**CHAPTER 1: LIMITS TO POWER AUSTRALIA AND UNITED STATES**

*constitutions:*

*australia*

1. parliament; general, senate, HOR, both houses of parliament, powers of parliament
2. executive government
3. judicature
4. finance and trade
5. the states
6. new states
7. miscellaneous
8. alteration of the constitution

*america*

1. legislative power; senate and HOR legislative powers, HOR, senate, elections for both houses, procedure of each house, payments and limitations of members of congress, passing of bills, powers of congress, states, other matters
2. executive power
3. judicial power
4. relationship between states
5. amending the constitution
6. prior debts, national supremacy, and oaths of office
7. ratification

*australia constitution and separation of powers*

* **representative democracy** and **constitutional monarchy**
* section 7 and 24 “requires both houses of parliament to be directly chosen by the people”
* commonwealth of australia constitution act 1900 contains **8 chapters and 128 sections**

*chapter 1*

* legislative power is vested in the **commonwealth parliament** which includes **queen and 2 houses of parliament**
* legislative power = power to make statues (statue = law made my legislature)
* aus is bicameral, composed of HOR (lower house, elected by the people 151 members)
* senate (upper house, 76 members 12 per state 2 per territory)
* section 53 “there is a division of the government powers between one national and 6 state governments”

*chapter 2*

* executive power vested in queen + gg
* executive power = power to carry out or execute laws by developing policies and implementing statues
* i**ncludes queen, prime ministers, ministers**
* cabinet = pm and senior ministers
* outer ministry made up of junior ministers and assistant ministers
* formed according to unwritten westminster conventions, eg. government is formed by party which has the majority of seats in lower house
* administrative executive = public servants
* aus constitution is minimalist, most of the constitutional rules are not written in constitution but found in unwritten constitutional conventions
* chapter 1 and 2 creates constitutional fusion of legislature and executive as crown is part of both
* section 61 “vests power of commonwealth in the queen and gg, therefore constitutional executive is formed”
* section 64 “all ministers must be part of parliament” but causes fusion between legislature and executive

*chapter 3*

* judicial power = power to adjudicate and make legally binding decisions and interpret common and statute laws
* jurisdiction = ‘where the law speaks’ the type of cases heard by court depends on jurisdictions
* aus jurisdiction is arranged geographically and by areas of law (court hierarchy)
* constitution creates separation of judicial power like US rather than british
* as aus is a federation the high court is similar to the US federal supreme court eg. both courts are constitutional courts with jurisdiction over the constitution and federal powers AND both courts are the final court of appeals
* section 71 “vests judicial power in high court and in other federal courts the parliament creates. it also grants commonwealth parliament the exclusive power to create other federal courts”

*united states constitution and separation of powers*

* US is a representative democracy, republic organised as a federation with an executive presidential system of government
* constitution contains 10 articles (like our chapters)

*article 1*

* legislative power in the congress (US) consists of the senate and HOR
* sections include, legislative power in congress consisting of senate and HOR, HOR, senate, elections for both houses, procedures of both houses, payments and limitations
* bicameral legislature, both houses directly elected by the people BUT are elected differently and have different powers

*article 2*

* executive power vested in president and vice president
* electoral college is part of the voting system, presidential elections are separate from congressional elections
* entirely separate from other 2 branches of government
* president and vice president are elected at the same time and then appoint cabinet of secretaries who head departments and agencies

*article 3*

* vests judicial power in supreme court and allows congress to create other federal courts
* include power to interpret constitutions and strike down laws it judges to be unconstitutional
* final court of appeal for all lower courts

**CHAPTER 2: POWER AND THE COMMONWEALTH PARLIAMENT**

* chapter 1 of aus constitution is 60/128 sections
* important sections include (7,24,51,53)
* section 7: creates and defines senate
* section 24: creates and defines HOR
* section 51: contains list of ’40 powers of parliament’ but is not a complete list, other powers are located elsewhere in constitution
* section 53: limit on senates power to legislate money bills
* parliament has 4 main functions’

1. **representation** of people
2. **legislation** - to make statute laws, both appropriation (money) acts and ordinary acts
3. **responsibility** to make government and then hold it to account
4. **debate** and act as the nations premier discussion form

*defining parliament and its power*

* aus is washminster hybrid; combines features of washington model and westminster model
* commonwealth parliament consists of 3 parts; lower house (HOR), upper house (senate) and crown

*‘wash’minster system*

* like US australia constitution divies power into; exclusive, concurrent and residual
* exclusive to commonwealth parliament (immigration, finance, border security etc)
* concurrent to both federal and state government (taxation, marriage etc)
* residual, responsibility of state government (primary schools etc)
* section 109 “federal law dominates over state law”
* section 106 “preserves state constitutions”
* section 107 “preserves state powers”
* section 108 “preserves state laws”
* wash ‘minster’ system
* section one of constitution says parliament is made up of queen, HOR and senate
* HOR keeps government accountable
* section 24 “establishes HOR as peoples house, requires HOR to be directly chosen by people, no state must have less than 5 members”
* also binds the 2 houses in terms of size, if one changes it will effect the other - nexus clause
* *WASH*

1. written federal constitution which divides and allocates powers of the legislature
2. powerful upper house - equally represent states at the federal level
3. strong bicameralism

* *MINSTER*

1. constitutional monarchy with queen incorporated into economy
2. lower house of government (HOR)
3. responsible parliamentary government operating under unwritten constitutional conventions

*senate*

* section 7 “senate and HOR has co-equal powers but senate cannot originate money bills”
* consequences of above; malapportionment ie. states with different populations have equal representatives, eg. tas has smaller proportion but same amount of representatives as larger states
* constitutional crisis in 1975, senate now negotiates money bills with HOR before presented to senate

*parliamentary powers flow through its functions - legislatures*

- section 7 nad 24 state each house must be directly chosen by people

*representation*

* delegate representation: (HOR) member of parliament is the mouthpiece of the people that elect them and simply represent the values and concerns of constituents in parliament
* trustee representation: (HOR) members of parliament do not have to necessarily voice concerns of constituents, rather use their judgement to decide in best interest of their electorate
* state representation: (senate) represents 6 states and each state regardless or size is equally represented

in practice:

* political parties are the leading representative associations in modern aus
* most electors identify with parties instead of candidates

party rooms

* meeting room of mps and senators belonging to a political party
* decisions are made via consensus or imposed party leadership
* once decision is made, the expectation is that it is supported publicly - party allegiance
* most electors cast votes for the party which holds the same ideologies and values as themselves - resulting in partisan representation
* contemporary aus politics has become more leader centric than policy centred - more presidential style leadership
* pm from lower house
* lower house = control money
* new convention is budget is discussed w senate before decision is made