent groups, causes, principles or aims less central to business, govt or the economy.
  - ↳ govts rarely pay attention unless circumstances make their causes prominent eg. Marriage Equality Aus.
  - ↳ poorly resourced: rely on donations, lack professionalism and organisational structures.
  - ↳ open membership, highly passionate members.

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sectional: portions/groups within society
cause: advocate cause for wider good of all
Hybrid: both sectional and cause
Peak: larger associations of similar groups eg. NFF.

- Insider: considered legitimate by govt
  greater influence
  better resourced: professional staff, membership fees etc.
  eg. NFF → The Nationals
- Outsider: not central to govt business except in circumstances eg Marriage Equality
  poorly resourced / lesser - less influential

Pressure group strategies:

-Direct lobbying: directly meeting/communicating with lawmakers.
↳most effective with inside knowledge, contacts + influence
↳used by sectional + insider groups - govt more likely to pay attention.
↳eg. Clubs Australia bbbied Julia Gillard to prevent introductio of tough anti-gambling laws.
↳lobbyists working for insider/sectional pressure groups mus be registered with Dept of PM and Cabinet - currently ~26 to ensure the pressure of powerful individuals or groups does not distort Australian democracy. Must maintain transparency.

-Submissions to parliamentary committees or inquiries.
↳submission: statement or argument from a group or individual seeking to influence lawmaking in parliament
↳committees investigate specific areas of legislative action, provide reports + suggestions to parliament. Suggest amendments to Bills.
↳inquiries: investigations established by parliament into specific issues, carried out by standing or select committees. Report + suggest to parliament.
↳eg. Parliamentary Joint Committee on Human Rights 2013 inquiry 'Examination of the Migration Package of Legislation' Pressure groups (Global Human Rights Clinic, Refugee and Immigration Legal Centre Inc) made submissions to this committee for inquiry, to attempt to influence Migration Act 1958 Found several Acts incompatible with human rights

-Direct action
↳eg. marches, picketing, sit-ins.
↳inexpensive, can encourage media coverage to make those in power more sensitive + aware of the cause.
↳often used by outsider and cause groups.
eg. 2018-2019, school walkout for climate

-Court action
↳taking legal action to argue interpretation of statutes, challenge exec decisions, create new precedents.
↳expensive → insider/sectional pressure groups, but increased use of crowdfunding led to more cases being pursu
↳eg. Mackay Conservation Group challenged Environment Ministe Greg Hunt's approval of Adani Mine - Federal Court ruled Hunt - had failed as under Environment Protection + Biodiversi Conservation Act 1999 to account for endangered species. Mine was re-approved but delayed + bought media attention to issue.

-Direct lobbying - must register to keep transparent. Insider/sectional groups more successful
-Submissions to inquiry/committees
-Direct action: inexpensive, media attention/pressure
-Court action: expensive → rise of crowdfunding

- Advertising
  - ↳ use of media
  - ↳ expensive for traditional media (TV, radio, print) so often only used by insider/sectional groups
  - ↳ Minerals Council of Australia ran $20 mill TV campaign against Rudd govt's Resources Super Profits Tax 2012 - abandoned by Gillard, replaced by ineffective Mineral Resources Rent Tax (collected almost no tax).
- Online campaigns
  - ↳ allowed pressure groups to use crowdfunding, raise awareness for little cost, create online petitions
  - ↳ hashtag campaigning + e-activism are cheap + effective options for smaller pressure groups.
  - ↳ GetUp: online-only left wing petitioning pressure group
    - used crowdfunding to successfully challenge in HC Commonwealth Electoral Act, allowing an additional 100,000 people to vote in 2010 election
    - campaign for mental health funding contributed to $2.2b reform to mental health services in 2011. Through visiting, emailing and faxing politicians, TV ads, vigils, 100,000 signature petition, 1.7 million 'scorecards' for political parties' mental health policy.
- Celebrities
  - ↳ using a prominent person to effectively communicate a message
  - ↳ eg. Cate Blanchett supported Australian Conservation Foundation, spoke out against scrapping Carbon Tax.

Pressure groups and democracy:
- Healthy part of plural democracy - many POVs and interests are represented, laws made on their merits.
- Parliament democratic institution - responds to popular opinion including of pressure groups for a certain cause.
- Powerful sectional/insider groups can use power + influence to advance corporatist powerful elites instead of public good.
- Courts are above popular appeals, media/lobbying. Will only respond through law cases from a group with a special interest or standing.
  - ↳ privileges large sectional/insider groups as court proceedings often expensive, can afford better legal resources
  - ↳ recent times have opened up to smaller/grassroots campaigns due to resources eg. crowdfunding.

Advertising
- free: media
more expensive

Celebrities
eg. Cate Blanchett support of Carbon Tax.

Online
- #campaigning
- crowdfunding
- petitions
- e-activism
eg. GetUp
Crowdfunded successful HC challenge 2010

Healthy part of plural democracy and representative responsive parliament.

Privileges powerful insider groups - have internal contacts $ for court challenge != may advance corporate good, not public good.