

Politics and Law

INTRODUCTION

Politics - greek word '**polis**' - '**city**' '**state**'

(politika) - 'state **affairs**' or '**public matter**'

Aristotle - to do politics - take part in **making** the **common arrangement** for **running** the **state**

political ideology - a system of beliefs and practices that determine the political decisions of a country or society

democracy - the supreme power is vested in the people and exercised directly by them or by their elected agents, everyone has decision making powers

direct democracy - all eligible citizens are able to present their opinions and directly contribute to political decision-making, everyone has a vote - with small groups

indirect/ representative democracy - the eligible voters select a representative to make political decisions on their behalf

oligarchy - small group of leaders make the decisions

autocracy - one person has authority

monarchy - all political power lies in one family (royal family)

absolute monarchy - one leader has authority and isn't restricted by any written laws

constitutional monarchy - led by set principals written in the constitution

dictatorship - one person or group leads nation by force

anarchy - no government, no penalties and laws, no authority

fascism - built on a centralised power, in which a leader makes all the political decisions without the participation of citizens

theocracy - beliefs and practices of a particular religion forms the foundation of a country's laws and governance

communism - all property is owned by the community and each person contributes and receives according to their ability and needs

socialism - the means of production, distribution, and exchange should be owned or regulated by the community as a whole

authoritarian - strict obedience to authority at the expense of personal freedom

Government - body that has **authority** to **enforce rules** and **laws** within a civil, religious, academic or other organisation or group

Royal assent - when a bill becomes a law. The governor general must give assent to any bill passed by the parliament before it becomes a law.

Electorate - all people in an area who are entitled to vote

precedent - an earlier action that is set as an example or guide to be considered in subsequent similar circumstances

Politics and Law

Politics is a **process** and its function is to **achieve consensus** and **resolve conflicts** which arise from **diverse interests, views** and **characteristics** of human beings

- Involves **making rules, laws** or **decisions** and **applying** them
- Involves: **debate, negotiation, compromise, manipulation, coercion** and **force**

Components of Politics

• **Power**

- "The possibility that one actor within a social relationship will be in a position to **carry out** his/her **will despite resistance**"
- Involves the capacity to **enforce ones will despite resistance** via influence, coercion, force

• **Authority**

- **Recognition** of the **right to rule** or **make decisions**
- generally **legitimate**, able to **exercise** their **power**
- **Traditional** - **elders** of an aboriginal group has heir right to rule established through past traditions
- **Charismatic** - **personal characteristics** of a leader
- **Rational - legal** - derived from the **office** a person occupies rather than the characteristics of the individual who holds the position - **hereditary, entitled** to the **position**

- What gives a person authority?

- position that enables them to make decision,
- beliefs
- education
- wealth
- occupation
- traditional position
- charisma
- gender
- physique

- How does an individual become powerful from having authority?

- make and enforce decisions
- using their influence on others
- achieving desired outcomes
- enforcing change
- having the right to rule

• **Democracy**

the **public sphere** is an area in social life where individuals can come together to freely discuss and identify societal problems, and through that discussion influence political action.

the **private sphere** is a certain sector of societal life in which an individual enjoys a degree of authority, unhampered by interventions from governmental or other institutions.

A good Government

- is **representative**
- reflects the **interest** and **backgrounds** of citizens
- allows **participation**
- involves people in the **decision making** process
- must be **accountable** to the institutions/people
- allows people to **voice** their **opinion** by allowing **regular elections**
- ability of people to **dismiss leaders** who **misused power**

- seek to guarantee **absolute freedom** - basis of a democratic society
- ^ right to **safety, security**, freedom of **thought, opinion** and private **belief**

- **private sphere** - concerns aspects of **individual's life** outside realm of Govt activity
- **ordinary lives** of individuals/ households
- meet basic needs for **food, shelter, relationships** with others
- private activities - **improve** our **own lives**, lives of our **families, others** close to us
- shared **activities/interests**
- every individuals **right** to '**life, liberty** and the pursuit of **happiness**'
- ^ American Declaration of Independence 1776
- need to work together as a **community** to achieve private aims

- **cooperation increases efficiency** so everyone benefits
- community makes **collective decisions** through **parliament/courts**
- **cooperative action** - ensure **individual's** activity doesn't **injure** or **exploit** others
- in democracy - govt set up **structures/ pass laws** to help create **cooperative action**
- **laws** enable **cooperation** or **limit exploitation** - traffic/ consumer protection

- some **aims/ needs** of **society** - only achieved through **collective action**
- e.g. **public safety**
- **no individual** (or group of) could provide **defence force** needed **against external threats**
- must be **funded** by **taxes, run collectively** by **whole nation**
- collective action needed to **provide schools** and **hospital**
- **public sanitation** - need for collective action

Difference between Politics and Government

Politics	Government
activity of making shared public decisions	general term that covers our political and legal structures and roles of powers that we give to those structures
means by which we create and modify our political and legal structures as well as deciding on specific laws and public policies	includes institutions of parliament (at federal and state levels as well as local councils), the roles of Ministers and all govt employees, and the framework of law, the courts and the judiciary

Roles of Government

- The United State President, Abraham Lincoln - "The legitimate role of government is to do for a community of people whatever they need to have done, but cannot do for themselves, or cannot do well for themselves..."

Security

- govt role is to improve **public safety**
- to provide a level of **external** and **internal security** that individuals cannot achieve alone
- e.g. defence, police patrol, laws, border control

Settling disputes

- provide avenues of **dispute settlement**
- in early times **kings** 'held court'
- their **laws/ judgements** were basis of **justice** for criminal offences/ civil disputes

Infrastructure

- govt provide **economic infrastructure**
- especially goods that cannot be provided by **private goods market**
- e.g. light houses - **funded** by **society collectively** through **govt taxes**
- import goods

Recent growth in functions

- with **industrialisation**, **range** of **public goods/ services** **grew** dramatically
- govt **provide infrastructure** such as transport, telecommunication networks, hospitals, public schools
- many democracies became involved in **manufacturing industry - making steel/ motor vehicles**
- expansion greatest in Europe
- since 1980s, level of **govt involvement** in economy has been **reduced**
- many **govt owned firms** and **administered services** have been **privatised**
- e.g. commonwealth bank and telstra

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Economic management

- **increased** scope of **govt activity** = **increase** in **tax** and **higher levels** of **public expenditure**
- **economic management**
- after WW2, govt use **levels** of **taxing** and **spending** to try to **'balance'** the economy
- manage greater growth, higher employment, low inflation
- economic management - interest/ exchange rates wages, price policies

Redistribution of income

- govt have significant role in **redistribution of income**
- by providing **free** or **low cost services** (schools, hospitals) govt action can **improve standard of living** of low to middle income earners
- ensures **all members** of the community are **considered** and **looked after**
- income also **redistributed** through **pensions**/ other welfare payment
- **tax rates** can be set to rise **more than proportionally** with income
- above average income earners **support payment** and **services** to those on lower income

Structure of Federal Parliament

Consists of:

- the **queen** (represented by Governor General)
- **two houses** (the Senate and House of Representatives)
- makes Australia a **constitutional monarchy** and a **parliamentary democracy**

Governor General:

- **represents** queen in Aus, acts on her behalf
- appointed by **Queen** on advice of **Prime Minister**
- usually will **follow advice** of PM and Cabinet (senior members of govt)
- Peter Cosgrove - since 2014

Parliamentary structure

- Aus govt follows the **British (Westminster) tradition**
- federal and all state parliaments (except qld) are **bicameral** (two houses)
- federal parliament elected max of **3 years**
- **Bicameral** system - **upper** house and **lower** house

Role of House of Representatives

- **form** govt
- **decide** matters of **national** interest
- **represent** interest of people in their **electorates**
- **propose, debate** and **vote** on bills and amendments
- **examine** issues in committees
- **scrutinise** executive govt

House of Rep

- **lower** house
- **150** members - each representing a separate electorates
- members elected for terms of up to **3 years**
- party of group with **majority support** in house form govt
- Liberals and nationals have an agreement to **vote together** - form a "**coalition**"
- **make laws, amend** existing ones

Role of Senate

- **decide** matters of national interest
- **represent** interest of people in their **states** or **territories**
- **propose, debate** and **vote** on bills and amendments
- **examine** issues in committees
- **scrutinise** executive govt

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Senate

- **upper** house
- has **76** senators - 12 for each state, 2 each for NT and ACT
- **state** senators - **6 year terms**
- **territory** senators - **3 year terms**
- states enjoy **equal representation** in the senate **regardless of population**
- **state matters** are **important** to senators
- **bills** cant become **law** unless they are agreed to by each house
- senate - **house of review**
- bills can be introduced in the senate (except "money bills")

3 levels of government in Australia	examples of areas of law-making power
commonwealth (federal)	currency defence marriage customs and border protection australian citizenship
state	primary and secondary education health services water electricity public transport
local	local infrastructure (eg provision of roads, footpaths, drainage and waste collection) recreational facilities (eg parks, libraries and pools) aged/child care facilities

5 important functions of parliament

1. provide for the formation of a govt
2. to legislate
3. to provide funds needed for a govt
4. to provide a forum for popular representation
5. to scrutinise actions of govt mmm

Three arms of government

- defining difference between **dictatorship** and **liberal democracy** - **way** in which **functions** (or powers) of **govt** are **carried out**
- all govt have same three functions - **making, administering** and **enforcing** the **law**
- three arms - **legislative, executive** and **judicial**
- in a **dictatorship** (or any **non-democratic** system) **govt** has **large** and **unchecked power**
- the ruler combines all power
- all liberal democracies - **separation of powers**, no one authority has control of all three functions

Legislative function

- **creates** and **modifies** the law
- laws made through parliament are called **statute law**

- three ways of making law
 1. **statutes** (acts of parliament) - laws made **directly** by **parliaments** both federal and state
 2. **delegated legislation** - parliamentary statutes can **give authority for others** (e.g. local councils and other govt departments) to make **rules** and **regulations**
 3. **judge-made law** - includes **common law** - made up of **judgements over time** of courts and **interpretations** of statutes that may **modify** their **meaning**

- **parliament** has **ultimate authority** over law-making
- legislative powers it delegates to any other authority can be **overruled by parliament** or **withdrawn** at any time

- **sovereignty of parliament:**
- **new statutes** can be passed to **override common law** and **Acts amended** to **limit scope** of **interpretation** of previous legislation by the courts

Executive function

- **administers** the law
- covers **powers** and **structures** required to **ensure the law is carried out**
- chief executive body:
- **Cabinet: PM** and **Senior Ministers** at federal level
- **premier** and **ministers** at State level
- **cabinet decisions** provide **authority** for **govt policies** to be carried out
- cabinet provides **legal authority** for govt departments or other agencies to **carry out** its **executive decisions** and to **implement new laws**

- statutes enable departments and statutory authorities to **create administrative rules** needed to carry out their responsibilities
- state/ federal level - **police** forces carry out investigations of **breaches of laws** passed by parliament and **charge alleged offenders**
- **public counsel** (govt employed **lawyers**) presents prosecution case in **court**

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Judiciary function

- **courts** carry out judicial function
- central task of courts is to **resolve legal disputes** and **determine penalties**
- **interpret** the law

- courts hear **cases** that result from **police investigations** or from **civil action** taken by **individuals**
- they must **determine** how the **law** (either statute or common) **applies to** the **circumstances** of the case
- **courts** (Magistrate or Judge, or Jury) decide whether facts before the court **prove** a **defendant** in a **criminal case** to be **guilty** or the **plaintiff** in a **civil case** to be **liable**
- **Magistrate** or **Judge** sets the **criminal sanction** (e.g. fine or imprisonment) or a **civil remedy** (e.g. awarding damages)
- **court's judgement** also **bound by law** - nature of sanction or remedy generally determined by the law or by **precedent**

- **interpretation** of a **statute** by a judge may **modify the law** or a higher court may set a **new precedent** that **changes common law**
- a new statute **cannot overturn** the **specific result** of a **previous judgment** of a court
- courts operate separately; **independent** of parliament and executive
- **legislation can't reverse** a **specific judgement** in a **specific case** that has been decided by courts
- **parliament** can make **new law** that will **change future judgement**
- **executive** has power to give a **pardon**, but a pardon **doesn't overturn** a **court judgement**

Rule of law

- the principle that **all individuals** are **equal** before the law
- it asserts that laws must be based on **consent, involve consistent** and **accepted procedures** and apply to all the actions of **govt** as well as to the actions of **individuals**
- the idea of the rule of law **rejects arbitrary** and **absolute power**
- thus expressed the "rule of laws not of men"

- a govt should not be arbitrary
- all citizens are **controlled** by the law and should **operate within the law**
- **rights** and **obligations** of citizens should be **laid down** in the law
- all citizens are **equal** before the law
- law applies to actions of **all citizens**, whatever their status or power
- govt and officials in legal and political system should be **held accountable**
- the law should be **clear** and **understandable** to all people

Assessment of the Rule of Law based on Justice, Fairness and Equality

1. consistency - the law applies to everyone in the same way
2. predicability or natural justice
 - people have the right to know what is alleged against them and to be able to defend that accusation
 - the right to be heard by a court that isn't biased
3. equality - law must start from the same base
4. impartiality - we have an impartial judiciary that is separated from the executive and legislature

The Rule of Law is a **legal tradition** in Australian society. The Law should **apply to all people equally** regardless of their status in society. **Checks and balances** on the use of power are in place to ensure govt and individuals **act according to the law** when power is granted. The **presumption of innocence** ensures individuals must be **proven guilty** before being punished. Trials are ensured to be fair through **independent** and **impartial judges**, to make sure justice is achieved for victims and the accused. People have the **Right to Assemble** peacefully in public, without fear, **Freedom of Speech, Access to Justice** and the law must be **accessible** to everyone. The rule of law in Australia was part of the system of **English law** which was shaped by the **Magna Carta** in **1215**. The rule of law is fundamental in maintaining a **free, democratic, tolerant** and **prosperous** society. It promotes **freedom from tyranny** by ensuring checks and balances on the use of power.

Essential features of a Democratic Government

- **accountability** - govt must continually test its representatives
- mandate is still derived from public opinion
- **public opinion** is freely and openly expressed
- essential to test accountability claim of democratic govt
- **majority opinion** - democracy implies majority rule - representation of diversity of views
- **rule of law** - processes of govt are bound by law
- all citizens are free from persecution (equality)
- all citizens are entitled to protection of the rule of law, and to be treated equal

Features of Modern Democracies (Democratic Principles)

- freedom of speech
- freedom of media
- freedom of association
- freedom of religion (no religious requirements imposed for holding of public office)
- equality of all citizens before the law
- freedom of assembly
- freedom of information

Liberal democracy

- phrase often used to describe **Western Democratic political systems**, such as Australia, the United States, Britain, New Zealand, Canada and other nations
- democracy + liberalism = **democratic value + libertarian**
- why? to have a **majority system** which recognises and respects **individual** and **minority rights**
- type of **representative** democracy
- representatives elected by the people given power to **decide on laws** and **political issues** - guided by **constitution**
- constitution tends to centre around **individual rights** and **freedoms, equality, and due process**
- granted to **all citizens** include minorities

1. Representative

- allows for **representation** and **accountability, free elections, open public expression, judicial independence** and **rule of majority** which is indirectly implied

2. Executive

- executive executes decisions made by the govt
- Who? Minister of Parliament, Cabinet, Elected Representatives
- How? Advises policy makers on policy

3. Social and Economic checks and balances

- many decisions relating to values of society (social and economic) made/represented by independent and autonomous individuals and associations
- important that there is checks and balances on these decisions

4. Political checks and balances

- separation of power
- bicameralism (two chambers acting as checks and balances on each other)
- federalism (through a vertical separation of powers)

Characteristics of a Liberal democracy

- **universal suffrage** - all citizens have the right to vote
- **each arm** of govt is to be **separate** and **independent**
- **elections** should be **free** and **fair** and **competitive**
- **places limits** the **authority** of govt
- considers **majority rule** but **considers minority point of view**
- **multiple** and **distinct political parties** should be able to **compete**
- **govt laws** are **legitimised** through **written laws** (Parliament)
- Rule of Law applies
- use of **federalism** and vertical separation of powers

The democratic value

- reflected through democracy
- **majority rule** - sometimes suppresses minority groups
- govt should reflect wishes of majority through **regular elections** by **secret ballot** - express political preferences

Libertarian value

- reflected through liberalism
- citizens **rights** and **liberties** (individual members and minorities) - **protected** from political power
- important that individual citizens basic rights aren't violated by govt action, in spite of meeting approval of majority

Democratic and non-democratic government

- **modern** democratic government - **liberal democracy** - free society, equal political rights
- **few hundred years ago** - these liberal democratic seen by many leaders and philosophers as a **dangerous experiment** and **contrary to 'laws of nature and God'**
- **17th century, Thomas Hobbes** - presents **traditional, authority-centred** view of good govt
- in **20th century** - many **authoritarian** and **totalitarian** systems e.g. fascist regime in Germany under Hitler, totalitarian communism in Soviet Union under stalin.
- many **21st century dictatorships** have some **elements of traditional govt**

Contrasting views of Good government		
	Traditional/ authority based	Liberal democratic govt
The Leader	<ul style="list-style-type: none"> • almost unlimited power • not accountable to anyone • right to position based on physical power, birth and/ or religion activity 	<ul style="list-style-type: none"> • right to rule based on will of majority • govt are accountable to the people • the people can select and dismiss leaders
The People	<ul style="list-style-type: none"> • individuals are subjects • position/ status in life of subjects set by birth, not merit • role of subject was to carry out will of leaders • very limited human rights 	<ul style="list-style-type: none"> • individuals are citizens • citizens have human rights including right to participate in all aspects of social, political and legal activity
The Law	<ul style="list-style-type: none"> • law as the will of leader • different laws for rulers (they were above the law), compared to subjects 	<ul style="list-style-type: none"> • basic principle of rule of law • formal equality before the law • courts independent of political rulers
Communication and Change	<ul style="list-style-type: none"> • communication controlled, limiting new ideas • in past - traditional societies were static (limited change) 	<ul style="list-style-type: none"> • open communication and access to new ideas • society generally dynamic allowing socially, political and economic change

Varieties of democratic and non-democratic government

Direct and representative democracy

- **democracy** - political and legal system based upon the **will of the people**, majority rule
- comes from ancient Greece, *demos* and *kratein*, "the people" and "to rule" respectively

- good govt - recognises **individual freedom**
- citizens can make free choices about many aspects of their lives
- **authority** of govt based on **consent of the people**, and govt aim to **achieve** the **common good** of the **community**

- ancient Greek, expression of the will of the people was a **direct democracy**
- all male citizens were **directly involved** in **all key decisions** that affected their lives

- **modern democratic societies** - not direct democracies - **representative** democracy
- representative democracy - citizens of a country **elect representatives on their behalf** to **make decisions** for a specified period of time
- in Aus, people select their representatives at **elections**

Non-democratic government

- political and legal system based on the **views of elites and powerful minorities**

- **Absolute monarchy** - all legal power rests in decisions of an **unelected monarch** who holds office on basis of **hereditary entitlement**

- **Aristocracy** - legal power is held by an **elite section of society** - **aristocrats**

- **Oligarchy** - power is held by a **few powerful elites** within a society

- **Plutocracy** - power held by **wealthy elite**, an oligarchy based on wealth

- **Autocracy** - legal power exercised by an **autocrat**, who **unilaterally** (without agreement of others) **decides laws** and **social direction** of that country
- seen as **arbitrary** and **unfair**
- **do not tolerate opposition** to their **viewpoints**
- **exercise control over** supposedly **independent** and **democratic institutions** (e.g. court system and parliament)

- **Fascist and Communist dictatorship** - applied widely to all forms of **autocratic govt**
- **absolute monarchs** of the **15th and 16th centuries** could be called **dictators**
- during **20th century**, two **extremely dangerous** forms of **dictatorship developed** - **authoritarian** and **totalitarian** systems

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- **Authoritarian** - rulers have **total control** of political/ legal power, **use violence** to **maintain control**
- **Totalitarian** - systems **enforce absolute obedience**, seek to create **absolute social control** over all citizens
- totalitarian govt **repress all opposition, terrorise society** through use of **secret police**
- uses **monopoly control** of **mass communications** to **enforce total loyalty** to leader or leadership group
- **Fascist** and **communist dictatorships** operate in similar ways but are based on different totalitarian ideologies
- **fascist** believe **all disunity - source of national weakness**
- they **suppress any group** that **opposes them** or is **different** from **'national ideal'**
- a **central fascist idea** is the **leadership myth** - only a **single all-powerful leader** can **express** the **'will of the people'** and **achieve** the **good of the nation**
- **Communist totalitarian dictatorships** seek **total control** over the people to **revolutionise** and **transform society**
- seek to **abolish all social** and **economic differences** - create **absolute equality**
- -> unequal wealth, power and dominance by an all-powerful leadership group/ member
- **Lord Acton** - "all power tends to **corrupt** and **absolute power** tends to **corrupt absolutely**"
- **Anocracies** - **weak** and **unstable** States where many **powerful elites compete** for **power**
- **elites** may **gain power** from **military, land** or other forms of **wealth**, regional or tribal **status**, or religious **position**
- generally **false democracy**, elections make no difference to real power, no effective rule of law
- elites use **corrupt processes** and **violence** to gain share of power

The voice of the people

- **representative govt** - get **authority** from the people, claim to **represent interest** of the people
- **differs from monarchs** who may have claimed to rule for the 'good of the people' but believed their authority was ordained by God
- **'representative of the people' doesn't always mean democratic** in modern sense
- many 'representative systems' **only representative of minority** of population
- others gave **everyone** a say in decision-making, but **some peoples' say** was **'more equal** than others'

Representation and pre-modern republics

- **Ancient Rome** - 'representative' govt but **wasn't a democracy**
- **31BCE** - **Octavian Caesar** declared himself **emperor** - **imperial empire**
- Before Caesars, Rome **republic** - **authority** to rule **comes from the people**
- **not a right** provided by the will of god(s) or physical power
- In **republican Rome**, govt **for the people** (but **not by or of** the people)
- **all free people** had **basic rights**
- **free Romans** - **citizens** with **social/legal rights**, and **responsibilities** - military service

- **Republic Rome** - based on **representative govt**
- emphasised by the letters **SPQR** - "**for the Senate and the people of Rome**"
- **main centre** of **power** - **senate** - **representative** body, but only of **small, wealthy minority**
- **ordinary citizens** represented in **limited** way
- had right to **elect tribunes** to **represent** their **grievances** to Senate

- Roman model of republican govt **inspired** many **early modern societies**
- republican cities **rejected Catholic model** of **Christian monarch** - **power** granted by **God**
- **people** of these cities - **citizens**, not subjects, **citizens enjoyed rights**
- most of these **republics** were **oligarchies**
- **power in hands** of a **privileged elite** - **not representative**

Other representative bodies in pre-modern Europe

- representative bodies existed **before modern times** - but only included **minority of population**, had **limited power**, and **weren't** a **permanent** part of govt
- **kings of middle ages** often didn't have absolute power, **shared power** with other groups
- sometimes involved **representation of the people**
- **England** - **House of Lords** made up of **powerful barons** and **churchmen**
- to **counterbalance** power of **aristocracy**, **monarchs** created **parliaments**, **represented other groups** in society
- wealthy townsman, lesser nobles (knights) - represented by **House of Commons**
- **Continental Europe** - monarchs sometimes called together **'estates'** or **classes** of society
- included **representatives** of **nobles**, **clergy** and **merchants**

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- **'estate monarchies'** - traditional system of govt
- covers Parliament in England, Estates General in France, the Cortes in Spain, the Sejm in Poland and the Riksdag in Sweden
- from time to time **monarchs** attempted to **increase** their **power**
- English parliament - called **'mother of all parliaments'** - because of powers it formally gained after **1689**
- pre-modern parliaments - **representative bodies**, but still only of **small minority** of population

Representation and the modern world

- early modern attempts at **democratic reform** focused on **effective representative govt**
- **people central to democracy**
- achievement of **American Revolution** was creation of a **'government of the people, by the people, for the people'**
- **1700's** and **1800's** idea that **all (or at least all male) citizens** would **have part in choosing govt** began to gain support
- **'Age of Enlightenment'** - **philosophers** including Rousseau and Locke claimed **govt** was **based on 'social contract'**
- declared that **right to rule** came from **consent of the governed**
- these enlightenment **thinkers** were **not democrat**
- idea of representation was a **logical development** of their ideas
- these ideas expressed in **American Revolution 1776**, and **French Revolution 1789**
- rebellion against British, **American** colonists demanded **'no taxation without representation'**
- after **independence 1783**, **US** created govt **representative** of **property-owning men**
- **1789** French revolutionaries **deposed monarch** Louis XVI
- **1791** new French parliament passed **Declaration of the Rights of Man**
- declared all men had **'inalienable' political and legal rights**
- right to **participate** through representatives, in making of the laws
- more **radical democratic claims** beginning to be made
- **1792 The Rights of Man - Thomas Paine** - looked forward to more equal society where **all men** could **participate** in govt
- **1792 Vindication of the Rights of Women - Mary Wollstonecraft** - **women** have an **equal capacity** with men for political participation
- **1800's** US, Britain and self-governing colonies of British empire were leaders in **extension of right to democratic representation**
- by **1850**, **all white males** (in theory) had the **vote** in the US (in practical, individual States still put limits on right to vote)

Political reform in Britain

- **strongest influence** on Aus political ideas - come from our **British heritage**
- taken to include **traditions** of **English govt** since **Norman Conquest of England** 1066
- after **1066**, **William the Conqueror** created a **Christian monarchy** modelled on powerful kinships of Europe
- over time, **powers** of **England monarchy** gradually **reduced**
- for a long time, only small elite shared in political power
- **1800's** number of **major expansions** of **representation** took place
- **1900's** Britain could claim to be **representative democracy**
- however, Aus introduced many modern democratic rights before they were adopted in England

- **early development** in **English govt** - cannot be seen as steps towards democracy - attempts by rich and powerful to **limit power** of **monarchs**
- **1215** - **King John** forced by English nobles to **sign Magna Carta**
- document that required **King** to **consult with nobles** when **tax** were **raised**, also set out some **basic legal rights**
- **1295** - **first parliament** called
- **1400's** - parliament included **two chambers** - **House of Lords** and the '**Commons**'
- **membership of the Lords** - resulted from **social position** - from **inherited** title, or **high position** in church or courts
- **Commons** - '**elected**' but only **represented dominant social** and **economic class** in the kingdom

- over next several centuries, **authority** of English parliament **gradually expanded**, but **representation remained very limited**
- under **Queen Elizabeth I**, parliamentary **freedom of speech/ freedom from arrest** **conceded** to parliament
- **civil war** fought between '**Parliament and the Crown**' in the **1640's**
- by **1690**, **English parliament** more **powerful** than **monarch**
- many **rights** of **modern parliaments** date from that time
- however, govt **still dominated** by a small, powerful **minority** of population

- **1800's series of Reform Acts** - **expanded right to vote** in Britain
- **1832** and **1867** Reform Acts gave **vote** to **middle class men**
- **1887** Act created **almost complete manhood suffrage**
- (vote for **all adult males** achieved in **1918**)
- **1928** - **equal voting rights** for **women** achieved
- **1911** - **Commons** became **clear centre** of **British political power**, when veto power of **unelected House of Lords** over **British politics** ended

Democratic reform in Australia

- European settlement **did not initially bring democracy** to Aus
- **first fifty years** after European settlement, **British Governors ran Aus colonies**
- were **responsible to British Parliament** in London and **established a British legal system**
- didn't recognise the **existing laws of indigenous Aus**
- **1850-1890 - Aus colonies** granted **self-govt**
- from **start - new colonial govt** were **representative** democracies
- **federation 1901 - political reforms** made **Aus** one of the **most democratic nations** on earth
- **right to vote** (the **franchise**) **widened**
- reforms - **secret ballot** and **payment** of members of parliament (**MPs**) were **adopted**
- **1894 - SA - women** right to **vote/ stand** as **candidates** in **Legislative Assembly elections**

Representation and a democratic society

- **modern representative** govt **developed** with **spread** of democracy
- in democracies, govt much be **representative** of **citizens** of **all backgrounds**
- the **franchise** (right to vote) gradually **widened** to include all adult **men**, and later, adult **women**
- **indigenous Aus** did not get **voting rights** until around **50 years ago**

- democratic **right to vote** - **vital** part of our **modern definition** of democracy
- however, not by itself enough to create modern democracy
- **democratic societies** require **more than right to vote** or **majority rule**
- must be based on **liberal democratic principles** of **individual freedom** and **equality**
- must **uphold rule of law** and **protect social, political** and **legal rights** of **individuals** and **minority groups** as well as **selecting govt** in popular elections

Politics and Law

Features of a democratic society

- citizens must be able to **exercise** their **right to vote without intimidation**
- electoral systems should give citizens **equal voting power** so govt **reflect majority will**
- **representative parliament** must be capable of **expressing**, or at least **respecting, voices of minority groups** in society
- minimum standard of **accountability - regular elections** where people can **dismiss** an **unpopular govt**
- higher standard - requires an **open society** - where govt must **respond** to **criticism daily**

- **open societies** - based on right to **peaceful political** participation for all
- democratic participation requires **political freedoms** (speech, association, protection against discrimination and persecution)
- democratic societies must have **media** able to **freely report** on **political activities**, present **wide range of POV** on political issues
- must be an **impartial court system** governed by **rules** of **procedural** or **natural justice**
- **procedural justice** - citizens brought before courts must **know charges against them**
- have right to put their **case** in a **free** and **open court**
- **natural justice** - all those accused of crime considered **innocent until proven guilty**
- **presumption of innocence** regarded as the 'golden thread' of English justice system

- **procedural justice** itself not enough to create **real equality** before the law
- democratic society - extra effort to ensure individuals have **relatively equal access to**, and **treatment by, legal system**

Principles of good government

- societies **shaped** by **beliefs** that people assume to be '**common sense**'
- one concept is the idea of an '**independent judiciary**'
- these concepts can be called 'the **principles of good government**'

- can be put into groups concerned with:
 1. **Limiting govt**: led to changes that sought to **limit power of govt**. Includes concepts of separation of powers, sovereignty, constitutionalism, citizenship and rule of law
 2. **Checking govt**: concerns **processes** intended to **make govt accountable** to the people. Main models of **democratic accountability** are the British idea of **responsible govt** and **presidential model** of the US. all forms of accountability require citizens to have **political** and **legal rights**
 3. **Voice of the people principles**: include **representative govt**, **democratic voting rights** and **idea** of a **democratic society**

- aus govt also shaped by idea of division of powers

Limiting government

Montesquieu and the separation of powers

- **1700's** - political thinkers **critical** of **absolute power** possessed by most monarchies
- **rejected** traditional idea - **king** was '**father**' - had **absolute power** to **make decisions** for his people, who was **only responsible to God**
- **separation of powers** opposed arbitrary rule by absolute monarchs
- **Baron de Montesquieu** - **rejected unlimited powers** of French monarchs
- key feature of British govt, **vital feature** of **modern limited govt**

Applying the separation of powers

- **US - 1780's** - constitution of the US, legislative power: **parliament** (the congress), executive power: **president**, judicial power: **Supreme Court**
- **never** been **clear separation** of legislative and executive in modern democracy

- **Britain** and **Aus** parliament - **division** between executive and legislative power **unclear**
- **judiciary - independent**
- **courts** should base **decision** on **authority of law**, not opinion
- free from interference from legislators or executive leaders

Sovereignty

- **supreme authority** to **govern** in an **independent nation**
- **non-democratic** govt - based on **traditional** or **religious authority**
- **constitutional** democracies - based on **consent** of the people

Constitutionalism and citizenship

- **1700's - 1800's - political revolutions** fought to **achieve constitutionalist govt**
- today this doesn't seem a radical **idea**
- Aus has different **corporative organisations** that set out **membership rules** and **decision-making processes** that **govern** them

- **political constitution** - set of **fundamental** laws that '**governs** the **governors**'
- constitution can define **govt powers, structure** of political systems and **processes** and **procedures** of govt
- set out the **legal way power** can be **exercised** in a political system
- **authority - power** exercised **under law**

- **revolutionaries** and **reformers** of the past demanded **absolute monarchy** be **replaced with constitutional monarchy** or **democratic republic**
- constitutional monarchy - **monarch** almost completely **restricted** to **acting on advice** of an **elected parliament**
- democratic republic - **sovereignty** entirely **based on people** and **decisions** are **made by elected representatives** on their behalf

- constitutionalism - **law limits power**
- govt only has authority to **exercise powers** set out **in constitution**
- mostly constitutions are **written documents**
- some systems rely on very strongly held **shared beliefs** or **conventions**
- makes it possible to **challenge legality** of **govt actions** in **court**
- provides people with **protection against tyranny** - against the **illegal exercise** of **power** by **power-holders**

- constitutions make **citizenship** possible
- **absolute monarchs** and **dictators** rule over **subjects**
- a **subject** is required to be **loyal** and **obedient to ruler**
- in contrast, people living in societies with **modern constitutionalist govt** are **citizens**
- **citizenship** requires **limited govt** and **rule of law**, and **responsibilities** of living in a **free society**
- citizens have **rights** - includes **basic** - freedom of speech, **legal** - right to a fair trial, **political** - right to vote
- some views of citizenship extend right of citizens to:
 - **economic rights** covering issues such as **education** and **public health**
 - **cultural rights** such as right to **participate in cultural life of community**

The rule of law

- similar concept to constitutionalism
- **'the rule of laws, not of men'**
- an **action** is **allowed** or **not allowed because of law, not because of power of govt**, large **cooperations** or powerful **individuals**
- under rule of law, **law** also **binds** all **arms of govt**
- **actions** of legislative, executive and courts must be **lawful**
- **standards** applied to **citizens** also **apply to govt**

Essential features of the rule of law:

1. The law **applies to actions of all citizens**, whatever their status or power. The law **equally binds** those who **make** or **enforce** it.
 2. There must be effective ways of **holding govt** and **officials accountable**. This restates need for **separation of powers**: legislative should not have power to enforce and adjudicate law, and judiciary must be able to act independently of legislative and executive.
 3. Citizens are **equal before the law**. This principle sets a minimum requirement that people have **same legal rights**, regardless of their wealth or status.
 4. The law must be **clear** and **understandable** so people can **easily comply with** it. In almost all cases it **must not be retrospective**: a **new law** should **set standards** for **future actions** and not make a illegal past action that was within the law when it occurred.
- rule of law creates **responsibilities** for both govt and citizens
 - **legal processes** must ensure those who appear in **court** get a **fair hearing**
 - citizens must **respect** the **law**
 - for rule of law to exist in reality, citizens must **willingly choose** to be **bound** by **existing laws even if they disagree** with need for them
 - citizen who accepts protection of rule of law must accept that **protection of law** and **right of due legal process** apply to **all other citizens**
 - all people have a **right** to **seek to change** the **law** through peaceful means

Referendums in Australia

- Australian Constitution can only be changed by referendum
- there has been 44 referendums held since 1901
- only eight of these have been successful
- most successful referendum in Australia's history was in 1967
- where 90.77% of the nation voted 'Yes for Aborigines
- 1967 referendum amended Australian Constitution to give federal parliament power to make laws in relation to Aboriginal and Torres Strait Islander people
- allowed for Aboriginal and Torres Strait Islander people to be included in census
- contrast to the 1999 referendum
- proposed to alter Australian Constitution so that Australia became a republic
- insert a new preamble

Checking government

Accountability definition

- govt responsible for their **actions** and **decisions**
- a principle of **responsible** and **representative** govt
- systems of **accountability check** or **scrutinise actions** of elected govt
- all **decision** taken by **elected representatives** of people - must be **fully accounted for**
- **govt spend taxes** they raise **from the people**
- must be **responsible** for **spending of these funds**
- must be **accountable** for **success** and **failures** of **policies introduced**

Democratic accountability

- citizens must have **right to vote freely** and **regularly**
- have **accurate info** to **evaluate actions** of govt
- govt must be **open to criticism** about its **failures** and **weaknesses**

Political accountability

- requirement that **all public officials**, both elected and appointed, should be **answerable** to the people
- can operate through both **democratic elections** and through **application of law**

Political rights

means people should be able to question the govt action by

- right to free speech
- right to form groups (pressure groups, bodies)
- free media
- right to dissent and protest against govt policies

Legal rights

- citizens have **legal rights**
- to protect rights of citizens, **legal system** has to be **independent** from govt
- citizens entitled to **justice** from our **court system**
- **decisions** handed down should be **free from bias and prejudice**
- legal system of Aus and England have a symbol of a blindfolded woman upholding scales of justice
- this asserts **two principals of justice**:
- all people seeking justice within court system are to be **treated equally**;
- legal process should not be **biased** or **prejudiced** against any individual or group in society

Responsible government

the Westminster model

- describes system of **checking govt** that has developed over many centuries in **Great Britain**
- at first, right to **carry out this check** asserted only by **wealthy nobles**
- by **1800s** - grown into **modern idea** of **responsible** parliamentary **govt**
- that govt **responsible** to a **parliament** of **elected representatives**
- ^ **Westminster system** - British parliament is at Westminster in London

- **Aus** and **GB**, **PM** and **other ministers**
- **key decision makers** who make up govt
- **elected members** of parliament
- **accountable** to parliament for their **day-to-day decisions**
- if they **lose support** to parliament they **cannot be govt**
- parliament can **sack them** and **replace them** with a new govt
- **unwritten rules** or **conventions** of **responsible govt**
- **enables parliament** to **dismiss corrupt** or **incompetent Minister**
- **ministers accountable** for **actions** of **public servants** who carry out their instructions

- under system of **responsible govt**, **legislative** (parliament) can **make and break govt**
- **all members** of parliament are themselves **accountable** to the people
- they have to **face voters** next **elections**
- by **voting out** their **elected representatives**, people can **change govt**
- **Westminster Chain of Responsibility**

the presidential model of The United States

- **US** system clearly **separates arms** of **govt**
- **three** separate branches
- **legislative** - **elected representatives** - sit in the **two houses of Congress**
- **executive** - **directly elected President**
- **judicial** - **courts**, headed by **Supreme Court**

- **voting** by US citizens to **directly elect President every four years**
- US **President directly accountable** to the people, can be **voted out** next election
- when **President loses** an **election**, his **whole administration** (including appointed ministers - **Secretaries of State**) is also **dismissed**
- **between elections**, members of **Congress (legislature)** can **impeach** a **President** who has **committed a criminal offence**
- 44 Presidents between 1789 and now
- **impeachment** attempted twice (against President Johnson 1868, President Clinton 1998)
- neither successful
- 1970, President Nixon resigned when Congress threaten to impeach him

- **accountability** in **US** also relies on '**checks and balances**'
- over time, power of **Congress** and **President overlapped**
- both share **legislative** power
- **Congress** can **pass a bill, not law until** it has **Presidential consent**
- **President may propose** vital **bills**, **only Congress can introduce** and **pass them**
- **Congress** and **President** act as a **check and balance** on each other
- US citizens can take a case to **Supreme Court** and **Court's judgment** can **cancel any govt law or action** that it determines is **unconstitutional**

Politics and Law

- both **Westminster** and **Presidential** Systems **emphasise independence** of the **judiciary**
- similarly, under **Aus federal constitution**, **High Court** hears constitutional disputes and can act as a **strong check** on govt power

Accountability and rights

- for any system of accountability to work, vital that **elected members** of parliament and **citizens** have **accurate info** about **actions of govt**
- **strength** of a **democracy** lies in its ability to **accept open criticism** about its **failures** and **weaknesses**
- **democratic participation** only possible if citizens have **equal democratic** rights
- political and legal