

Politics and Law: Unit 3 & 4 Definitions

Separation of Powers	The principle by which government powers are limited, defined and divided between three arms (legislature, executive and judiciary) to provide checks and balances on each arm, to ensure that no single body can exercise absolute power, and to prevent arbitrary, oppressive government. Developed by French philosopher Montesquieu. Today, no full separation of powers exists - for instance, in Australia, the executive and the legislature are merged in the parliament, as members of the executive are drawn from the legislature.
Constitutionalism	The principle that government powers should be limited to those prescribed in a written or unwritten constitution, in order to enable checks on the government's exercise of its powers.
Federalism	A system of government in which the powers and responsibilities of the government are divided vertically between a single central government and two or more regional governments. It requires a written constitution to settle disputes regarding the division of powers, usually through a constitutional court. Utilised in countries such as Australia, the US and Canada. Achieved through a vertical division of powers, whereby exclusive powers are enumerated and remain with the federal government, concurrent powers are shared between the federal and state governments, and residual (un-enumerated powers) remain with the regional governments
Heads of power	Codified legislative and financial powers allocated either to the Commonwealth Parliament and/or State Parliaments under the exclusive and concurrent powers enumerated in the constitution.
Responsible Government	The convention, drawn from the British Westminster system, by which the executive must be supported by a majority of the parliament, which in turn is answerable to the people. If the executive are defeated by a no confidence vote in the parliament, or by an election by the people, they must resign. In Britain and Australia, this means that the executive are elected members of parliament, and must maintain accountability to the parliament in order to form government, and can be dismissed by the parliament. Manifested in the Westminster Chain of Responsibility which exists between the people, the parliament, and the executive.
Public service	A public servant is an unelected/appointed official of the administrative executive who provides administrative services to the Commonwealth Executive. These public servants are arranged into government departments and statutory authorities who manage their own areas of Commonwealth law. Accountable, via the Westminster Chain, to the Minister which appointed them and to the parliament, and thus also to the people.
Judicial power	The power to adjudicate, to make legally-binding decisions that have the force of the law - a power exercised exclusively by the courts
Constitutional monarchy	A form of government in which a hereditary monarch's powers are limited by the existence of a democratic constitution, and on occasion, a democratic parliament. Examples include Britain and Australia, whereby the Queen is the head of state, but the nation is governed by an executive which is drawn from an elected parliament.
Delegate representation	Parliamentarians relay the peoples' interests and views into parliament with little concern for their own values or conscience

Trustee representation	Parliamentarians are entrusted by the people to represent them
Sovereign state interest	Senate represents all States and their views equally
Mirror representation	an elected body of representatives reflect society's different groups in similar proportions to those that exist in the wider population
Partisan representation	Parliamentarians represent party policy due to party discipline
Gag	A government member moves a motion to call a vote on the Bill during the Second Reading Debate to cease debate
Guillotine	Government moves a motion that allocates a certain amount of time for the debate of a certain Bill before debate commences > once time expires, debate ceases
Floodgating	Government introduces many Bills simultaneously to overwhelm deliberative procedures of the statutory process, in order to push Bills through the lower house quickly at the expense of debate and scrutiny
Parliamentary Privilege	Legal immunity enjoyed by members of certain legislatures, in which legislators are granted protection against civil or criminal liability for actions done or statements made in the course of their legislative duties > protects debate and creates ultimate freedom of speech
Decline of Parliament Thesis	The Decline of Parliament thesis states that the failure of the parliament to live up to its theoretically ideal functions means that it is in decline. The thesis outlines how the Australian parliament is failing to live up to its theoretical expectation in the areas of representation, legislating, responsibility and debate, for the large part due to underlying structural features of Australia's political and legal system such as the executive dominance created by the system of Responsible Government. For example, the thesis argues that the legislative function of parliament is in decline, as executive dominance limits the scrutiny and policy range of legislation passed in the parliament.
Governor General	The representative of the monarch in Australia, established by s61 and exercising the formal executive power of the Commonwealth. They possess express and reserve powers, but in reality their powers are limited by Westminster convention.
Constitutional executive	The executive branch as established by the constitution, but limited by convention. Belongs to the Governor General and the Queen of Australia, but realistically they exercise very little real power in the Australian political and legal system.
Political executive	The executive government (Cabinet) which has the responsibility of running the day-to-day activities of the government in Australia. Made up of the Prime Minister and Ministers drawn from the party with the majority of seats in the House of Representatives. The Constitution makes almost no reference to the political executive (ie. the Cabinet), leaving much of its operation to the Conventions of Responsible Government.
EXCO	The Federal Executive Council, the formal executive created by s62. Comprised of the GG and their appointed Ministers. Advise the GG on the exercise of executive power. In reality, the PM (appointed from the elected parliament by Westminster Conventions of responsible government) advises the GG on ministerial appointments to EXCO.

Express powers	Powers of the GG which are codified in the constitution, and are exercised by the GG on the advice of EXCO. The exercise of express powers thus requires Cabinet Ministers' approval. Examples include the appointment of federal judges (s72) and issue of election writs.
Reserve powers	Powers of the GG which may be exercised without or contrary to Ministerial advice. Examples include the dismissal of a PM if they have lost the confidence of the power house (s64)
Ministry	The collective of Ministers, Assistant Ministers, Junior Ministers and the Prime Minister. It is divided into the inner Ministry of senior Cabinet Ministers, and an outer Ministry of less important Junior and Assistant Ministers. Collectively, they form EXCO, and advise the GG on executive matters. The Ministry is largely unmentioned in the Constitution - their decisions may require action by the GG, parliament, or holders of statutory office.
Inner Ministry	The collective of senior Cabinet Ministers, including the Prime Minister, who hold important policy portfolios within the executive
Outer Ministry	The collective of less important Junior and Assistant Ministers who hold less important portfolios, or assist a Minister with their portfolios.
Prime Minister	The leaders of the party, or of the senior party in a coalition, which hold an absolute majority of seats in the House of Representatives. They are the head of the 'political executive' and are commissioned by the GG under s64. The PM is largely unmentioned in the Constitution, and is largely governed by convention.
Cabinet Minister	A member of the executive arm of government, and a member of both Cabinet and EXCO, drawn from the senior ranks of the majority party or coalition in the lower house. They are responsible for a certain area of government activity, known as a portfolio
Junior Minister	Ministers which are not permanent members of Cabinet, and hold portfolios in less important areas
Assistant Minister	Less important Ministers which provide support for Cabinet Ministers in their roles due to the increased complexity of governance. May manage their own small portfolios. Not recognised as Ministers until 2000 - Previously known as Parliamentary Secretaries, before Malcolm Turnbull's decision to change the name to Assistant Ministers, implying they are now appointed by the GG.
Cabinet Solidarity	The convention that requires Ministers to publicly support Cabinet decisions, otherwise, by convention, they must resign from the Cabinet. However, is rarely enforced, and most usually a break with solidarity has no consequences for the Minister.
Cabinet secrecy	The convention that the details of all Cabinet meetings must be kept secret, which is accomplished through the use of soundproof Cabinet rooms, and minuted meetings that are locked away for 30 years following the meetings, and also by the criminal offence of breaching Cabinet Secrecy.
Opposition	the party with the second largest number of seats in the HoR which is loyal to the system of government but in adversarial competition with the current executive government
Shadow Ministry	composed of senior members of an opposition party who directly oppose a current government Minister, whose role is to scrutinise and oppose equivalent government Ministers

Private Members	all MPs who do not form part of the Ministry (executive). Includes the Shadow Ministry, Leader of the Opposition, and government backbenchers. Private Members' Bills are those Bills introduced by Private Members, such as the Australian Cannabis Agency Bill 2018, introduced by Greens Senator Richard di Natale.
Refusing pairs	Opposition does not agree to remove one member for each absent member of the government in order to maintain power ratios. Refusing pairs may force the government to summon all MHRs, delaying government business
Mandate	A claim to exercise political and legal power, the justification for which is derived from the democratic expression of the people.
Popular Sovereignty	The idea that the right to govern rests in the people, who delegate their sovereignty to elected representatives to make laws and authoritative decisions on their behalf
Representative Democracy	A system of democracy in which the citizens elect representatives to legislate and govern on their behalf. Involves temporarily delegating sovereignty to these representatives for a period of time through elections
Will of the Majority Mandate	Claimed by the government when they win an election, justified by the claim that the people. Have delegated their sovereignty to the government, and thus that it should be able to implement its specific policies and laws in line with its general ideology
Balance of Power Mandate	Claimed by the parties or independents with the balance of power in either house, which justifies the amending, passing or repealing of Bills
Right to Oppose	The right claimed by the Opposition to influence legislation, on the justification that respect for the democratic system enables the Opposition to hold a mandate to oppose the government.
General Mandate	A claim by a governing party to have the authority to implement policies which broadly reflect its ideology, on the basis that they were delegated the democratic sovereignty of the people at an election
Specific Mandate	A claim by a governing party to have the authority to implement policies and promises which were specifically a part of their election campaign. These are the most successful claims for a mandate.
Cross-vesting	The act of giving state courts the power to hear federal cases and vice versa - the granting of federal jurisdiction to state courts under s71 of the Constitution. More common before the parliament created federal courts such as the Federal Court of Australia.
Legalism	The strict use of customary and traditional legal rules and maxims of interpretation in legal interpretation. The narrow legal aspects of the case are examined without reference to broad community concerns or evolving social and cultural norms.
Literalism	Judges consider the actual words of the law and their plain English meanings are used with minimal consideration of extraneous sources.
Judicial activism	The purpose and intent of the law is as important as the actual words, there may be implications in the laws that have not been explicitly expressed in the law itself, and the broader social impact of the interpretation is a valid consideration. Judges attempt to read the law in ways that keep it up to date with contemporary circumstances.
Superior law	Law found in constitutions

Statute law	Laws made by parliament. Being made by elected MPs it has democratic legitimacy and thus overrides common law
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. Precedence formed by ratio decidendi are binding on all the lower courts in the same hierarchy. inferior to statute law.
Delegated legislation	Lawmaking power delegated by parliament to the executive to maximise efficiency. While executive can make regulations and ordinances eg. Indexation of pensions, parliament closely oversees delegated lawmaking and may withdraw authority at any time, to avoid breaching the SoP
Political parties	Associations formed by people with generally similar interests who are seeking to influence legislation and policy.
Major party	A political party capable of winning a HoR majority in their own right or in a coalition with a minor party during an election
Minor party	A political party capable of winning seats in parliament but not of forming government in its own right
Micro party	A political party which may win a seat or only a few seats in parliament. They may not survive for more than one or a few successive parliaments
Pressure group	Associations formed by people seeking to influence policy and legislation. They have a narrow focus
Cause group	Pressure groups focused on a particular specific issue they perceive to be in the public interest
Sectional group	Pressure groups focussed on the benefits for a particular sector of society or the economy.
Hybrid groups	Combine features of both cause and sectional pressure groups, advocating for the interests of a particular group but also for general policies that they believe are in the interests of society.
Peak bodies	Pressure groups which belong to a larger, better resourced association of similar pressure groups
Insider groups	Groups that represent important sectors of society and are considered legitimate by government
Outsider groups	Groups that represent aims, groups, causes and principles which are less central to business, government or the economy
Cooperative federalism	A federal system in which the two levels of government work together to achieve shared outcomes
Coordinate federalism	A federal system in which the two levels of government work independently within their own spheres of influence and powers
Coercive federalism	A federal system in which the central level of government possesses and exercises significant power over the regional governments.
Fiscal federalism	A federal system in which the central level of government possesses and exercises significant financial power which it can use to coerce the regional governments.

Concurrent powers	Powers shared between and exercised by the Commonwealth and the states, outlined in s51 of the constitution.
Exclusive powers	Powers granted by the constitution to the Commonwealth parliament alone. Found in s52 and various other sections such as s90.
Residual powers	All powers not specified or enumerated in the constitution, which belong solely to the states.
Vertical Fiscal Imbalance	The imbalance in the taxing powers and spending obligations between the two levels of government in a federation
Horizontal fiscal equalisation	The requirement that the federal government use its financial powers to equalise the standard of public service delivery in each state
COAG	The Council of Australian Governments, the peak Ministerial Council and intergovernmental forum in Australia. Members are the PM, state and territory first Minister and the president of the local government council. An institution of cooperative federalism
Doctrine of Reserved Powers	The doctrine which instructs the High Court to interpret concurrent powers narrowly such that state power is preserved when the Commonwealth enters an area of concurrent powers. Manifested in the 1904 case of Peterwald, but has since been largely abandoned in favour of increasing centralism
Doctrine of Implied Immunities of Instrumentalities	The interpretation that argues that the Constitution implies that state powers should be preserved and thus that the Commonwealth should not be able to intervene in residual powers. Upheld in the Railway Servants case 1906, but has since been largely abandoned in favour of increasing centralism eg. In the Engineers Case 1920
Referendum	The only process by which formal change to the text of the constitution is possible. It is a formal process governed by the Constitution itself in s128
Double majority	The voting requirement for a referendum to pass - a majority of voters across the Australian electorate (democratic majority) as well as a majority of voters in the majority of the 6 states (federal majority). The ACT and NT do not count as part of the 6 states, but their residents' votes are counted within the democratic majority.
Rule of law	The principles that all individuals and government are equal before the law, that laws must be based on consent, and applied through consistent and accepted practices. Laws should apply equally to all citizens' and governments' actions, all must have equal rights before the law, law must be easily understandable so people can comply, law must keep the government accountable under the SoP, and must not be retrospective. Citizens should have the right to seek to peacefully change the law.
Elections	A procedure allowing all eligible citizens to hold elected officials to account for their previous term in office and to delegate popular sovereignty temporarily to elected officials for the next term of office.
Malapportionment	The result of an inequality in the number of electors in an electoral division, resulting in electors in smaller districts having comparably larger voting power than those in larger districts. Violates 'one vote, one value'
Standing orders	Rules governing the conduct of all the business of the House and Senate. They determine conduct, orders of business, motions and votes, the passage of Bills, and how to address the speaker.

Presiding officers	The leading officer of each house of parliament, responsible for the regulation of parliamentary conduct and for managing debate and business of the chamber.
Committees	A specialised subset of MPs which has defined membership and a specific area of work to focus on.
Standing committees	Formed when a parliament is established after an election, and endure for the life of the parliament, before being dissolved before the next election
Select committees	Firmed for a particular purpose and dissolve when that purpose is achieved
Ejusdem Generis	of the same kind' - a specific group of words in an act creates a 'class', and courts decide case-by-case what else belongs to said class
Noscitur a Sociis	by the company it keeps' - courts read the words of an Act in the context of the surrounding words.
Expressio unis est exclusio alterius	the express mention of one is to exclude all others' - an act containing words that create a class, but doesn't contain a general term after them - implies the strict application without expanding said class
Literal rule	Courts apply standard dictionary definitions of a word in a statute. Courts use ordinary meaning of language in the statute
Golden rule	Courts seek alternative meanings of a word if the literal meaning results in an absurd outcome or injustice
Mischief rule	Court seeks to interpret the purpose of the law or the mischief it seeks to prevent, in order to interpret the meaning of its words. Applies if the literal rule and golden rule may produce unjust or absurd outcomes.
Administrative Appeals Tribunal	Tribunal focussed on review and accountability of public service sector decisions - both for merit and for legality. Contains divisions such as Freedom of Information Division, Migration and Refugee Division, NDIS Division
Senate Regulations and Ordinances Committee	Group of senators who work as a committee to supervise and scrutinise the executive's subordinate law-making power
Auditor General	Independent officer of parliament, with bipartisan support, whose role is to provide parliament with an impartial assessment of all areas of government departments and public service administration.
Senate Legislation and References Committees	8 important standing committees in Senate which review all legislation from parliament eg. Economcis, Foreign Affairs Defence and Trade, Legal and Constitutional Affairs
Senate Estimates	Special sittings of legislative and references committees of the Senate which conduct investigations during the budget during which the exec's spending is examined by the parliament.
Individual Ministerial Responsibility	Individual Ministerial Responsibility is a Westminster Convention of responsible government by which a minister may be held to account by the House of Representatives.

Collective Ministerial Responsibility	Collective Ministerial Responsibility is a Westminster Convention whereby an entire executive government may be held to account by the House of Representatives.
Censure Motion	Actions by which the parliament seeks to disapprove of the actions of a specific Minister. May take form of a vote - or the defeat of a key government Bill/Appropriation Bill is an 'effective vote of NC'
No-Confidence Motion	No-Confidence Motion: actions by which the parliament seeks to disapprove of the actions of a government. By convention, government against which a no confidence motion is passed, is expected to resign from government immediately. S64- Ministers must be MPs. Means they are subject to the Westminster Chain of Responsibility, may be dismissed by the parliament for poor conduct - by a censure motion.
Convention	Unwritten constitutional practices regarding the operation of government, primarily derived from the Westminster system which are consciously followed in a society and government but are not legally enforceable.
Appeals	A challenge to the judgement of a lower court in a higher court. The right of individuals to appeal is a major reason for having the hierarchy of courts.
Chief Justice	A chief justice is the head and most senior of judges in a court hierarchy. They possess an accountability role in ensuring that all courts in that hierarchy are fulfilling their roles successfully and exercising judicial power appropriately. However, they are limited in their accountability power, as judicial independence is a principle which applies not only to judges from external influences of the other arms of government, but also within the court hierarchy itself, between individual judges.
Doctrine of Precedent	The theory that principles of law created by judgements in higher courts should be applied to judgements in cases in lower courts where the facts of the case are similar. Enforces accountability of the courts by ensuring that judgements are consistent and valid.
Natural Justice	The right of all individuals to the due process of court proceedings that enable them to best argue their case before an unbiased judge, and where appropriate, to be judged by their peers. Requires the right to appeal if the original trial contained legal flaws.
Parliamentary sovereignty	The principle that parliament is the ultimate law-making authority as it has democratic legitimacy granted by the people, and thus its laws override common law made by the courts. Thus, by implication the parliament is able to place statutory limitations on the extent of judicial discretion and judgement.
Public confidence	Public confidence refers to the extent to which the Australian public has trust in the legal system. This is influenced by the public perception of transparency, justice and fairness in the legal system. Public confidence is important to maintain, as it acts as an incentive for law-abiding behaviour, and better enables the operation of due process and cooperation between the legal system and the public.
Rules of evidence	The guidelines and restrictions on the admission of evidence in a trial - restrictions on the validity of evidence - eg. Hearsay evidence, circumstantial evidence not permitted. An important part in ensuring the validity and fairness of the trial.
Human Rights	Universal claims to certain freedoms and entitlements which ensure dignity, equality, respect and the ability to make genuine choices about one's own life

Civil rights	Rights which involve protecting people from discrimination and empowering them to live full lives within their communities and societies. First generation negative rights, eg. Freedom of speech, right to life
Political rights	Rights which involve empowering people to participate in the government of their country eg the right to vote, right to assemble. First generation negative rights
Legal rights	Rights which apply to those accused of or subject to civil or criminal wrongdoing, aimed at defending fair trial and natural justice processes. First generation negative rights eg. Right of presumption of innocence
Economic rights	Rights which involve the entitlement to a minimum standard of living ensured by economic prosperity eg. Rights to own property and to work. Second generation positive rights
Social rights	Rights which enable a person to develop and live a life of their own choosing eg. The right to choose a marriage partner, rights to have children and a family. Second generation positive rights
Cultural rights	Rights which apply to specific ethnic or cultural groups based on ethnicity, religion or status, seeking to protect the specific entitlements of that group. Third generation rights eg. Native title in Australia
Parliamentarianism	The assignment of ultimate power over rights to the legislature. In theory the legislature represents the democratic will of the people. It follows that the people would not suppress their own rights.
Judicial supremacy	The assignment of ultimate power over rights to the judiciary. The judiciary is immune of influence by the legislative or the executive.
Constrained parliamentarianism	The assignment of ultimate power over rights to the legislature, while allowing the judiciary to monitor and declare statute laws as incompatible with rights. Thus, the parliament is effectively 'constrained' by the judiciary, but still exercises significant power
Express rights	Rights that are explicitly and specifically enumerated and outlined by the Constitution
Implied rights	Rights discovered as being implied in the constitution by the High Court when it interprets the Constitution. They can be controversial because they alter the constitution without democratic authority
Political representation	The process of selecting representatives that express the views and values of their constituents in the national assembly or parliament
Popular participation	Involves the ability of the people to play a role in their own governance and the political systems which govern their nation
Judicial independence	A key democratic principle whereby the judiciary must be completely free from interference and influence from the parliament or government, or any other institution or person. A key component of the Rule of Law
Corporatism	A political theory which argues that there are powerful interests within society which influence law and policy in their own interests rather than in the public interest. These groups compete with each other for the recognition of the government eg. media, large companies and industries. This theory can be used to explain the activities of some sectional pressure groups, and is a theory critical of the distorting influence of pressure groups on democracy and society.

Pluralism	A political theory which argues that there is a very wide range of interests within society that try to influence law and policy, and which compete with each other for recognition by the government. This theory can be used to explain the activities of cause-based pressure groups, who contribute to democracy by enabling popular participation.
Electoral college	An elected group of voters who then vote for a candidate for public office eg. In the US for presidential elections. Each state in the US is entitled to a certain number of electoral college votes based on its population. If a presidential candidate wins the majority of a state's electoral college votes, they take all of that state's votes (except for Nebraska and Maine, who have proportional representation). The electoral college meets some weeks after the popular elections to cast their votes for the president.
Open government	An ideal of democratic governance which holds that the business of government should be open to public and parliamentary scrutiny and oversight via a 'free flow' of information