# LAWBOOK CO. CASEBOOK WINTERTON'S AUSTRALIAN FEDERAL CONSTITUTIONAL LAW

COMMENTARY AND MATERIALS

THIRD EDITION

PETER GERANGELOS (General Editor)

HP LEE • NICHOLAS ARONEY • SARAH MURRAY • SIMON EVANS • PATRICK EMERTON

# **BIBLIOGRAPHY TO THE THIRD EDITION**



Lawbook Co.



**THOMSON REUTERS** 

# Winterton's Australian Federal Constitutional Law: Commentary and Materials, Third Edition

# Select Bibliography

[APP.10]	CASEBOOKS		
[APP.20]	REFERENCE BOOKS		
	[APP.20]	Annotations of Commonwealth Constitution	2
		Historical Background	
		Constitutional Reform Proposals: Official Publications	
		Bibliographies High Court	
		Justices	
[APP.480]		: CONSTITUTIONAL FUNDAMENTALS	
		2: PARLIAMENTARY SOVEREIGNTY AND STATE CONSTITUTIONAL	50
[AFF.490]			38
[APP.500]		3: THE EXECUTIVE	
		I: INCONSISTENCY	
		COMMERCE AND CORPORATIONS	
[AI1.520]		Commerce Power	
		Corporations Power	
[APP.540]		: 5: EXTERNAL AFFAIRS AND DEFENCE	
		External Affairs Power	
	[APP.550]	Defence Power	53
[APP.560]		7: COMMONWEALTH FINANCIAL POWERS	
		Taxation	
		Grants	
		Appropriation	
		3: FREEDOM OF INTERSTATE TRADE AND COMMERCE	
[APP.600]	CHAPTER 9	P: EXCISE DUTIES	59
[APP.610]		0: EXPRESS RIGHTS AND FREEDOMS	
		General	
		Acquisition of Property	
		Right of State Electors	
		Trial by jury Religion	
		Rights of Residents	
[APP.670]		11: IMPLIED RIGHTS AND FREEDOMS	

[APP.680]	CHAPTER 12: INTERGOVERNMENTAL IMMUNITIES	72
[APP.690]	CHAPTER 13: THE SEPARATION OF JUDICIAL POWER	74
[APP.700]	CHAPTER 14: CONSTITUTIONAL INTERPRETATION	77
[APP.710]	INTERNET CONSTITUTIONAL LAW SITES	85
	[APP.710] Australia	85
	[APP.720] National Constitutions	86
	[APP.730] United States	86

# CASEBOOKS

**[APP.10]** Blackshield T and Williams G, Australian Constitutional Law and Theory: Commentary and Materials, 5th ed, Federation Press, Sydney, 2010.

Howard C and Saunders C, Cases and Materials on Constitutional Law, Law Book Co, Sydney, 1979.

Keyzer P, Clarke J and Stellios J, *Hanks' Australian Constitutional Law: Materials and Commentary*, 9th ed, Lexis Nexis Butterworths, Sydney, 2012.

Lane P, A Digest of Australian Constitutional Cases, 5th ed, LBC Information Services, Sydney, 1996.

Ratnapala S, John T, Karean V and Koch C, *Australian Constitutional Law: Commentary and Cases*, Oxford UP, Melbourne, 2006.

Zines L and Lindell G, Sawer's Australian Constitutional Cases, 4th ed, Law Book Co, Sydney, 1982.

# **REFERENCE BOOKS**

# **Annotations of Commonwealth Constitution**

**[APP.20]** Attorney-General's Department, *The Australian Constitution Annotated*, AGPS, Canberra, 1980 (1976-1979 Cumulative Supplement, AGPS, Canberra, 1980).

Australian Government Solicitor, Australia's Constitution: With Overview and Notes by the Australian Government Solicitor, Commonwealth of Australia, Canberra, 2010.

Lane PH, Lane's Commentary on the Australian Constitution, 2nd ed, Law Book Co, Sydney, 1997 (First Supplement, 1999).

Lane PH, The Australian Federal System with United States Analogues, Law Book Co, Sydney, 1972.

Moens G and Trone J, *Lumb*, *Moens and Trone The Constitution of the Commonwealth of Australia: Annotated*, 8th ed, LexisNexis Butterworths, Sydney, 2011.

Quick J and Garran RR, *The Annotated Constitution of the Australian Commonwealth*, Angus & Robertson, Sydney, 1901 (reprinted by Legal Books, Sydney, 1976, 1995).

Saunders C, *The Australian Constitution (Annotated)*, Constitution Centenary Foundation, Melbourne, 2000.

# **Historical Background**

**[APP.30]** Anderson H (ed), *Tocsin: Radical Arguments Against Federation*, Drummond, Melbourne, 1977.

Aroney N, "A Commonwealth of Commonwealths: Late Nineteenth-Century Conceptions of Federalism and their Impact on Australian Federation, 1890-1901" (2002) 23(3) *Journal of Legal History* 253.

Aroney N, "Imagining a Federal Commonwealth: Australian Conceptions of Federalism, 1890-1901" (2002) 30 Federal Law Review 265.

Aroney N, *The Constitution of a Federal Commonwealth: The Making and Meaning of the Australian Constitution*, Cambridge UP, Cambridge, 2009.

Aveling M, A History of the Australian Natives Association 1871-1900, PhD thesis, Monash University, Melbourne, 1970.

Bannon J, The Crucial Colony: South Australia's Role in Reviving Federation 1891 to 1897, Federalism Research Centre, Canberra, 1994.

Barton GB, Notes on Australian Federation and the Draft Constitution Bills Framed by the Conventions of 1891 and 1897, Government Printer, Sydney, 1897.

Bastin J, *The West Australian Federation Movement*, MA thesis, Department of History, University of Melbourne, 1951.

Bennett S (ed), Federation, Cassell Australia, Melbourne, 1975.

Bennett S (ed), The Making of the Commonwealth, Cassell Australia, Melbourne, 1971.

Bennett SC, Annotated Documents on the Making of the Commonwealth of Australia, MA thesis, Australian National University, Canberra, 1967.

Brazil P and Mitchell B (eds), Opinions of Attorneys-General of the Commonwealth of Australia with Opinions of Solicitors-General and the Attorney-General's Department: Volume 1: 1901–14, Volume 2: 1914-23, AGPS, Canberra, 1981 and 1988.

Clark D, "Kingston's Draft Constitution for a United Australia" (2004) 7 Constitutional Law & Policy Review 1.

Craig DJ, *The Federal Movement in Tasmania 1880–1900*, MA thesis, Department of History, University of Tasmania, Hobart, 31 December 1971.

Crisp LF, *Australian National Government*, 5th ed, Longman Cheshire, Melbourne, 1983, pp 1–39 ("The Fathers and their Constitution").

Crisp LF and Hart J (ed), Federation Fathers, Melbourne UP, Melbourne, 1990.

de Garis BK, *British Influence on the Federation of the Australian Colonies*, 1880–1901, D Phil thesis, Oxford University, December 1965.

Department of the Senate, The Constitution Makers, 30 Papers on Parliament, Canberra, 1997.

Eastman D, The Founding Documents of Australia, Privately Printed, Canberra, 1995.

Ely R, *A Living Force: Andrew Inglis Clark and the Ideal of the Commonwealth*, Centre for Tasmanian Historical Studies, Hobart, 2001.

Ely R, "Andrew Inglis Clark on the Preamble of the Australian Constitution" (2001) 75 *Australian Law Journal* 36.

Evans R, Moore C, Saunders K and Jamison B, 1901 – Our Future's Past, Pan Macmillan, Sydney, 1997.

Foster SG, Marsden S and Russell R, *Federation: The Guide to the Records*, Australian Archives, Canberra, 1998.

Gambling J, Aspects of the South Australian Referenda on the Commonwealth Bill, BA (Hons) thesis, University of Adelaide, 1957.

Garran RR, The Coming Commonwealth: An Australian Handbook of Federal Government, Angus & Robertson, Sydney, 1897.

Goldring J, *The Privy Council and the Australian Constitution*, University of Tasmania Law P, 1996.

Griffith SW, Notes on Australian Federation: Its Nature and Probable Effects, Government Printer, Brisbane, 1896 (reprinted in Griffith SW, Australian Federation and the Draft Commonwealth Bill, Government Printer, Brisbane, 1899, reprinted in Queensland Parliamentary Papers: Vol xlix, 1st Session Part 1, 1899, pp 83ff).

Griffith SW, ["Selected Writings and Speeches by Griffith on Federation and the Constitution (1884–1900)"] in White M and Rahemtula A (eds), *Sir Samuel Griffith: The Law and the Constitution*, Law Book Co, Sydney, 2002.

Griffith SW, Some Conditions of Australian Federation, Government Printer, Brisbane, 1896.

Griffith SW, Successive Stages of the Constitution of the Commonwealth of Australia, Manuscript Q 198, Dixson Library of the NSW Library, Sydney, 1891 (reprinted in Williams, The Australian Constitution: A Documentary History, Melbourne UP, Melbourne, 2004).

Harvey M, "James Bryce, 'The American Commonwealth' and the Australian Constitution" (2002) 76 Australian Law Journal 362.

Haward M and Warden J (eds), An Australian Democrat: The Life, Work and Consequences of Andrew Inglis Clark, Centre for Tasmanian Historical Studies, Hobart, 1995.

Headon D and Williams J (eds), *Makers of Miracles: The Cast of the Federation Story*, Melbourne UP, Melbourne, 2000.

Hirst J, The Sentimental Nation: The Making of the Australian Commonwealth, Oxford UP, Melbourne, 2000.

Hodgins BW et al (eds), *Federalism in Canada and Australia: The Early Years*, Australian National UP, Canberra, 1978.

Howell P, South Australia and Federalism, Wakefield Press, Adelaide, 2002.

Irving H, To Constitute a Nation: A Cultural History of Australia's Constitution, Cambridge UP, Melbourne, 1999.

Irving H (ed), The Centenary Companion to Australian Federation, Cambridge UP, Melbourne, 1999.

Killey I, Constitutional Conventions in Australia: An Introduction to the Unwritten Rules of Australia's Constitutions, Australian Scholarly Publishing, Melbourne, 2009.

La Nauze JA, No Ordinary Act: Essays on Federation and the Constitution, Melbourne UP, Melbourne, 2001.

La Nauze JA, *The Making of the Australian Constitution*, Melbourne UP, Melbourne, 1972.

Martin AW (ed), Essays in Australian Federation, Melbourne UP, Melbourne, 1969.

McDonald GW, *The Social and Political Ideology of the Australian Founding Fathers*, BA (Hons) thesis, University of Queensland, Brisbane, 1967.

McGrath F, *The Framers of the Australian Constitution: Their Intentions*, Privately Printed, Sydney, 2003.

McGregor AR, What Role Did the Framers of the Constitution Intend for the High Court? LLB (Hons) thesis, Monash University, Melbourne, September 1996.

McKenna M, *The Captive Republic: A History of Republicanism in Australia* 1788–1996, Cambridge UP, Melbourne, 1996.

McMinn WG, Nationalism and Federalism in Australia, Oxford UP, Melbourne, 1994. McMinn WG, A Constitutional History of Australia, Oxford UP, Melbourne, 1979. Naughton WM, *The Federation Referendum of 1900 in Western Australia*, BA (Hons) thesis, University of Western Australia, Perth, 1972.

Neasey FM and Neasey LJ, Andrew Inglis Clark, University of Tasmania Law P, Tasmania, 2001.

Norris R, The Emergent Commonwealth: Australian Federation: Expectations and Fulfilment 1889–1910, Melbourne UP, Melbourne, 1975.

Norris R, Aspects of the 1898 South Australian Federation Referendum and the Parker–Blainey Controversy, BA (Hons) thesis, University of Adelaide, 1966.

Pillar E, Victorian Opposition to Federation 1880–1900, BA (Hons) thesis, University of Melbourne, 1966.

Pringle RA, The Workings of the Federation Movement in New South Wales 1891–1899: The Roles of Parliament and Public Opinion, MA thesis, Macquarie University, Sydney, 1969.

Reid RL, Contributions to the Federation Movement Made by South Australian Delegates at the Federal Conventions of 1891 and 1897–98, BA (Hons) thesis, University of Adelaide, 1952.

Rhodes G, *The Australian Federation Referenda 1898–1900: A Spatial Analysis of Voting Behaviour*, PhD thesis, Department of Geography, London School of Economics & Political Science, London, 1988.

Rhodes GT, Federalism in Australia and the 1898–99 Federation Referenda in the Hunter Valley Region of New South Wales, BA (Hons) thesis, University of Newcastle, 1974.

Roe M, *The State of Tasmania: Identity at Federation Time*, Tasmanian Historical Research Association, Hobart, 2001.

Sharwood RL, Australasian Federation Conference 1890: Debates, Centenary edition, Legal Books, Sydney, 1990.

Sundberg RA, The Origins of the Judicature Chapter of the Australian Constitution and its Development to the End of the National Australasian Convention of 1891, MA thesis, University of Melbourne, 1982.

The New Federalist: The Journal of Australian Federation History, Nos 1–8, University of Adelaide, 1998-2001.

Twomey A, *The Australia Acts 1986: Australia's Statutes of Independence*, Federation Press, Sydney, 2010.

Vercoe H, Opposition to Federation in Victoria, 1897–1899, BA (Hons) thesis, University of Melbourne, 1959.

Warden J, Federal Theory and the Formation of the Australian Constitution, PhD thesis, Australian National University, Canberra, May 1990.

Waugh J, "Lawyers, Historians and Federation History", in French RS, Lindell G and Saunders C (eds), *Reflections on the Australian Constitution*, Federation Press, Sydney, 2003, p 25.

White M and Rahemtula A (eds), *Sir Samuel Griffith: The Law and the Constitution*, Law Book Co, Sydney, 2002.

Williams J, The Australian Constitution: A Documentary History, Melbourne UP, Melbourne, 2004.

Williams J, "The Emergence of the Commonwealth Constitution", in Lee HP and Winterton G (eds), *Australian Constitutional Landmarks*, Cambridge UP, Cambridge, 2003.

Willoughby H, Australian Federation: Its Aims and Its Possibilities: With a Digest of the Proposed Constitution, Official Statistics, and a Review of the National Convention, Sands & McDougall Ltd, Melbourne, 1891.

Wilson RI, *The Federal Constitution Referendum*, 1898 in New South Wales and Victoria, BA (Hons) thesis, University of Melbourne, 1965.

Young AH, *The Press and the Federal Campaign of 1897–1899 in Hobart and Launceston*, BA (Hons) thesis, University of Tasmania, Hobart, 1971.

# Publications of the Founding Era

[APP.40] Baker RC, Federation, Scrymgour and Sons, Adelaide, 1897.

Baker RC, A Manual of Reference to Authorities for the Use of The National Australasian Convention which will Assemble at Sydney on March 2, 1891 for the Purpose of Drafting a Constitution for the Dominion of Australia, WK Thomas & Co, Adelaide, 1891.

Clark AI, *Studies in Australian Constitutional Law*, Charles F Maxwell, Melbourne, 1901 (reprinted by Legal Books, Sydney 1997).

Cockburn JA, Australian Federation, Horace Marshall & Son, London, 1901.

Craven G (ed), The Convention Debates 1891-1898: 6 vols (including Commentaries, Indices and Guide), Legal Books, Sydney, 1986.

Deakin A, Federated Australia: Selections From Letters to the Morning Post 1900–1910 (edited and introduction by La Nauze JA), Melbourne UP, Melbourne, 1968.

Deakin A, *The Federal Story: The Inner History of the Federal Cause*, Robertson & Mullens, Melbourne, 1944 (reprinted as '*And Be One People: Alfred Deakin's Federal Story* (Introduction by S Macintyre), Melbourne UP, Melbourne, 1995).

Higgins HB, Essays and Addresses on the Australian Commonwealth Bill, Atlas Press, Melbourne, 1900.

Just TC, Leading Facts Connected with Federation Compiled for the Information of the Tasmanian Delegates to the Australasian Federal Convention 1891, on the Order of the Government of Tasmania, The Mercury Office, Hobart, 1891.

Moore W Harrison, *The Constitution of the Commonwealth of Australia*, John Murray, London, 1902, 2nd ed, Maxwell, Melbourne, 1910 (reprinted by Legal Books, Sydney, 1997).

Moore W Harrison, The Constitution of the Commonwealth of Australia: Students' Edition, Maxwell, Melbourne, 1910.

Moore W Harrison, The Commonwealth of Australia: Four Lectures on the Constitution Bill 1897, George Robertson & Co, Melbourne, 1897.

Quick J, The Legislative Powers of the Commonwealth and the States of Australia with Proposed Amendments, Law Book Co, Sydney, 1919.

Quick J, A Digest of Federal Constitutions, JB Young, Bendigo, Victoria, 1896.

Quick J and Garran RR, *The Annotated Constitution of the Australian Commonwealth*, Angus & Robertson, Sydney 1901 (reprinted by Legal Books, Sydney 1976, 1995).

Quick J and Groom LE, *The Judicial Power of the Commonwealth with the Practice and Procedure of the High Court*, Charles F Maxwell, Melbourne, 1904.

Wise BR, *The Making of the Australian Commonwealth 1889–1900: A Stage in the Growth of Empire*, Longmans, Green & Co, London, 1913.

Wise BR, *The Commonwealth of Australia*, Isaac Pitman, London, 1909, 2nd ed revised, Little, Brown & Co, Boston, 1914.

**6** [APP.40]

#### Modern Scholarship

**[APP.50]** [Scholarship on specific topics covered in this book is included under relevant Chapter headings below.]

Aitken G and Orr R, *Sawer's The Australian Constitution*, 3rd ed, AGPS, Canberra, 2002. Appleby G, Aroney NT and John T (eds), *The Future of Australian Federalism:* 

International and Comparative Perspectives, Cambridge UP, Cambridge, 2012.

Birch IKF, Constitutional Responsibility for Education in Australia, ANU P, Canberra, 1975.

Blackshield AR, The Abolition of Privy Council Appeals: Judicial Responsibility and "The Law for Australia", Adelaide Law Review Association, Adelaide, 1978.

Blackshield AR, Coper M and Williams G (eds), *The Oxford Companion to the High Court of Australia*, Oxford UP, Melbourne, 2001.

Booker K, Glass A and Watt R, Federal Constitutional Law: An Introduction, 2nd ed, Butterworths, Sydney, 1998.

Brennan G, One Hundred Years On: Strengths and Strains in the Constitution, Federation Press, Sydney, 2001.

Brennan G, "The Privy Council and the Constitution", in Lee and Winterton, Australian Constitutional Landmarks, Cambridge UP, Cambridge, 2003, p 312.

Campbell E and Lee HP, The Australian Judiciary, Cambridge UP, Cambridge, 2001.

Carling R (ed), Where to for Australian Federalism?, Centre for Independent Studies, St Leonards, 2008.

Carney G, *The Constitutional Systems of the Australian States and Territories*, Cambridge UP, Melbourne, 2006.

Carney G, Members of Parliament: Law and Ethics, Prospect/LexisNexis Butterworths, Sydney, 2000.

Carney G, "The High Court and the Constitutionalism of Electoral Law", in G Orr, B Mercurio and G Williams (eds), *Realising Democracy: Electoral Law in Australia*, Federation Press, Sydney, 2003.

Clark D, Principles of Australian Public Law, LexisNexis Butterworths, Sydney, 2003.

Cooray LJM, Conventions, the Australian Constitution and the Future, Legal Books, Sydney, 1979.

Coper M, Encounters with the Australian Constitution, CCH Australia, NSW, 1987, revised ed 1988.

Coper M and Williams G (eds), *The Cauldron of Constitutional Change*, Federation Press, Sydney, 1997.

Coper M and Williams G (eds), How Many Cheers for Engineers?, Federation Press, Sydney, 1997.

Coper M and Williams G (eds), Power, Parliament and the People, Federation Press, Sydney, 1997.

Craven G (ed), Australian Federation: Towards the Second Century, Melbourne UP, Melbourne, 1992.

Craven G, Conversations with the Constitution: Not just a piece of paper, UNSW Press, Sydney, 2004.

Craven G, Secession: The Ultimate States Right, Melbourne UP, Melbourne, 1986.

Cullen R, Federalism in Action: The Australian and Canadian Offshore Disputes, Federation Press, Sydney, 1990.

Cullen R, Australian Federalism Offshore, 2nd ed, Law School, University of Melbourne, Melbourne, 1988.

Cunneen C, *Kings' Men: Australia's Governors–General from Hopetoun to Isaacs*, George Allen & Unwin, Sydney, 1983.

Detmold MJ, *The Australian Commonwealth: A Fundamental Analysis of its Constitution*, Law Book Co, Sydney, 1985.

Dixon O, Jesting Pilate and Other Papers and Addresses, collected by Judge Woinarski, 2nd ed, William S Hein & Co, Buffalo, New York 1997.

Douglas NFA, *The Justiciability of Section 57 of the Australian Constitution*, Master of Public Law thesis, Australian National University, Canberra, November 1986.

Else-Mitchell R (ed), *Essays on the Australian Constitution*, 2nd ed, Law Book Co, Sydney, 1961.

Encel S et al (eds), *Change the Rules! Towards a Democratic Constitution*, Penguin Books, Melbourne, 1977.

Evans G (ed), Labor and the Constitution 1972–1975, Heinemann, Melbourne, 1977.

Evatt HV (with Commentary by Zines L), *The Royal Prerogative*, Law Book Co, Sydney, 1987.

Evatt HV, Atkin E and Evans B, Seeing Red: The Communist Party Dissolution Act and the Referendum 1951: Lessons for Constitutional Reform, Evatt Foundation, Sydney, 1992.

Evatt HV, *Evatt and Forsey on the Reserve Powers*, Introduction by Dr Forsey, Legal Books, Sydney, 1990.

Finn PD (ed), Essays on Law and Government: Vol 1: Principles and Values: Vol 2: The Citizen and the State in the Courts, Law Book Co, Sydney, 1995 and 1996.

French RS, Lindell G and Saunders C (eds), *Reflections on the Australian Constitution*, Federation Press, Sydney, 2003.

Galligan B, A Federal Republic: Australia's Constitutional System of Government, Cambridge UP, Melbourne, 1995.

Galligan B (ed), Australian Federalism, Longman Cheshire, Melbourne, 1989.

Galligan B and Nethercote JR (eds), *The Constitutional Commission and the 1988 Referendums*, Centre for Research on Federal Financial Relations, Australian National University, Canberra, 1989.

Garran RR, Prosper the Commonwealth, Angus & Robertson, Sydney, 1958.

Gilbert CD, Australian and Canadian Federalism 1867–1984, Melbourne UP, Melbourne, 1986.

Goldring J, *The Privy Council and the Australian Constitution*, University of Tasmania Law P, 1996.

Groves M (ed), Law and Government in Australia, Federation Press, Sydney, 2005.

Hall R and Iremonger J, *The Makers and the Breakers: The Governor-General and the Senate vs the Constitution*, Wellington Lane P, Sydney, 1976.

Hanks P, Constitutional Law in Australia, 2nd ed, Butterworths, Sydney, 1996.

Harris B, A New Constitution for Australia, Cavendish, London, 2002.

Hasluck P, The Office of Governor-General, Melbourne UP, Melbourne, 1979.

Heatley A and Nicholson G, *Selected Constitutional Documents on the Northern Territory*, Northern Territory Department of Law, Darwin, 1989.

Hirst J, A Republican Manifesto, Oxford UP, Melbourne, 1994.

Horrigan B, Resources and Limits of Judicial Reasoning, with Particular Reference to Decisions of the Australian High Court to Overrule Its Own Decisions, D Phil thesis, University College, Oxford, Michaelmas Term, 1989.

House of Representatives Standing Committee on Legal and Constitutional Affairs, *Aspects* of Section 44 of the Australian Constitution: Subsections 44(i) and (iv), AGPS, Canberra, July 1997.

House of Representatives Standing Committee on Legal and Constitutional Affairs, *The Third Paragraph of Section 53 of the Constitution*, AGPS, Canberra, November 1995.

Howard C, Australian Federal Constitutional Law, 3rd ed, Law Book Co, Sydney, 1985.

Howard C, Australia's Constitution: What It Means and How It Works, Penguin, Melbourne, 1985.

Howard C, The Constitution, Power and Politics, Fontana/Collins, Melbourne, 1980.

Hudson WJ and Sharp MP, Australian Independence: Colony to Reluctant Kingdom, Melbourne UP, Melbourne, 1988.

Hunt EM, American Precedents in Australian Federation, Columbia UP, New York, 1930, reprinted AMS Press, New York, 1968.

Irving H (ed), A Woman's Constitution? Gender and History in the Australian Commonwealth, Hale & Iremonger, Sydney, 1996.

Johnston RE, The Effect of Judicial Review on Federal–State Relations in Australia, Canada and the United States, Louisiana State UP, Baton Rouge, 1969.

Joseph S and Castan M, *Federal Constitutional Law: A Contemporary View*, 3rd ed, Law Book Co, Sydney, 2010.

Kelly P, November 1975: The Inside Story of Australia's Greatest Political Crisis, Allen and Unwin, Sydney, 1995.

Kenny S, Constitutional Facts and their Judicial Ascertainment in the United States Supreme Court with a Comparative Reference to the Practice of the Australian High Court, D Phil thesis, Oxford University, Michaelmas Term, 1988.

Keyzer P, Principles of Australian Constitutional Law, 3rd ed, Lexis Nexis Butterworths, Sydney, 2010.

Keyzer P, Constitutional Law, 2nd ed, Lexis Nexis Butterworths, Sydney, 2005.

Kildea P, Lynch A and Williams G (eds), *Tomorrow's Federation: Reforming Australian Government*, Federation Press, Sydney, 2012.

Lane PH, *Lane's Commentary on the Australian Constitution*, First Supplement, Law Book Co, Sydney, 1999.

Lane PH, The Australian Federal System with United States Analogues, Law Book Co, Sydney, 1972.

Lee HP and Gerangelos PA (eds), Constitutional Advancement in a Frozen Continent: Essays in Honour of George Winterton, Federation Press, Sydney, 2009.

Lee HP and Winterton G (eds), Australian Constitutional Landmarks, Cambridge UP, Cambridge, 2003.

Lee HP and Winterton G (eds), Australian Constitutional Perspectives, Law Book Co, Sydney, 1992.

Lindell G (ed), Future Directions in Australian Constitutional Law, Federation Press, Sydney, 1994.

Lindell G and Bennett R (eds), Parliament: The Vision in Hindsight, Federation Press, Sydney, 2001.

Lindell GJ, Justiciability of Political Questions under the Australian and United States Constitutions, 2 vols, LLM thesis, University of Adelaide, July 1972.

Lindsey K, The Australian Constitution in Context, Law Book Co, Sydney, 1999.

Loveday P and McNab P (eds), Australia's Seventh State, ANU Printing, Canberra, 1988.

Lumb RD, *The Constitutions of the Australian States*, 5th ed, University of Queensland P, Brisbane, 1991.

Lumb RD, Australian Constitutionalism, Butterworths, Sydney 1983.

Macken JJ, Australian Industrial Law: The Constitutional Basis, 2nd ed, Law Book Co, Sydney, 1980.

McMillan J, Evans G and Storey H, Australia's Constitution: Time for Change?, George Allen & Unwin, Sydney, 1983.

Moens G (ed), Constitutional and International Law Perspectives, University of Queensland P, Brisbane, 2000.

Murray S (ed), Constitutional Perspectives on an Australian Republic: Essays in Honour of Professor George Winterton, Federation Press, Sydney, 2010.

Opeskin B and Wheeler F (eds), *The Australian Federal Judicial System*, Melbourne UP, Melbourne, 2000.

Ratnapala S and Crowe J, *Australian Constitutional Law: Foundations and Theory*, 3rd ed, Oxford UP, Melbourne, 2012.

Reid G and Forrest M, Australia's Commonwealth Parliament 1901–1988: Ten Perspectives, Melbourne UP, Melbourne, 1989.

Renfree HE, *The Executive Power of the Commonwealth*, Legal Books, Sydney, 1984 (1984 Supplement).

Renfree HE, *The Federal Judicial System of Australia*, Legal Books, Sydney 1984 (1984 Supplement).

Richardson JE, *Patterns of Australian Federalism*, Research Monograph No 1, Centre for Research on Federal Financial Relations, Australian National University, Canberra, 1973.

Sampford CJG and Preston KE (eds), *Interpreting Constitutions: Theories, Principles and Institutions*, Federation Press, Sydney, 1996.

Saunders C, The Constitution of Australia: A Contextual Analysis, Hart Publishing, Oxford, 2011.

Saunders C (ed), Courts of Final Jurisdiction: The Mason Court in Australia, Federation Press, Sydney, 1996.

Saunders C et al, Current Constitutional Problems in Australia, Centre for Research on Federal Financial Relations, Canberra, 1982.

Saunders C and Le Roy K (eds), The Rule of Law, Federation Press, Sydney, 2003.

Sawer G, Federation Under Strain: Australia 1972–1975, Melbourne UP, Melbourne, 1977.

Sawer G, Australian Federal Politics and Law: 1901–1929, Melbourne UP, Melbourne, 1956 reprinted 1972.

Sawer G, Australian Federal Politics and Law: 1929–1949, Melbourne UP, Melbourne, 1963 reprinted 1967, 1974.

Sawer G, Australian Federalism in the Courts, Melbourne UP, Melbourne, 1967.

Sawer G (ed), *Federalism: An Australian Jubilee Study*, FW Cheshire, Melbourne, 1952. Sawer G et al, *Federalism in Australia*, FW Cheshire, Melbourne, 1949.

Scott E (ed), *Cambridge History of the British Empire: Vol 7 Part I: Australia*, Cambridge UP, Cambridge, 1933, reprinted 1988.

**10** [APP.50]

Senate Standing Committee on Legal and Constitutional Affairs, Commonwealth Law Making Power and the Privilege of Freedom of Speech in State Parliaments, AGPS, Canberra, 1985.

Souter G, Acts of Parliament: A Narrative History of the Senate and House of Representatives: Commonwealth of Australia, Melbourne UP, Melbourne, 1988.

Stone A and Williams G (eds), *The High Court at the Crossroads: Essays in Constitutional Law*, Federation Press, Sydney, 2000.

Taylor GD, Characterisation in Federations: Six Countries Compared, Springer, Berlin, 2006.

*The Constitution Papers*, Parliamentary Research Service, Subject Collection No 7, AGPS, Canberra, 1996.

Thomson JA, Judicial Review in Australia: The Courts and the Constitution, Thesis Publications, Lane Cove, NSW, 1988.

Twomey A, The Chameleon Crown, Federation Press, Sydney, 2006.

Waugh J, The Rules: An Introduction to the Australian Constitution, Melbourne UP, Melbourne, 1996.

Webb L, Communism and Democracy in Australia: A Survey of the 1951 Referendum, FW Cheshire, Melbourne, 1954.

Wells [née Saunders] CA, Co-operative Federalism in Australia, PhD thesis, University of Melbourne, 1975.

Williams G, Human Rights under the Australian Constitution, Oxford UP, Melbourne, 1999.

Williams G, *Industrial Relations and the Australian Constitution*, Federation Press, Sydney, 1998.

Williams G, *The Communist Party Case: A Study in Law and Politics*, LLB (Hons) thesis, Macquarie University, Sydney, 1991.

Williams JM, *The Protection of Rights Under the Australian Constitution: A Republican Analysis*, PhD thesis, Law Program, Research School of Social Sciences, Australian National University, Canberra, May 1997.

Windeyer V, *Some Aspects of Australian Constitutional Law*, Institute of Law Research and Reform, Edmonton, Alberta, 1973.

Winterton G, The Resurrection of the Republic, Federation Press, Sydney, 2001.

Winterton G, Judicial Remuneration in Australia, Australasian Institute of Judicial Administration, Melbourne, 1995.

Winterton G, Monarchy to Republic: Australian Republican Government, Oxford UP, Melbourne, 1994.

Winterton G, Parliament, the Executive and the Governor–General: A Constitutional Analysis, Melbourne UP, Melbourne, 1983.

Winterton G (ed), State Constitutional Landmarks, Federation Press, Sydney, 2006.

Winterton G (ed), We, The People: Australian Republican Government, Allen & Unwin, Sydney, 1994.

Wright DI, Shadow of Dispute: Aspects of Commonwealth–State Relations 1901–1910, Australian National UP, Canberra, 1970.

Wynes W Anstey, *Legislative, Executive and Judicial Powers in Australia*, 5th ed, Law Book Co Ltd, Sydney, 1976.

Zines L, The High Court and the Constitution, 5th ed, Federation Press, Sydney, 2008.

Zines L, Cowen and Zines' Federal Jurisdiction in Australia, 3rd ed, Federation Press, Sydney, 2002.

Zines L, The Common Law in Australia: Its Nature and Constitutional Significance, Federation Press, Sydney, 1999.

Zines L, Constitutional Change in the Commonwealth, Cambridge UP, Cambridge, 1991.

Zines L (ed), Commentaries on the Australian Constitution: A Tribute to Geoffrey Sawer, Butterworths, Sydney, 1977.

#### **Constitutional Reform Proposals: Official Publications**

[APP.60] Report of the Royal Commission on the Constitution, Government Printer, Canberra, 1929.

Royal Commission on the Constitution of the Commonwealth: Minutes of Evidence, Parts 1-4, Government Printer, Canberra, 1929.

Conference of Commonwealth and State Ministers on Constitutional Matters: Held in Melbourne, 16th to 28th February, 1934, Commonwealth Government Printer, Canberra, 1935.

Convention of Representatives of the Commonwealth and State Parliaments on Proposed Alterations of the Commonwealth Constitution: Record of Proceedings, Commonwealth Government Printer, Canberra, 1942.

Report from the [Senate] Select Committee Appointed to Consider and Report upon the Constitution Alteration (Avoidance of Double Dissolution Deadlocks) Bill, Commonwealth Government Printer, Canberra, 1950.

Report from the Joint Committee on Constitutional Review 1959, Commonwealth Government Printer, Canberra, 1959.

Minutes of Proceedings and Official Record of Debates of the Australian Constitutional Convention: Sydney 1973, Melbourne 1975, Hobart 1976, Perth 1978, Adelaide 1983 (2 vols), Brisbane 1985 (2 vols), Government Printer, Sydney, Melbourne, Adelaide, Brisbane, 1974, 1975, 1976, 1978, 1983, 1985.

Report of the Advisory Committee to the Constitutional Commission, *Australian Judicial System*, AGPS, Canberra, 22 May 1987.

Report of the Advisory Committee to the Constitutional Commission, Distribution of Powers, AGPS, Canberra, 6 June 1987.

Report of the Advisory Committee to the Constitutional Commission, *Executive Government*, AGPS, Canberra, June 1987.

Report of the Advisory Committee to the Constitutional Commission, Individual and Democratic Rights, AGPS, Canberra, 1987.

Report of the Advisory Committee to the Constitutional Commission, *Trade and National Economic Management*, AGPS, Canberra, 1987.

First Report of the Constitutional Commission, 2 Vols, AGPS, Canberra, April 1988.

Republic Advisory Committee, *An Australian Republic: The Options*, Vol 1: The Report; Vol 2: The Appendices, AGPS, Canberra, 1993.

House of Representatives Standing Committee on Legal and Constitutional Affairs, Constitutional Change: Select Sources on Constitutional Change in Australia 1901–1997, AGPS, Canberra, February 1997.

Report of the Constitutional Convention: Old Parliament House Canberra, 2–13 February

1998, 4 Vols, AGPS, Canberra, 1998, available at: http://www.aph.gov.au/Parliamentary\_Business/Hansard.

Joint Select Committee on the Republic Referendum, Advisory Report on Constitution Alteration (Establishment of Republic) 1999 and Presidential Nominations Committee Bill 1999, AGPS, Canberra, August 1999, available at: http://www.aph.gov.au/house/committee.

Report of the Consultative Group on Constitutional Change, *Resolving Deadlocks: The Public Response*, Department of the Prime Minister and Cabinet, Canberra, March 2004.

Senate Legal and Constitutional Affairs Committee, *The Road to a Republic: Inquiry into an Australian Republic*, AGPS, Canberra, 2004, available at: http://www.aph.gov.au/Senate/ committee.

House of Representatives Standing Committee on Legal and Constitutional Affairs, A Time for Change: Yes/No? – Inquiry into the Machinery of Referendums, Commonwealth of Australia, Canberra, December 2009.

House of Representatives Standing Committee on Legal and Constitutional Affairs, *Reforming Our Constitution: A Roundtable Discussion*, Commonwealth of Australia, Canberra, June 2008.

Expert Panel on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples, *Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution: Report* of the Expert Panel, Commonwealth of Australia, 2012.

#### Bibliographies

**[APP.70]** Aroney N, The Constitution of a Federal Commonwealth: The Making and Meaning of the Australian Constitution, Cambridge UP, Cambridge, 2009, pp 389-410.

Australian Constitutional Law and History: Select Union List: A Guide to the Holdings of Certain Australian Libraries in relation to Australian Constitutional Law and History, Commonwealth Attorney-General's Department, Canberra 1972.

Castles A, Annotated Bibliography of Printed Materials on Australian Law 1788–1900, Law Book Co, Sydney, 1994.

Coper M, Freedom of Interstate Trade under the Australian Constitution, Butterworths, Sydney, 1983, pp 371–380.

Crisp LF and Hart J (eds), Federation Fathers, Melbourne UP, Melbourne, 1990, pp 369-454.

Eggleston R and St John E, Constitutional Seminar, University of New South Wales P, Sydney, 1977, pp 63-68.

Fox R, "Enid Campbell" (1997) 23(2) Monash University Law Review xii.

"Publications of Enid Campbell", in Groves M (ed), *Law and Government in Australia*, Federation Press, Sydney, 2005, pp 301–306.

Galligan B, A Federal Republic: Australia's Constitutional System of Government, Cambridge UP, Melbourne, 1995, pp 255–273.

Goehlert R, *The Parliament of Australia: A Bibliography*, Department of the Parliamentary Library, Canberra, 1988.

Howard C and Saunders C, Cases and Materials on Constitutional Law, Law Book Co, Sydney, 1979, pp xxvii-xli.

Human Rights Commission, Human Rights for Australia: A Survey of Literature and Developments, and a Select and Annotated Bibliography of Recent Literature in Australia and Abroad, AGPS, Canberra, 1986.

Irving H, To Constitute a Nation: A Cultural History of Australia's Constitution, Updated ed, Cambridge UP, Melbourne, 1999, pp 240–248.

Livissianos G, "Judges of the High Court of Australia", in J F Corkery (ed), *The Study of Law*, Federation Press, Sydney, 1988, pp 171–191.

Moens G and Trone J, *Lumb*, *Moens and Trone The Constitution of the Commonwealth of Australia: Annotated*, 6th ed, Butterworths, Sydney, 2001, pp 425–439.

Pettifer JA (ed), House of Representatives Practice, AGPS, Canberra, 1981, pp 891-942.

Schick A, "Bibliography of Works by Geoffrey Sawer 1935-1980" (1980) 11 Federal Law Review 271.

Thomson JA, "American and Australian Constitutions: Continuing Adventures in Comparative Constitutional Law" (1997) 30 John Marshall Law Review 627 at 683–698.

Thomson JA, "Looking for Heroes: History, Framers and the Australian Constitution" (1996) 3 *Deakin Law Review* 89.

Thomson JA, "Constitutional Interpretation: History and the High Court: A Bibliographical Survey" (1992) 5 University of New South Wales Law Journal 309.

Thomson JA, "Comparative Constitutional Law: Entering the Quagmire" (1989) 6 Arizona Journal of International and Comparative Law 22.

Thomson JA, "A Torrent of Words: A Bibliography and Chronology of the Franklin Dam Case" (1985) 15 *Federal Law Review* 145.

Thomson JA, "Judicial Biography: Some Tentative Observations on the Australian Enterprise" (1985) 8 University of New South Wales Law Journal 380.

Thomson JA, "Andrew Inglis Clark and Australian Federalism", in Haward M and Warden J (eds), *An Australian Democrat: The Life, Work and Consequences of Andrew Inglis Clark*, Centre for Tasmanian Historical Studies, Hobart, 1995, pp 73–81.

Thomson JA, "Bibliography of Professor Leslie Zines", in Lindell G (ed), *Future Directions in Australian Constitutional Law*, Federation Press, Sydney, 1994, pp 269–272.

Thomson JA, "Selected Bibliography", in A Brooks, B Brooks and J Thomson, 'Australia' in International Encyclopaedia of Laws: Constitutional Law, Kluwer Law and Taxation Publishers, Deventer, The Netherlands, January 1993, pp 35–42.

Winterton G, "Introduction to the 1997 Reprint", in Moore WH, *The Constitution of the Commonwealth of Australia*, 2nd ed, 1910; 1997, pp lviii–lxviii.

Winterton G, Parliament, the Executive and the Governor-General: A Constitutional Analysis, Melbourne UP, 1983, pp 329–346.

# **High Court**

**[APP.80]** Allan J and Aroney N, "An Uncommon Court: How the High Court of Australia has undermined Australian Federalism" (2008) 30 *Sydney Law Review* 245.

Bennett J, Keystone of the Federal Arch: A Historical Memoir of the High Court of Australia to 1980, AGPS, Canberra, 1980.

Blackshield AR, Coper M and Williams G (eds), *The Oxford Companion to the High Court* of Australia, Oxford UP, Melbourne, 2001.

Brennan G, "Historical Note: Australian Appointments to the Privy Council" (2000) 2 Constitutional Law & Policy Review 76.

Callinan I, "An Over-Mighty Court?", in *Upholding the Australian Constitution Vol 4: Proceedings of the Fourth Conference of the Samuel Griffith Society*, Samuel Griffith Society, Melbourne, 1994, p 81.

Cane P (ed), Centenary Essays for the High Court of Australia, LexisNexis Butterworths, Sydney, 2004.

Coper M, Encounters with the Australian Constitution, CCH Australia, NSW, 1987, revised ed 1988, pp 103–160.

Craven G, "The High Court of Australia: A Study in the Abuse of Power" (1999) 22 University of New South Wales Law Journal 216.

Craven G, "Reforming the High Court", in *Upholding the Australian Constitution Vol 7: Proceedings of the Seventh Conference of the Samuel Griffith Society*, Samuel Griffith Society, Melbourne, 1996, p 21.

Crisp LF, Australian National Government, 5th ed, Longman Cheshire, Melbourne, 1983, pp 58–82.

Galligan B, Politics of the High Court: A Study of the Judicial Branch of Government in Australia, University of Queensland Press, Brisbane 1987.

Galligan B, "The High Court's Role in Government and Nation", in Cane P (ed), *Centenary Essays for the High Court of Australia*, LexisNexis Butterworths, Sydney, 2004, p 35.

Gibbs H, "Appellate Advocacy" (1986) 60 Australian Law Journal 496.

Gibbs H, "Appellate Procedures in the High Court" (1986) 2 Australian Bar Review 1. Gibbs H, "The High Court Today" (1983) 10 Sydney Law Review 1.

Gow D, Judicial Attitude: A Critique and a Case Study of the High Court of Australia, BA (Hons) thesis, Department of Government and Public Administration, University of Sydney, Sydney, 1 November 1977.

Groves M and Smyth R, "A Century of Judicial Style: Changing Patterns in Judgment Writing on the High Court 1903–2001" (2004) 32 Federal Law Review 255.

Howard C, "The High Court", in *Upholding the Australian Constitution Vol 4: Proceedings* of the Fourth Conference of the Samuel Griffith Society, Samuel Griffith Society, Melbourne, 1994, p 65.

Hull C, *The High Court of Australia: Celebrating the Centenary* 1903–2003, Law Book Co, Sydney, 2004.

Irving H, "Its First and Highest Function: The Framers' Vision of the High Court as the Interpreter of the Constitution", in Cane, *Centenary Essays for the High Court of Australia*, LexisNexis Butterworths, Sydney, 2004, p 17.

Jackson D, "Practice in the High Court of Australia" (1997) 15 Australian Bar Review 187. Jones F, "High Court Procedure under the Judiciary Act" (1994) 68 Australian Law Journal 442.

Jones F, "The Story Behind the Headlines: Constitutional Procedures" (1994) 12 Australian Bar Review 148.

Kirby M, "The High Court of Australia and the Supreme Court of the United States – A Centenary Reflection" (2003) 31 University of Western Australia Law Review 171.

Kirby M, "Change and Decay or Change and Renewal?" (1998) 7 Journal of Judicial Administration 189.

Kirby M, "Judicial Activism" (1997) 27 University of Western Australia Law Review 1.

Kirby M, "What is it Really Like to be a Justice of the High Court of Australia?" (1997) 19 *Sydney Law Review* 514.

La Nauze JA, *Alfred Deakin: A Biography: Vol 1*, Melbourne, UP, Melbourne, 1965, pp 287–296 [*Judiciary Bill 1903* (Cth)], pp 305–310 [Appointment of Griffith CJ, Barton and O'Connor JJ].

Lane PH, "The Changing Role of the High Court" (1996) 70 Australian Law Journal 246. Lloyd C, "Not Peace But a Sword! – The High Court under J G Latham" (1987) 11 Adelaide Law Review 175.

Lynch A, "Does the High Court Disagree More Often in Constitutional Cases? A Statistical Study of Judgment Delivery 1981–2003" (2005) 33 Federal Law Review 485.

Lynch A, The Impact of Dissenting Opinions upon the Development of Australian Constitutional Law, PhD thesis, University of NSW, Sydney, 2005.

Lynch A, "Is Judicial Dissent Constitutionally Protected?" (2004) 4 Macquarie Law Journal 81.

Lynch A, "Taking Delight in Being Contrary, Worried about Being a Loner or Simply Indifferent: How do Judges Really Feel about Dissent?" (2004) 32 Federal Law Review 311.

Lynch A, "Dissent: The Rewards and Risks of Judicial Disagreement in the High Court of Australia" (2003) 27 *Melbourne University Law Review* 724.

Lynch A, "The Gleeson Court on Constitutional Law: An Empirical Analysis of its First Five Years" (2003) 26(1) University of New South Wales Law Journal 32.

Lynch A, "The High Court on Constitutional Law: The 2003 Statistics" (2004) 27(1) University of New South Wales Law Journal 88.

Lynch A, "Dissent: Towards a Methodology for Measuring Judicial Disagreement in the High Court of Australia" (2002) 24 Sydney Law Review 470.

Lynch A and Williams G, "The High Court on Constitutional Law: The 2005 Statistics" (2006) 29(2) University of New South Wales Law Journal 182.

Lynch A and Williams G, "The High Court on Constitutional Law: The 2004 Statistics" (2005) 28(1) University of New South Wales Law Journal 14.

Mason A, "The High Court of Australia: A Personal Impression of the First 100 Years" (2003) 27 *Melbourne University Law Review* 864.

Mason A, "Centenary of the High Court of Australia" (2002) 5 Constitutional Law & Policy Review 41.

Mason A, "The High Court as Gatekeeper" (2000) 24 Melbourne University Law Review 784.

Mason A, "Judicial Disqualification for Bias or Apprehended Bias and the Problem of Appellate Review" (1998) 1 Constitutional Law & Policy Review 21.

Mason A, "The Future of the High Court of Australia" (1996) 12 Queensland University of Technology Law Journal 1.

Mason A, "The Judge as Law-maker" (1996) 3 James Cook University Law Review 1.

Mason A, "The Regulation of Appeals to the High Court of Australia: The Jurisdiction to Grant Special Leave to Appeal" (1996) 15 University of Tasmania Law Review 1.

Mason A, "Reflections on the High Court of Australia" (1995) 20 Melbourne University Law Review 273.

Mason A, "The Role of a Constitutional Court in a Federation: A Comparison of the Australian and United States Experience" (1986) 16 Federal Law Review 1.

Mason A, "The Role of Counsel and Appellate Advocacy" (1984) 54 Australian Law Journal 537.

McGinley G, "The Search for Unity: The Impact of Consensus Seeking Procedure in Appellate Courts" (1987) 11 Adelaide Law Review 203.

McGregor A R, What Role Did the Framers of the Constitution Intend for the High Court?, LLB (Hons) thesis, Monash University, Melbourne, 2 September 1996.

McHugh M, "The Strengths of the Weakest Arm" (2004) 25 Australian Bar Review 181.

McMinn W, "The High Court Imbroglio and the Fall of the Reid-McLean Government" (1978) 64 Journal of the Royal Australian Historical Society 14.

McQueen H, "One Hundred Years of Judicial Activism", *Australian Financial Review*, 3 October 2003, p 4.

McQueen R, "The High Court of Australia: Institution or Organisation?" (1987) 57(1) *Australian Quarterly* 43.

Moens G, "The Role of the States in High Court Appointments", in Upholding the Australian Constitution Vol 8: Proceedings of the Eighth Conference of the Samuel Griffith Society, Samuel Griffith Society, Melbourne, 1997, p 17.

O'Brien D, Special Leave to Appeal: The Law and Practice of Applications for Special Leave to Appeal to the High Court of Australia, LBC Information Services, Sydney, 1996.

Patapan H, Judging Democracy: the New Politics of the High Court of Australia, Cambridge UP, Melbourne 2000.

Patapan H, "Governance and the High Court", in Keating M, Wanna H and Weller P (eds), *Institutions on the Edge: Capacity for Governance*, Allen and Unwin, Sydney, 2000, p 205.

Pierce J L, *Inside the Mason Court Revolution: The High Court of Australia Transformed*, Carolina Academic Press, Durham, NC, 2006.

Sawer G, *Australian Federalism in the Courts*, Melbourne UP, Melbourne, 1967, pp 35–51 ("Organization and Procedure of the High Court of Australia").

Sawer G, "High Court Appointments Under Mr Menzies", *Nation*, 11 October 1958, p 9. Sawer G, "The [US] Supreme Court and the High Court of Australia" (1957) 6 *Public Law* 482.

Senate Standing Committee on Constitutional and Legal Affairs, *Report on High Court of Australia*, AGPS, Canberra, December 1986, Parliamentary Paper 446/1986.

Sexton M and Maher L, *The Legal Mystique: The Role of Lawyers in Australian Society*, Angus and Robertson, Sydney, 1982, pp 39–53.

Smyth R, "The Role of Attitudinal, Institutional and Environmental Factors in Explaining Variations in the Dissent Rate on the High Court of Australia" (2005) 40 *Australian Journal of Political Science* 519.

Smyth R, "What Explains Variations in Dissent Rates? Times Series Evidence from the High Court" (2004) 26 *Sydney Law Review* 221.

Smyth R, "Acclimation Effects for High Court Justices 1903-1975" (2002) 6 University of Western Sydney Law Review 167.

Smyth R, "Historical Consensual Norms in the High Court" (2002) 37 Australian Journal of Political Science 255.

Solomon D, The Political High Court: How the High Court Shapes Politics, Allen and Unwin, Sydney, 1999.

Solomon D, The Political Impact of the High Court, Allen and Unwin, Sydney, 1992.

Souter G, *The Lion and Kangaroo: The Initiation of Australia*, William Collins, Sydney 1976, Pan Macmillan, Sydney, 1992, pp 92–108.

Thomson JA, "History, Justices and the High Court: An Institutional Perspective" (1995) 1 Australian Journal of Political Science 281.

Thomson JA, "Appointing High Court Justices: Some Constitutional Conundrums", in Lee HP and Winterton G (eds), *Australian Constitutional Perspectives*, Law Book Co, Sydney, 1992, p 251.

Thomson JA, Some Notes on the History of Section 72(ii) of the Australian Constitution, Occasional Paper No 2, Department of the Parliamentary Library, AGPS, Canberra, 1984 (reprinted as "Removal of High Court and Federal Judges: Some Observations Concerning Section 72(ii) of the Australian Constitution" (1984) Australian Current Law 36033 (Pt 1), 36055 (Pt 2)).

Virtue B, "High Court is Planning New Rules" (1983) 28(6) Australian Lawyer 18.

Von Nessen P, "The Use of American Precedents by the High Court of Australia 1901–1987" (1992) 14 Adelaide Law Review 181.

Williams G, "The High Court and the People", in H Selby (ed), Tomorrow's Law, Federation Press, Sydney, 1995, p 271.

Winterton G, "Once Distrusted by the Left, Now Mistrusted by the Right", *Australian*, 8 October 2003, p 13.

Wright D, "Sir Josiah Symon, Federation and the High Court" (1978) 64 Journal of the Royal Australian Historical Society 73.

Zines L, "The Vision and the Reality", in Cane (ed), Centenary Essays for the High Court of Australia, LexisNexis Butterworths, Sydney, 2004, p 3.

# Justices

General

[APP.90] Australian Dictionary of Biography (entry for individual justices).

Australian Law Journal (entry for individual justices under "Personalia").

Blackshield A, Coper M and Williams G, *The Oxford Companion to the High Court of Australia*, Oxford UP, Melbourne, 2001 (entry for individual justices).

Fricke G, Judges of the High Court, Hutchinson, Melbourne, 1986.

Livissianos, "Judges of the High Court of Australia", in Corkery JF (ed), *The Study of Law*, Federation Press, Sydney, 1988.

Neumann E, *The High Court of Australia: A Collective Portrait 1903 to 1972*, Occasional Monograph No 6, Department of Government and Public Administration, University of Sydney, 2nd ed 1973.

Thomson JA, "Judicial Biography: Some Tentative Observations on the Australian Enterprise" (1985) 8 University of New South Wales Law Journal 380.

White M and Rahemtula A (eds), *Queensland Judges on the High Court*, Supreme Court of Queensland Library, Brisbane, 2003.

# Individual Justices

# Griffith

**[APP.100]** Aroney N, "The Griffith Doctrine: Reservation and Immunity", in White M and Rahemtula A (eds), *Queensland Judges on the High Court*, Supreme Court of Queensland Library, Brisbane, 2003, p 219.

**18** [APP.90]

Bolton G, "Samuel Griffith: The Great Provincial" (1991) 14 Journal of the Royal Australian Historical Society 350 reprinted in (1991) 13 Papers on Parliament 19.

Cowen Z, "Griffith, Sir Samuel Walker (1845–1920)", Oxford Dictionary of National Biography, Oxford UP, Oxford, 2004.

Gibbs H, "Sir Samuel Griffith", in White M and Rahemtula A (eds), *Queensland Judges on the High Court*, Supreme Court of Queensland Library, Brisbane, 2003, p 21 (with commentary by Keane P).

Gibbs H, "Sir Samuel Walker Griffith: Memorial Lecture" (1984) 19(4) Australian Law News 24.

Joyce R, "Samuel Griffith, the Biographer and the Matter of Sources", in Walter J and Nugent R (eds), *Biographers at Work*, The Institute for Modern Biography, Griffith University, Brisbane, 1984, p 17.

Joyce R, Samuel Walker Griffith, University of Queensland P, Brisbane, 1984.

Pannam C, "The Radical Chief Justice" (1964) 37 Australian Law Journal 275.

White M and Rahemtula A (eds), *Sir Samuel Griffith: The Law and the Constitution*, Law Book Co, Sydney, 2002.

#### Barton

**[APP.110]** Bolton G, "Barton, Sir Edmund (1849-1920)", Oxford Dictionary of National Biography, Oxford UP, Oxford, 2004.

Bolton G, Edmund Barton, Allen and Unwin, Sydney, 2000.

Reynolds J, *Edmund Barton*, Angus and Robertson, Sydney, 1948 (reprinted 1979 and 1999 by Melbourne UP).

Young PW, "Barton the Lawyer" (2001) 75 Australian Law Journal 143.

# lsaacs

**[APP.120]** Cowen Z, "Isaacs, Sir Isaac Alfred (1855–1948)", Rev Peter Balmford, Oxford Dictionary of National Biography, Oxford UP, Oxford, 2004.

Cowen Z, Sir Isaac Isaacs, Melbourne UP, Melbourne, 1979.

Cowen Z, *Isaac Isaacs*, Oxford UP, Melbourne, 1967 (reprinted University of Queensland Press, Brisbane, 1993).

Crisp L F, The Unrelenting Penance of Federalist Isaac Isaacs: 1897–1947, Australian National University, Canberra, 1981.

Crisp LF and Hart J (ed), *Federation Fathers*, Melbourne UP, Melbourne, 1990, pp 121–129, 155–173, 177–181, 183–185, 186–271.

Gordon M, Sir Isaac Isaacs: A Life of Service, Heinemann, London, 1963.

Kirby M, "Sir Isaac Isaacs – A Sesquicentenary Reflection" (2005) 29 Melbourne University Law Review 880.

#### Higgins

**[APP.130]** Brennan G, "The Irish and Law in Australia" (1986) 21 Irish Jurist (NS) 95 at 104–106.

Coward P, *Henry Bournes Higgins and the Australian Constitution*, LLM thesis, Australian National University, Canberra, 1971.

Crisp LF and Hart J (ed), *Federation Fathers*, Melbourne UP, Melbourne, 1990, pp 121–129, 155–173, 177–181, 183–185, 186–271.

Palmer N, Henry Bournes Higgins: A Memoir, GG Harrap and Co, London, 1931.
Rickard J, HB Higgins: The Rebel as Judge, George Allen and Unwin, Sydney, 1984.
Rickard J, "Higgins, Henry Bournes (1851–1929)", Oxford Dictionary of National Biography, Oxford UP, Oxford, Sept 2004; online edn, May 2006.

#### **Gavan Duffy**

**[APP.140]** Balmford P, "Duffy, Sir Frank Gavan (1852–1936)", Oxford Dictionary of National Biography, Oxford UP, Oxford, 2004.

Gavan Duffy F, "A Dream of Fair Judges" (1945) 19 Australian Law Journal 43 (a poem, with notes by Ahern CJ).

#### Powers

**[APP.150]** Douglas J, "Sir Charles Powers", in White M and Rahemtula A (eds), *Queensland Judges on the High Court*, Supreme Court of Queensland Library, Brisbane, 2003, p 171 (with commentary by Saunders K).

#### **Piddington**

**[APP.160]** Crisp LF and Hart J (ed), *Federation Fathers*, Melbourne UP, Melbourne, 1990, pp 121–137, 181–182.

Graham M, AB Piddington: The Last Radical Liberal, University of New South Wales P, Sydney, 1995.

Phillips G, Justice Unknown: A Biography of Albert Bathurst Piddington, Legal History Research Paper, Adelaide University, 1987.

# Dixon

**[APP.170]** Andrew I, *The Rt Hon Sir Owen Dixon*, OM, GCMG 1886–1972: An Introductory Legal-Historical Biography, BA (Hons) thesis, Department of History, University of Queensland, Brisbane, 1988.

Ayers P, "Dixon's View of the Privy Council" (2003) 24 Australian Bar Review 7 (also 6 Constitutional Law & Policy Review 25).

Ayers P, Owen Dixon, Miegunyah Press, Melbourne, 2003.

Ayres P, "Federalism and Sir Owen Dixon", in Upholding the Australian Constitution Vol 11: Proceedings of the 11th Conference of the Samuel Griffith Society, Samuel Griffith Society, Melbourne, 1999, ch 11.

Dawson D and Nicholls M, "Sir Owen Dixon and Judicial Method" (1986) 15 Melbourne University Law Review 543.

Dixon O, Jesting Pilate and Other Papers and Addresses, collected by Judge Woinarski, 2nd ed, William S Hein & Co, Buffalo, New York 1997.

Ford H, "Sir Owen Dixon: His Judgments in Private Law" (1986) 15 Melbourne University Law Review 582.

Howard C, "Sir Owen Dixon: Giant Who Enriched the Law" (1986) 15 Melbourne University Law Review 575.

Hulme SEK, "Sir Owen Dixon" (Autumn 1998) 104 Victorian Bar News 31.

Hulme SEK, "Tait's Case, and Sir Owen Dixon" (Winter 1997) 101 Victorian Bar News 34.

**20** [APP.140]

Kitto F, "Some Recollections of Sir Owen Dixon" (1986) 15 Melbourne University Law Review 577.

Maher LW, "Owen Dixon: Concerning his Political Method" (2003) 6 Constitutional Law & Policy Review 33.

Mann GJ, The Rt Hon Sir Owen Dixon, OM, GCMG: 1886–1972, LLB (Hons) thesis, Melbourne University, 1975.

Merralls J, "Biography of a Professional: Sir Owen Dixon" (Summer 1996) 99 Victorian Bar News 26.

Note, "Sir Owen Dixon on Separation of Powers in the Constitution" (1998) 1 Constitutional Law & Policy Review 38.

Ritter D, "The Myth of Sir Owen Dixon" (2005) 9 Australian Journal of Legal History 249.

Rose D, "Sir Owen Dixon" [review of P Ayres' biography] (2003) 6 Constitutional Law & Policy Review 18.

Ryan P, "Sir Owen Dixon: An Intellectual Man of Passion" (1986) 15 Melbourne University Law Review 579.

Saunders C, "Owen Dixon: Evidence to the Royal Commission on the Constitution, 1927–29" (1986) 15 Melbourne University Law Review 553.

Stephen N, *Sir Owen Dixon: A Celebration*, Melbourne UP, Melbourne, 1986 reprinted in Dixon O, *Jesting Pilate and Other Papers and Addresses*, collected by Judge Woinarski, 2nd ed, William S Hein & Co, Buffalo, New York 1997.

Young J McI, "Dixon, Sir Owen (1886–1972)", Oxford Dictionary of National Biography, Oxford UP, Oxford, 2004.

Zines L, "Sir Owen Dixon's Theory of Federalism" (1965) 1 Federal Law Review 221.

#### Evatt

**[APP.180]** Bayne P, "Mr Justice Evatt's Theory of Administrative Law: Adjusting State Regulation to the Liberal Theory of the Individual and the State" (1991) 9 *Law in Context* 1.

Buckley K, Dale B and Reynolds W, Doc Evatt: Patriot, Internationalist, Fighter and Scholar, Longman Cheshire, Sydney, 1994.

Cowen Z, "Mr Justice HV Evatt and the High Court" (1966) 2(1) Australian Bar Gazette 3.

Crockett P, Evatt: A Life, Oxford UP, Melbourne, 1993.

Dalziel A, Evatt the Enigma, Lansdowne Press, Melbourne, 1967.

Evatt HV, "Mr Justice Cardozo" (1939) 39 Columbia Law Review 5 (also 52 Harvard Law Review 357; 48 Yale Law Journal 375).

Evatt HV, Atkin E and Evans B, Seeing Red: The Communist Party Dissolution Act and the Referendum 1951: Lessons for Constitutional Reform, Evatt Foundation, Sydney, 1992.

Galligan B, "Evatt, Herbert Vere (1894–1965)", Oxford Dictionary of National Biography, Oxford UP, Oxford, 2004.

Kirby M, "HV Evatt, The Anti-Communist Referendum and Liberty in Australia" (1991) 7 Australian Bar Review 93.

Tennant K, *Evatt: Politics and Justice*, Angus and Robertson, Sydney, 1970 (reprint with revisions 1972).

Wesley-Smith P, Herbert Vere Evatt and the High Court of Australia, BA (Hons) thesis, University of Adelaide, 1969.

Zines L, "Mr Justice Evatt and the Constitution" (1969) 3 Federal Law Review 153.

#### **McTiernan**

**[APP.190]** Kirby M, "Sir Edward McTiernan – A Centenary Reflection" (1991) 20 Federal Law Review 165.

Kirby M, "Sir Edward Aloysius McTiernan, 1892–1990: Parliamentarian and Judge" (1990) 64 Australian Law Journal 320.

#### Latham

[APP.200] Ayres P, "Two Chief Justices: Sir Owen Dixon's View of Sir John Latham", National Observer, No 60 (Autumn 2004), p 58.

Ayres P, "John Latham in Owen Dixon's Eyes", in *Upholding the Australian Constitution Vol 15: Proceedings of the 15th Conference of the Samuel Griffith Society*, Samuel Griffith Society, Melbourne, 2003, ch 6.

Cowen Z, Sir John Latham and Other Papers, Oxford UP, Melbourne, 1965, pp 3-60.

Latham J, "Interpretation of the Constitution", in Else-Mitchell R (ed), *Essays on the Australian Constitution*, 2nd ed, Law Book Co, Sydney, 1961, p 1.

Rubinstein HL, "Latham, Sir John Greig (1877–1964)", Oxford Dictionary of National Biography, Oxford UP, Oxford, 2004.

# Webb

**[APP.210]** Ratnapala S, "Sir William Webb – A Hobbesian Jurist", in White M and Rahemtula A (eds), *Queensland Judges on the High Court*, Supreme Court of Queensland Library, Brisbane, 2003, p 133 (with commentary by D Smith).

#### Kitto

**[APP.220]** Kirby M, "Kitto and the High Court of Australia" (1999) 27 Federal Law Review 131.

Kitto F, "Why Write Judgments?" (1992) 66 Australian Law Journal 787.

Lahy PJ, *His Honour Mr Justice Kitto: Some Aspects of a Constitutional Approach*, LLB (Hons) thesis, Australian National University, Canberra, March 1974.

Meagher RP, "Obituary – The Right Hon Sir Frank Walters Kitto AC, KBE" (Autumn/ Winter 1994) Bar News 16, NSW Bar Association.

# Windeyer

**[APP.230]** Burmester H, "Justice Windeyer and the Constitution" (1987) 17 Federal Law Review 65.

Windeyer V, The 1977 Commonwealth Lecture: Australia in the Commonwealth, Cambridge UP, Cambridge, 1978.

Windeyer V, *Some Aspects of Australian Constitutional Law*, Institute of Law Research and Reform, Edmonton, Alberta, 1973.

#### Barwick

**[APP.240]** Barwick G, A Radical Tory: Garfield Barwick's Reflections and Recollections, Federation Press, Sydney, 1995.

Barwick G, Sir John Did His Duty, Serendip Publications, Sydney, 1983.

Johnston P, "Multifaceted Brilliance" (1996) 26 University of Western Sydney Law Review 241.

Marr D, *Barwick*, George Allen and Unwin, Sydney, 1980, reprinted 1992.

Rumble GA, "Book Review" (1995) 23 Federal Law Review 378.

Rumble GA, *Sir Garfield Barwick's Approach to the Constitution*, PhD thesis, Australian National University, Canberra, August 1983.

Sawer G, "Absolutely Free Man: Sir Garfield Barwick Looks Up an Old Constitutional Battle", *Nation*, 4 June 1960, p 8.

Thomson JA, "Book Review" (1983) 6 University of New South Wales Law Journal 225.

Winterton G, "Barwick the Judge" (1998) 21 University of New South Wales Law Journal 109.

# Gibbs

**[APP.250]** Gibbs H, "Australia Day Messages 1993–2000", in Upholding the Australian Constitution Vol 16: Proceedings of the 16th Conference of the Samuel Griffith Society, Samuel Griffith Society, Melbourne, 2004, Appendix 1.

Priest J, Sir Harry Gibbs: Without Fear or Favour, Scribblers Publishing, Queensland, 1995. Upholding the Australian Constitution Vol 18: Proceedings of the 18th Conference of the

*Samuel Griffith Society*, Samuel Griffith Society, Melbourne, 2006 (papers by Heydon J, Kirby J, T Hughes T QC, D Jackson QC and J Leeser).

Williams G, "Sir Harry Gibbs", in White M and Rahemtula A (eds), *Queensland Judges on the High Court*, Supreme Court of Queensland Library, Brisbane, 2003, p 41 (with commentary by D Jackson).

#### Mason

**[APP.260]** Allars M, "Rights of Citizens and Limits of Administrative Discretion: Contribution of Sir Anthony Mason to Administrative Law" (2000) 28 *Federal Law Review* 187.

Cockburn M, "Mason Sets the Benchmark", *Sydney Morning Herald*, 30 July 1988, p 71. Gummow WMC, "Permanent Legacy" (2000) 28 *Federal Law Review* 177.

"In Conversation: An Interview with Sir Anthony Mason" (1996) 17 Singapore Law Review 3.

Kirby M, "Constitutional Interpretation and Original Intent: A Form of Ancestor Worship" (2000) 24 *Melbourne University Law Review* 1.

Kirby M, "Sir Anthony Mason Lecture 1996: AF Mason – From *Trigwell* to *Teoh*" (1996) 20 *Melbourne University Law Review* 1087.

Lindell G (ed), *The Mason Papers: Selected Articles and Speeches by Sir Anthony Mason*, Federation Press, Sydney, 2007.

Lindell G, "Judge(s) and Co" (1998) 21 University of New South Wales Law Journal 268 (shorter version published as "Judge and Co: Judicial-law Making and the Mason Court" (1998) 5 Agenda 83).

Lobez S, "Interview with Chief Justice Sir Anthony Mason" (Winter 1994) 89 Victorian Bar News 44.

"Mason Keeps Shining Light on Law", Canberra Times, 3 September 2005, p 6.

Mason A, "The Australian Constitution 1901–1988" (1988) 62 Australian Law Journal 755.

Mason A, "The Australian Constitution in Retrospect and Prospect", in Lindell GJ, Saunders C and French RS (eds), *Reflections on the Australian Constitution*, Federation Press, Sydney, 2003, p 7.

Robinson J, "Conservative Judge seen as Radical", Canberra Times, 30 Dec 1988, p 9.

Saunders C (ed), Courts of Final Jurisdiction: The Mason Court in Australia, Federation Press, Sydney, 1996.

Waterford J, "Benchmark", Canberra Times, 25 March 1995, pp C1-C2.

Waterford J, "His Honour the Radical" (April 1995) Independent Monthly 84.

Wood D, "Adjudication and Community Values: Sir Anthony Mason's Recommendations", in Ellinghaus MP, Bradbrook AJ and Duggan AJ (eds), *The Emergence of Australian Law*, Butterworths, Sydney, 1989, p 89.

Zines L, "Sir Anthony Mason" (2000) 28 Federal Law Review 171.

# Murphy

**[APP.270]** Bickovskii P, "No Deliberate Innovators: Mr. Justice Murphy and the Australian Constitution" (1976-1977) 8 *Federal Law Review* 460.

Blackshield A, et al (eds), *The Judgments of Justice Lionel Murphy*, Primavera Press, Sydney, 1986.

Campbell L, "Lionel Murphy and the Jurisprudence of the High Court Ten Years On" (1996) 15 University of Tasmania Law Review 22.

Coper M and Williams G (eds), *Justice Lionel Murphy: Influential or Merely Prescient?*, Federation Press, Sydney 1997.

Ely J and Ely R, Lionel Murphy: The Rule of Law, Akron P, Sydney, 1986.

Hocking J, Lionel Murphy: A Political Biography, Cambridge UP, Melbourne, 2002.

Johnston P, "Saint or Sinner" (1995) 25 University of Western Australia Law Review 208.

Kirby M, "Lionel Murphy and the Power of Ideas" (1993) 18 Alternative Law Journal 253.

Lindell G, "The Murphy Affair in Retrospect", in Lee HP and Winterton G (eds), *Australian Constitutional Landmarks*, Cambridge UP, Cambridge, 2003, p 280.

Pannam C and Sundberg R, "Two Views on the Judgments of Lionel Murphy J" (1987) 60 *Victorian Bar News* 16.

Scutt J, Lionel Murphy: A Radical Judge, McCulloch Publishing, Melbourne, 1987.

Venturini VG (ed), In the Name of Lionel, Never Give In Press, Melbourne, 2000.

Venturini VG (ed), Five Voices for Lionel, Federation Press, Sydney, 1994.

Williams J, "Revitalising the Republic: Lionel Murphy and the Protection of Individual Rights" (1997) 8 *Public Law Review* 27.

Winterton G, "Murphy: A Maverick Reconsidered" (1997) 20 University of New South Wales Law Journal 204.

# Aickin

**[APP.280]** Merralls JD, "Sir Keith Aickin" (1982) 12 University of Queensland Law Journal 3.

# Wilson

**[APP.290]** Craven G, "Able to Follow Both His Calling and His Conscience", *Australian Financial Review*, 22 July 2005, p 52.

#### Brennan

**[APP.300]** Blackshield T, "Brennan Leads Way in a Constitution Assessment", *Australian Financial Review*, 27 February 1998, p 28.

Blackshield T, "In Brennan's Court", Age, 21 May 1998, p 15.

Brennan G, One Hundred Years On: Strengths and Strains in the Constitution, Federation Press, Sydney, 2001.

Brennan G, "Courts for the People-Not People's Courts" (1995) 2 Deakin Law Review 1. Brennan G, "Courts, Democracy and the Law" (1991) 65 Australian Law Journal 32.

Carney G, "Sir Gerard Brennan – the Principled Judge", in White M and Rahemtula A (eds), *Queensland Judges on the High Court*, Supreme Court of Queensland Library, Brisbane, 2003, p 85.

Creyke R and Keyzer P, *The Brennan Legacy: Blowing the Winds of Legal Orthodoxy*, Federation Press, Sydney, 2002.

Kirby M, "Law, Human Life and Ethical Dilemmas" (2000) 12 *Bond Law Review* 129. Lane B, "Highest in the Land", *Australian*, 30 March 1995, p 13.

#### Deane

[APP.310] Deane WP, Directions: A Vision for Australia, St Paul's Publications, Sydney, 2002. Manne R, "Sir William Deane", in The Barren Years: John Howard and Australian Political Culture, Text Publishing, Melbourne, 2001.

Stevens T, Sir William Deane: The Things that Matter, Hodder, Sydney 2002.

Sunderland F, *Justice Deane and the Constitution*, LLB (Hons) thesis, University of Western Australia, Perth, October 1996.

#### Dawson

[APP.320] "Sir Daryl Dawson, AC, KBE, CB" (Spring 1997) 102 Victorian Bar News 13.

Toohey

**[APP.330]** "Justice Toohey" (1997) 14(2) and (3) *Brief*, Law Society of WA, 6 (Part 1), 19 (Part 2).

Lane B, "Demanding Decisions", Weekend Australian, 21-22 February 1998, p 25.

#### Gaudron

**[APP.340]** Batrouney J, "The Contribution that the Hon Mary Gaudron QC has made to Women and the Law" (2004) 15 *Public Law Review* 320.

Campbell R, "Gaudron's Extraordinary Career Comes to an End", *Canberra Times*, 12 February 2003, p 14.

Juvenal, "The High Court's Junior" (1987) 50 Justinian 11.

Kenny S, "Concepts of Judicial Responsibility: The Contribution of the 'One of Seven'" (2004) 15 *Public Law Review* 283.

Saunders C, "Interpreting the Constitution" (2004) 15 Public Law Review 289.

Shield F, "A Different Kind of Justice", Age, 9 December 2002, p 11.

Stone A, "Justice Gaudron and Constitutional Rights" (2004) 15 Public Law Review 297.

# McHugh

**[APP.350]** Aroney N, "Justice McHugh, Representative Government and the Elimination of Balancing" (2006) 28 Sydney Law Review 505.

McHugh M, "Working as a High Court Justice", Speech to the Women Lawyers Association of New South Wales and the Law Society of Newcastle, Newcastle, 17 August 2005.

McHugh M, "The Judicial Method" (1999) 73 Australian Law Journal 37.

McHugh M, "The High Court of Australia" [1997] 2 Journal of [US] Supreme Court History 2.

McHugh M, "The Law-making Function of the Judicial Process" (1988) 62 Australian Law Journal 15 (Pt 1), 116 (Pt 2).

# Gummow

**[APP.360]** Gummow WMC, "The Constitution: Ultimate Foundation of Australian Law?" (2005) 79 Australian Law Journal 167.

Gummow WMC, Change and Continuity: Statute, Equity, and Federalism, Oxford UP, Oxford, 1999.

#### Kirby

**[APP.370]** Kirby M, "A Public Conversation on Constitutionalism and the Judiciary between Professor James Allan and the Hon, Michael Kirby" (2009) 33 *Melbourne University Law Review* 1032.

Kirby M, Judicial Activism: Authority, Principle, and Policy in the Judicial Method, Sweet & Maxwell, London, 2004 (The Hamlyn Lectures).

Kirby M, "The High Court of Australia and the Supreme Court of the United States: A Centenary Reflection" (2003) 31 University of Western Australia Law Review 171.

Kirby M, "Change and Decay or Change and Renewal?" (1998) 7 Journal of Judicial Administration 189.

Kirby M, "The Australian Constitution – A Centenary Assessment" (1997) 23 Monash University Law Review 229.

Kirby M, "Julius Stone and the High Court of Australia" (1997) 20 University of New South Wales Law Journal 239.

Kirby M, "The Constitutional Centenary and the Counting of Blessings" (1997) 2(1) Newcastle Law Review 1.

Kirby M, "Reflections on a Career in Law", in Corkery JF (ed), *The Study of Law*, Federation Press, Sydney, 1988, pp 210–216.

"The Legal Eye View", Canberra Times, 23 April 2005, p 6.

#### Hayne

**[APP.380]** Ackland R, "Judge who won't say Cheese for the Press", Australian Financial Review, 15 August 1997, p 27.

Lee HP, "Hayne is his Own Man", Sydney Morning Herald, 22 August 1997, p 17.

# Callinan

**[APP.390]** Aroney N, "Reasonable Disagreement, Democracy and the Judicial Safeguards of Federalism" (2008) 27(1) *University of Queensland Law Journal* 129.

Bennett D, "What 'Capital-C'?" (2008) 27(1) University of Queensland Law Journal 23.

Callinan I, "The Queensland Contribution to the High Court", in White M and Rahemtula A (eds), *Queensland Judges on the High Court*, Supreme Court of Queensland Library, Brisbane, 2003, p 199.

Callinan I, "An Over-Mighty Court?", in *Upholding the Australian Constitution*, Samuel Griffith Society, Melbourne, 1995.

Devereux J A, "Callinan, the Constitution and Criminal Law: A Decade of Pragmatism" (2008) 27(1) University of Queensland Law Journal 71.

Kingston M, "Callinan Casts a Long Shadow", *Sydney Morning Herald*, 14 August 1998, p 19.

McGeogh P, "A Very Different Justice", Sydney Morning Herald, 16 May 1998, p 1.

Twomey A, "Constitutional Alteration and the High Court: The Jurisprudence of Justice Callinan" (2008) 27(1) University of Queensland Law Journal 47.

#### Gleeson

**[APP.400]** Clark A, "In the Court of Murray Gleeson", *Australian Financial Review*, 22 August 2000, p 10.

Editorial, "Top Lawyer for High Court Task", Australian, 1 April 1998, p 10.

Fife-Yeomans J, "The Man behind the Mask", Australian, 1 April 1998, pp 1, 2.

Gleeson M, "Courts and the Rule of Law", in C Saunders and K Le Roy (eds), *The Rule of Law*, Federation Press 2003.

Gleeson M, *The Rule of Law and the Constitution*, ABC Books, Sydney, 2000 (The Boyer Lectures).

Gleeson M, "Who Do Judges Think They Are?" (1998) 22 Criminal Law Journal 10.

Gleeson M, "Judicial Accountability", in Courts in a Representative Democracy, AIJA, Melbourne, 1995.

Lane B, "Praise From All Quarters, But ...", Australian, 1 April 1998, p 2.

Lane B and Fife-Yeomans J, "Gleeson Leads High Court", Australian, 1 April 1998, p 1.

McColl R, "Chief Justice Murray Gleeson AC – 'Reasonably Calm'", Autumn/Winter 1994 Bar News 11, NSW Bar Association.

Merritt C, "Gleeson to take High Court Reins", *Australian Financial Review*, 1 April 1998, pp 1, 6.

#### Heydon

**[APP.410]** Heydon JD, "Threats to Judicial Independence: The Enemy Within" (2013) 129 *Law Quarterly Review* 205.

Heydon JD, "Judicial Activism and the Death of the Rule of Law" (2003) 23 Australian Bar Review 110.

Hutchinson A, "Heydon' Seek: Looking for Law in All the Wrong Places" (2003) 29 Monash University Law Review 85.

Lane B, "A Man for all Reasons", Australian, 19 December 2002.

Lawson V, "A Jolly Dour Leftie Tory: the Jury is out on Judging Justice Heydon", *Sydney Morning Herald*, 19 December 2002, p 8.

#### Crennan

**[APP.420]** Crennan S, *Statutes and the Contemporary Search for Meaning*, Statute Law Society Paper, London, 1 February 2010, available at: http://www.hcourt.gov.au/assets/publications.

Crennan S, "Scepticism and Judicial Method" (2008) 82 Australian Law Journal 169.

Crennan S, *Reflections on Sections 7 and 24 of the Constitution*, Gilbert & Tobin Centre of Public Law Constitutional Law Dinner, 2008, available at: http://www.hcourt.gov.au/assets/ publications.

Crennan S, *Industrial Property and Confidential Information*, 2nd ed, Leo Cussen Institute for Continuing Legal Education, 1986.

Merritt C, "Renaissance Woman", Australian, 21 September 2005, p 11.

"The Hon Justice Susan Crennan" [2006] Bar News (NSW Bar) 78.

# Kiefel

**[APP.430]** Karvelas P and Berkovic N, "Kiefel Will Make High Court History", *Australian*, 14 August 2007, p 1.

Kiefel S, "Proportionality: A Rule of Reason" (2012) 23 Public Law Review 85.

Kiefel S, "Section 92: Markets, Protectionism and Proportionality: Australian and European Perspectives" (2010) 36 Monash University Law Review 1.

Kiefel S, *The Use of Constitutional Supra Principles by Judges*, VIII World Congress of the International Association of Constitutional Law, Mexico City, 10 December 2010, available at: http://www.hcourt.gov.au/assets/publications.

"The Hon Justice Susan Kiefel" [2007] Bar News 68, NSW Bar.

#### French

**[APP.440]** French RS, "The Incredible Shrinking Federation: Voyage to a Singular State?", in Appleby G, Aroney NT and John T (eds), *The Future of Australian Federalism: International and Comparative Perspectives*, Cambridge UP, Cambridge, 2012, p 39.

French RS, *Tax and the Constitution*, 27th National Convention of the Tax Institute, DG Hill Memorial Lecture, Canberra, March 2012, available at http://www.hcourt.gov.au/assets/ publications.

French RS, *Australia's Constitutional Evolution*, John Fordham Law School Constitutional Law Master Class, New York City, 20 January 2010, available at: http://www.hcourt.gov.au/assets/publications.

French RS, *Constitutional Review of Executive Decisions – Australia's US Legacy*, John Marshall Law School–Chicago Bar Association, Chicago, 25 and 28 January 2010, available at: http://www.hcourt.gov.au/assets/publications.

French RS, *Theories of Everything and Constitutional Interpretation*, University of New South Wales–Gilbert & Tobin Centre of Public Law 2010 Constitutional Law Conference Dinner Address, Sydney, February 2010, available at: http://www.hcourt.gov.au/assets/publications.

French RS, "The Executive Power: Inaugural George Winterton Lecture, Sydney Law School" (2010) 12 Constitutional Law & Policy Review 5.

French RS, *The Future of Australian Constitutionalism*, International and Comparative Perspectives on Constitutional Law: A 21st Anniversary Celebration for the Centre for

Comparative Constitutional Studies, Melbourne, 27 November 2009, available at: http://www.hcourt.gov.au/assets/publications.

French RS, "The Constitution and the People", in Lindell GJ, Saunders C and French RS (eds), *Reflections on the Australian Constitution*, Federation Press, Sydney, 2003, p 60.

#### Bell

**[APP.450]** Marr D, "Justice Bell Rings the Changes as Third Woman on High Court", *Sydney Morning Herald*, 4 February 2009, p 3.

"The Hon Justice Virginia Bell" [2009] Bar News 84, NSW Bar.

# Gageler

**[APP.460]** Gageler S, "The Federal Balance", in Appleby G, Aroney NT and John T (eds), *The Future of Australian Federalism: International and Comparative Perspectives*, Cambridge UP, Cambridge, 2012, p 27.

Gageler S, "Common Law Statutes and Judicial Legislation: Statutory Interpretation as a Common Law Process" (2011) 37 Monash University Law Review 1.

Gageler S, "Impact of Migration Law on the Development of Australian Administrative Law" (2010) 17 Australian Journal of Administrative Law 92.

Gageler S, "Beyond the Text: A Vision of the Structure and Function of the Constitution" (2009) 32 Australian Bar Review 138.

Gageler S, "Fact and Law" (2008) 11 Newcastle Law Review 1.

Gageler S, "Judicial Appointment" (2008) 30 Sydney Law Review 157.

Gageler S, "In the Matter of Constitutional Issues Concerning Preventative Detention in the Australian Capital Territory" (2005) 9 University of Western Sydney Law Review 159.

Gageler S, "Legitimate Expectation: Comment on the Article by the Hon Sir Anthony Mason AC KBE" (2005) 12 Australian Journal of Administrative Law 111.

Gageler S, "The Legitimate Scope of Judicial Review: the Prequel" (2005) 26 Australian Bar Review 303.

Gageler S, "Private Intra-national Law: Choice or Conflict, Common Law or Constitution?" (2003) 23 Australian Bar Review 184.

Gageler S, "The High Court on Constitutional Law: The 2001 Term" (2002) 25 University of New South Wales Law Journal 194.

Gageler S, "Legalism", in Blackshield A R, Coper M and Williams G (eds), *The Oxford Companion to the High Court of Australia*, Oxford UP, Melbourne, 2001.

Gageler S, "The Underpinnings of Judicial Review of Administrative Action: Common Law or Constitution" (2000) *Federal Law Review* 303.

Gageler S, "The Races Power Problem: The Case for Validity" (1998) 9 Public Law Review 270.

Gageler S, "Gnawing at a File: An Analysis of *Re Tracey; Ex Parte Ryan*" (1990) 20 University of Western Australia Law Review 47.

Gageler S, "The Foundations of Australian Federalism and the Role of Judicial Review" (1987) 17 Federal Law Review 162.

Gageler S and Glass A, "Constitutional law and human rights", in *Human Rights in Australian Law: Principles, Practice and Potential*, Federation Press, Sydney, pp 47-62.

Gageler S and Leeming M, "An Australian Republic: Is a Referendum Enough?" (1996) 7 *Public Law Review* 143.

Griffith G, Rose G and Gageler S, "Choice of Law in Cross-Vested Jurisdiction: A Reply to Kelly and Crawford" (1988) 62 Australian Law 698.

#### Keane

**[APP.470]** Hulme SEK, Hughes TEF, Hampson CEK, Keane PA, Young PW and Coper M, "High Court Centenary: Reminiscences and Reflections" (2003) 77 *Australian Law Journal* 653.

Keane PA, Originalism: Founders, Judges and Modesty, 2011 Constitutional Law Conference, Sydney, 18 February 2011, available at http://www.fedcourt.gov.au/publications.

Keane PA, *In Celebration of the Constitution*, Address to the National Archives Commission, Brisbane, 12 June 2008, available at http://www.archive.sclqld.org.au/judgepub/2008/Keane120608.pdf.

Keane PA, "Judicial Review: The Courts and the Academy" (2008) 82 Australian Law Journal 623.

Keane PA, "Judicial Power and the Limits of Judicial Control", in Cane P (ed), Centenary Essays for the High Court of Australia, LexisNexis Butterworths, Sydney, 2004, p 295.

Keane PA, "The Ramifications of the Wik Decision" (1997) 53 Refresher 15.

# CHAPTER 1: CONSTITUTIONAL FUNDAMENTALS

**[APP.480]** Alexander L and Schauer F, "On Extrajudicial Constitutional Interpretation" (1997) 110 *Harvard Law Review* 1359.

Alfange D, "Marbury v Madison and Original Understandings of Judicial Review: In Defense of Traditional Wisdom" [1993] Supreme Court Review 329.

Allan J and Aroney N, "An Uncommon Court: How the High Court of Australia Has Undermined Australian Federalism" (2008) 30 *Sydney Law Review* 245.

Allan TRS, *Law, Liberty, and Justice: The Legal Foundations of British Constitutionalism*, Clarendon P, Oxford, 1993.

Anderson G, "The Council of Australian Governments: A New Institution of Governance for Australia's Conditional Federalism" (2008) 31 University of New South Wales Law Journal 493.

Aroney N, "Subsidiarity: European Lessons for Australia's Federal Balance" (2011) 39 *Federal Law Review* 213.

Aroney N, "Towards the 'Best Explanation' of the Constitution: Text, Structure, History and Principle in Roach v Electoral Commissioner" (2011) 30 University of Queensland Law Journal 145.

Aroney N, The Constitution of a Federal Commonwealth: The Making and Meaning of the Australian Constitution, Cambridge UP, Cambridge, 2009.

Aroney N, "Constitutional Choices in the Work Choices Case, or What Exactly is Wrong with the Reserved Powers Doctrine?" (2008) 32 Melbourne University Law Review 1.

Balkin J and Levinson S, "The Canons of Constitutional Law" (1998) 111 Harvard Law Review 963.

Basten J, "Constitutional Elements of Judicial Review" (2004) 15 Public Law Review 187. Bateman W, "The Constitution and the Substantive Principles of Judicial Review: The Full Scope of the Entrenched Minimum Provision of Judicial Review" (2011) 39 Federal Law Review 463. Behrendt L, Achieving Social Justice: Indigenous Rights and Australia's Future, Federation Press, Sydney, 2003.

Bickel A, *The Least Dangerous Branch: The Supreme Court at the Bar of Politics*, Yale UP, New Haven, 2nd ed, 1986.

Blackford R, "Judicial Power, Political Liberty and the Post-Industrial State" (1997) 71 Australian Law Journal 267.

Booker K and Glass A, "The Engineers Case", in Lee HP and Winterton G (eds), *Australian* Constitutional Perspectives, Law Book Co, Sydney, 1992, p 34.

Brennan G, "Centenary of the Enactment of the Commonwealth of Australia Constitution Act" (2001) 75 Australian Law Journal 31.

Campbell E, "An Australian-Made Constitution for the Commonwealth of Australia", in Standing Committee D, "Report to Executive Committee" (1 August 1975), 95 (Appendix H), in *Minutes of proceedings and official record of debates of the Australian Constitutional Convention, held at the Hotel Windsor, Melbourne, 24-26 September, 1975*, Government Printer, Melbourne, 1975.

Choper JH, Judicial Review and the National Political Process, Chicago UP, Chicago, 1980. Cole D, Enemy Aliens: Double Standards and Constitutional Freedoms in the War on Terrorism, New Press, New York, 2003.

Cooke JE (ed), The Federalist, Wesleyan UP, Middletown, Connecticut, 1961.

Coper M and Williams G (eds), How Many Cheers for Engineers?, Federation Press, Sydney, 1997.

Craig P, "Formal and Substantive Conceptions of the Rule of Law: An Analytical Framework" [1997] *Public Law* 468.

Craven G, "The Future of Federalism" (2009) 24(2) Australasian Parliamentary Review 23.

Craven G, "The High Court and the States", in Upholding the Australian Constitution, Vol 6: Proceedings of the Sixth Conference of the Samuel Griffith Society, Samuel Griffith Society, Melbourne, 1995.

Craven G, "The Founding Fathers: Constitutional Kings or Colonial Knaves?" (1993) 21 Papers on Parliament 119.

Craven G, "The States – Decline, Fall or What?", in Craven G (ed), Australian Federation: Towards the Second Century, Melbourne UP, Carlton, 1992.

Crennan SM, "Scepticism and Judicial Method" (2008) 82 Australian Law Journal 169.

Crommelin M, "The Federal Model", in Craven G (ed), Australian Federation: Towards the Second Century, Melbourne UP, Melbourne, 1992, p 168.

De Jersey P, "A Sketch of the Modern Australian Federation", in Appleby G, Aroney NT and John T (eds), *The Future of Australian Federalism: International and Comparative Perspectives*, Cambridge UP, Cambridge, 2012, p 66.

Detmold M, "Australian Law: Federal Movement" (1991) 13 Sydney Law Review 31.

Detmold M, "Australian Law: Freedom and Identity" (1990) 12 Sydney Law Review 483.

Dixon O, Jesting Pilate: And Other Papers and Addresses, collected by Judge Woinarski, Law Book Company, Sydney, 1965.

Douglas R, "Smallish Blow for Liberty – The Significance of the Communist Party Case" (2001) Monash University Law Review 253.

Elazar D, Exploring Federalism, University of Alabama Press, Tuscaloosa, 1987.

Ely JH, Democracy and Distrust: A Theory of Judicial Review, Harvard UP, Cambridge, Massachusetts, 1980.

Evans S, "Why is the Constitution Binding? Authority, Obligation and the Role of the People" (2004) 25 Adelaide Law Review 103.

Fallon R, "The Rule of Law as a Concept in Constitutional Discourse" (1997) 97 Columbia Law Review 1.

Finnis J, "Separation of Powers in the Australian Constitution" (1968) 3 Adelaide Law Review 159.

Fitzgerald B, "Principles of Australian Constitutionalism", in ALTA 1994: Proceedings of the 49th Annual Conference of the Australasian Law Teachers Association: Vol 1, Pt 2, University of Tasmania Law Press, Hobart, 1994, p 799.

Fleiner-Gerster T, "Federalism in Australia and in Other Nations", in Craven G (ed), Australian Federation: Towards the Second Century, Melbourne UP, Melbourne, 1992, p 14.

Foley K, "The Australian Constitution's Influence on the Common Law" (2003) 31 Federal Law Review 131.

French R, "The Incredible Shrinking Federation: Voyage to a Singular State?", in Appleby G, Aroney NT and John T (eds), *The Future of Australian Federalism: International and Comparative Perspectives*, Cambridge UP, Cambridge, 2012, p 39.

French R, "The Executive Power: Inaugural George Winterton Lecture, Sydney Law School" (2010) 12 Constitutional Law & Policy Review 5.

French R, *Theories of Everything and Constitutional Interpretation*, University of New South Wales–Gilbert & Tobin Centre of Public Law 2010 Constitutional Law Conference Dinner Address, Sydney, February 2010, available at: http://www.hcourt.gov.au/assets/publications.

French R "The Constitution and the People" in Lindell GJ, Saunders C and French RS, *Reflections on the Australian Constitution*, Federation Press, Sydney, 2003, p 60.

Friedman B, "The History of the Countermajoritarian Difficulty, Part One: The Road to Judicial Supremacy" (1998) 73 New York University Law Review 333.

Fuller L, The Morality of Law, 2nd ed, Yale UP, New Haven, 1969, pp 33-94.

Gageler S, "The Federal Balance", in Appleby G, Aroney NT and John T (eds), *The Future* of Australian Federalism: International and Comparative Perspectives, Cambridge UP, Cambridge, 2012, p 27.

Gageler S, "Beyond the Text: A Vision of the Structure and Function of the Constitution" (2009) 32 Australian Bar Review 138.

Galligan B, A Federal Republic: Australia's Constitutional System of Government, Cambridge UP, Melbourne, 1995.

Galligan DJ, "Judicial Review and Democratic Principles: Two Theories" (1983) 57 Australian Law Journal 69.

Galligan B, "The Founders' Design and Intentions Regarding Responsible Government", in Weller P and Jaensch D (eds), *Responsible Government in Australia*, Drummond, Melbourne, 1980.

Gerangelos PA, "The Executive Power of the Commonwealth of Australia: Section 61, 'Nationhood' and the Future of the Prerogative" (2012) 12 Oxford University Commonwealth Law Journal 97.

Gerangelos PA, "Parliament, the Executive, the Governor-General and the Republic: The George Winterton Thesis", in Lee HP and Gerangelos PA (eds), *Constitutional Advancement in a Frozen Continent: Essays in Honour of George Winterton*, Federation Press, Sydney, 2009, p 189.

Gerangelos PA, "Interpretational Methodology in Separation of Powers Jurisprudence" (2005) 8 Constitutional Law & Policy Review 1.

Gibbs H, "The Decline of Federalism" (1994) 18 University of Queensland Law Journal 1. Glass A, "Birthright Non-Alienage" (2004) 6 Constitutional Law & Policy Review 80.

Gleeson AM, *The Rule of Law and the Constitution*, ABC Books, Sydney, 2000 (The Boyer Lectures).

Goldsworthy J, "Constitutional Implications Revisited" (2011) 30 University of Queensland Law Journal 9.

Goldsworthy J, "Justice Windeyer on the Engineers' Case" (2009) 37 Federal Law Review 363. (Comments by Mason A, "Justice Windeyer on the Engineers' Case" (2010) 12(3) Constitutional Law & Policy Review 41).

Goldsworthy J, "Original Meanings and Contemporary Understandings in Constitutional Interpretation", in Lee HP and Gerangelos PA (eds), *Constitutional Advancement in a Frozen Continent: Essays in Honour of George Winterton*, Federation Press, Sydney, 2009, p 245.

Goldsworthy J, The Sovereignty of Parliament: History and Philosophy, Oxford UP, Oxford, 1999.

Griffin S, American Constitutionalism: From Theory to Politics, Princeton UP, Princeton, 1996.

Gummow WMC, "The Constitution: Ultimate Foundation of Australian Law?" (2005) 79 Australian Law Journal 167.

Gwyn WB, The Meaning of the Separation of Powers, Tulane UP, New Orleans, 1965.

Habermas J, "Constitutional Democracy" (2001) 29 Political Theory 776.

Hatzistergos J, "Federation and Culture: Reflections on the Australian Constitution" (2009) 83 Australian Law Journal 810.

Henkin L, "A New Birth of Constitutionalism: Genetic Influence and Genetic Defects", in Rosenfeld M (ed), *Constitutionalism, Identity, Difference and Legitimacy*, Duke UP, Durham, 1994, p 39.

Henley K, "The Impersonal Rule of Law" (1992) 5 Canadian Journal of Law and Jurisprudence 299.

Heydon JD, "One Small Point About Originalism" (2009) 28 University of Queensland Law Journal 7.

Hill G and Stone A, "The Constitutionalisation of the Common Law" (2004) 25 Adelaide Law Review 67.

Horrigan B, "Towards a Jurisprudence of High Court Overruling" (1992) 66 Australian Law Journal 199.

Howard C, "Public Law and Common Law", in Galligan DJ (ed), *Essays in Legal Theory:* A Collaborative Work, Melbourne UP, Melbourne, 1984, p 1.

Ignatieff M, The Lesser Evil: Political Ethics in an Age of Terror, Princeton UP, Princeton, 2004.

Irving H, "How Well Does the Compact Fit? A Critique of the New Constitutional Grundnorm in the Light of History and Theory" (2002) 11 *Griffith Law Review* 408.

Kerr D, "Pape v Commissioner of Taxation: Fresh Fields for Federalism?" (2009) 9 Law & Justice 311.

Kerr D, "The High Court and the Executive: Emerging Challenges to the Underlying Doctrines of Responsible Government and the Rule of Law" (2009) 28 University of Tasmania Law Review 145.

Kinley D, "Constitutional Brokerage in Australia: Constitutions and the Doctrines of Parliamentary Supremacy and the Rule of Law" (1994) 22 Federal Law Review 194.

Kirby M, "Red Cross Oration: The Growing Impact of International Law on Australian Constitutional Values" (2008) 27 University of Tasmania Law Review 1.

Kirby M, "Deakin: Popular Sovereignty and the True Foundation of the Australian Constitution" (1996) 3 Deakin Law Review 129.

Kirchheimer O, "The Rechtsstaat as Magic Wall", in Wolff KH and Moore B (eds), *The Critical Spirit: Essays in Honor of Herbert Marcuse*, Beacon P, Boston, 1967, p 287.

Krygier M, "The Rule of Law: Legality, Teleology, Sociology", in Palombella G and Walker N (eds), *Re-locating the Rule of Law*, Hart Publishing, Portland, Oregon, 2008.

Krygier M, "Rule of Law", in Smelser N and Baltes P (eds), *International Encyclopaedia of the Social and Behavioural Sciences*, Vol 20, Elsevier, Amsterdam, 2001.

Lee HP, "The Australia Act 1986 – Some Legal Conundrums" (1986) 14 Monash University Law Review 298.

Lee HP and Gerangelos PA (eds), Constitutional Advancement in a Frozen Continent: Essays in Honour of George Winterton, Federation Press, Sydney, 2009.

Levinson S, Constitutional Faith, Princeton UP, Princeton, 1988.

Lindell G, Responsible Government and the Australian Constitution: Conventions Transformed into Law, Federation Press, Sydney, 2004.

Lindell G, "Further Reflections on the Date of the Acquisition of Australia's Independence", in French RS, Lindell G and Saunders C (eds), *Reflections on the Australian Constitution*, Federation Press, Sydney, 2003, p 51.

Lindell G, "Responsible Government", in Finn PD, *Essays on Law and Government*, Vol 1, Principles and values, Law Book Co, North Ryde, 1995, p 73.

Lindell G, "Why is Australia's Constitution Binding? – The Reasons in 1900 and Now, and the Effect of Independence" (1986) 16 *Federal Law Review* 29.

Lindell G, "Duty to Exercise Judicial Review", in Zines L (ed), Commentaries on the Australian Constitution: A Tribute to Geoffrey Sawer, Butterworths, Sydney, 1977, p 150.

Lipton J, "Responsible Government, Representative Democracy and the Senate: Options for Reform" (1997) 19 University of Queensland Law Journal 194.

Longo M, "Bringing International Human Rights Norms In: Constitutional Interpretive Methodology in Australia and Canada Compared" (2012) 18 Australian Journal of Human Rights 115.

Macintyre S, "A Federal Commonwealth, an Australian Citizenship" (1997) 30 Papers on Parliament 19.

Macklem P, *Indigenous Difference and the Constitution of Canada*, University of Toronto Press, Toronto, 2001.

Macklem P, "Normative Dimensions of an Aboriginal Right to Self Government" (1995) 21 Queens Law Journal 173.

Maddox G, Australian Democracy in Theory and Practice, 3rd ed, Longman, Melbourne, 1996.

Maddox G, "Constitution", in Ball T, Farr J and Hanson R (eds), *Political Innovation and* Conceptual Change, Cambridge UP, Cambridge, 1989, p 50.

Madison J in Rossiter C (ed), *The Federalist Papers*, New American Library, New York, 1961.

Mantziaris C, "The Executive – A Common Law Understanding of Legal Form and Responsibility", in French RS, Lindell G and Saunders C (eds), *Reflections on the Australian Constitution*, Federation Press, Sydney, 2003, p 125.

Marshall G, *Parliamentary Sovereignty and the Commonwealth*, Clarendon Press, Oxford, 1957.

Mason A, "The Tension Between Legislative Supremacy and Judicial Review" (2003) 77 *Australian Law Journal* 803.

Mason A, "A New Perspective on Separation of Powers" (1996) 82 Canberra Bulletin of Public Administration 1.

Mason K, "Prospective Overruling" (1989) 63 Australian Law Journal 562.

McDonald F, *States' Rights and the Union: Imperium in Imperia* 1776-1876, University Press of Kansas, Lawrence, Kansas, 2000.

McHugh M, "The Constitutional Jurisprudence of the High Court: 1989–2004" (2008) 30 *Sydney Law Review 5*.

McKenna M, "Citizens of the Nation and Citizens of the World: The Importance of Constitutional Change in Reshaping the Australian Imagination" (2001) 24 University of New South Wales Law Journal 652.

McMillan J, "Re-thinking the Separation of Powers" (2010) 38 Federal Law Review 423.

Meale D, "The History of the Federal Idea in Australian Constitutional Jurisprudence: A Reappraisal" (1992) 8 Australian Journal of Law and Society 25.

Meese E, "Perspectives on the Authoritativeness of Supreme Court Decisions" (1987) 61 *Tulane Law Review* 979.

Meyerson D, "Rethinking the Constitutionality of Delegated Legislation" (2003) 11 Australian Journal of Administrative Law 45.

Michael B, "International Law in Constitutional Interpretation: A Theoretical Perspective" (2012) 23 Public Law Review 197.

Michelman F, "Can Constitutional Democrats Be Legal Positivists? Or Why Constitutionalism?" (1996) 2 Constellations 293.

Palombella G and Walker N (eds), *Re-locating the Rule of Law*, Hart Publishing, Portland, 2008.

Patience A, "By-Passing Liberalism: Constitutionalism in Australian Politics", in G Duncan (ed), *Critical Essays in Australian Politics*, Edward Arnold, Melbourne, 1978, p 97.

Pauling T, "Constitutional Differences Between Territories and States" (2000) 20 Australian Bar Review 187.

Pearson N, "To Be or Not To Be – Separate Aboriginal Nationhood or Aboriginal Self-Determination and Self-Government Within the Australian Nation" (1993) 61 (3) *Aboriginal Legal Bulletin* 14.

Perry M, "The High Court and Dynamic Federalism", in Kildea P, Lynch A and Williams G (eds), *Tomorrow's Federation: Reforming Australian Government*, Federation Press, Sydney, 2012, p 172.

Pyke J, "The Covering Clauses and Patriation of the Australian Constitution", in ALTA 1994: Proceedings of the 49th Annual Conference of the Australasian Law Teachers Association: Vol 1, Pt 2, University of Tasmania Law Press, Hobart (1994), p 840.

Quick J and Garran R, *The Annotated Constitution of the Australian Commonwealth*, Angus and Robertson, Sydney, 1901; reprinted Legal Books, Sydney, 1975.

Ratnapala S, "Government Under the Law: Ebb and Flow of Sovereignty in Australia" (2001) 24 University of New South Wales Law Journal 670.

Ratnapala S and Moens GA (eds), *Jurisprudence of Liberty*, 2nd ed, LexisNexis, Sydney, 2011.

Raz J, Ethics and the Public Domain, Clarendon P, Oxford, 1994.

Rubenstein K, Australian Citizenship Law in Context, Lawbook, Sydney, 2002.

Rubenstein K, "Citizenship and the Constitutional Convention Debates: A Mere Legal Inference" (1997) 25 Federal Law Review 295.

Saunders C, "Can Federalism Have Jurisprudential Weight?", in Courchene T, Allan J, Leuprecht C and Verrelli N (eds), *The Federal Idea: Essays in Honour of Ronald L Watts*, McGill-Queen's UP, Montreal, 2011, p 111.

Saunders C, "The Constitutional, Legal and Institutional Foundations of Australian Federalism", in Carling R (ed), *Where to for Australian Federalism?*, Centre for Independent Studies, St Leonards, 2008, p 15.

Saunders C, "Constitutional Structure and Australian Federalism", in Cane P (ed), *Centenary Essays for the High Court of Australia*, LexisNexis Butterworths, Sydney, 2004, p 174.

Saunders C, "The Separation of Powers", in Opeskin B and Wheeler F (eds) *The Australian Federal Judicial System*, Melbourne UP, Melbourne, 2003.

Saunders C, "Constitutional Arrangements of Federal Systems" (1995) 25 (2) Publius 61.

Saunders C, "Democracy: Representation and Participation", in Finn PD, *Essays on Law and Government*, Vol 1, Principles and values, Law Book Co, North Ryde, 1995, p 51.

Sawer G, Australian Federalism in the Courts, Melbourne UP, Melbourne, 1967.

Selway B, "The Rule of Law, Invalidity and the Executive" (1998) 9 Public Law Review 196.

Shapiro DL, Federalism: A Dialogue, Northwestern UP, Evanston, Illinois, 1995.

Symposium, "Fidelity in Constitutional Theory" (1997) 65 Fordham Law Review 1247.

Tate J, "Giving Substance to Murphy's Law: The Question of Australian Sovereignty" (2001) 27 Monash University Law Review 21.

Thompson E, "The Constitution and the Australian System of Limited Government, Responsible Government and Representative Democracy: Revisiting the Washminster Mutation" (2001) 24 University of New South Wales Law Journal 657.

Thomson JA, "The Australia Acts: A State Constitutional Law Perspective" (1990) 20 University of Western Australia Law Review 409.

Thomson JA, "Constitutional Authority for Judicial Review", in Craven G (ed), *The Convention Debates 1891-1898: Commentaries, Indices and Guide*, Vol 6, Legal Books, Sydney 1986, p 173.

Thomson JA, "The Australian Constitution: Statute, Fundamental Document or Compact?" (1985) 59 *Law Institute Journal* 1199.

Troper M, "Marshall, Kelsen, Barak and the Constitutional Fallacy" (2005) 3 International Journal of Constitutional Law 24.

**36** [APP.480]

Tushnet MV, "Symposium on Democracy and Distrust: Ten Years Later" (1991) 77 Virginia Law Review 631.

Twomey A, "Future Directions in Federalism – Where Will the High Court Go?" (2011) 6 *Public Policy* 133.

Twomey A, "Constitutional Convention and Constitutional Reality" (2004) 78 Australian Law Journal 798.

Twomey A, "Sue and Hill – The Evolution of Australian Independence", in Stone A and Williams G (eds), *The High Court at the Crossroads: Essays in Constitutional Law*, Federation Press, Sydney, 2000, p 77 (with commentary by Horan C, p 109).

Twomey A, "The Constitution – 19th Century Colonial Office Document or a People's Constitution?", in *The Constitution Papers*, Parliamentary Research Service, Subject Collection No 7, AGPS, Canberra, 1996, p 1 (reprinted from Background Paper No 15, Parliamentary Research Service, AGPS, Canberra, 1994).

Uhr J, Deliberative Democracy in Australia, Cambridge UP, Melbourne, 1998.

Vile MJC, Constitutionalism and the Separation of Powers, Clarendon P, Oxford, 1967, 2nd ed, Liberty P, Indianapolis, 1998.

Wait M, "Slumbering Sovereign: Sir Owen Dixon's Common Law Constitution Revisited" (2001) 29 Federal Law Review 57.

Walker G de Q, "The Seven Pillars of Centralism: the *Engineers Case* and Federalism" (2002) 76 Australian Law Journal 678.

Walker G, *The Rule of Law: Foundation of Constitutional Democracy*, Melbourne UP, Melbourne, 1988.

Walker N (ed), Sovereignty in Transition, Hart Publishing, Portland, Oregon, 2003.

Weller P and Jaensch D (eds), Responsible Government in Australia, Drummond, Melbourne, 1980.

Wells B, "Aliens: The Outsiders in the Constitution" (1996) 19 University of Queensland Law Journal 45.

Wells B and Doyle J, "Reconciliation and the Constitution", in Johnston E, Hinton M and Rigney D (eds), *Indigenous Australians and the Law*, Cavendish Publishing, Sydney, 1997, p 196.

White M, "Federalism and the Australian Judicial System – Back to the Future: The Autochthonous Expedient and Other Devices", in Appleby G, Aroney NT and John T (eds), *The Future of Australian Federalism: International and Comparative Perspectives*, Cambridge UP, Cambridge, 2012, p 432.

Williams G, "Reading the Judicial Mind: Appellate Argument in the Communist Party Case" (1993) 15 Sydney Law Review 3.

Winterton G, "The High Court and Federalism: A Centenary Evaluation", in Cane P (ed), *Centenary Essays for the High Court of Australia*, LexisNexis Butterworths, Sydney, 2004, p 197.

Winterton G, "The Relationship Between Commonwealth Legislative and Executive Power" (2004) 25 Adelaide Law Review 21.

Winterton G, "The Acquisition of Independence", in French RS, Lindell G and Saunders C (eds), *Reflections on the Australian Constitution*, Federation Press, Sydney, 2003, p 31.

Winterton G, "The Communist Party Case", in Lee HP and Winterton G (eds), Australian Constitutional Landmarks, Cambridge UP, Cambridge, 2003, p 108.

Winterton G, "Popular Sovereignty and Constitutional Continuity" (1998) 26 Federal Law Review 1.

Winterton G, "The Significance of the Communist Party Case" (1992) 18 Melbourne University Law Review 630.

Winterton G, "Extra-Constitutional Notions in Australian Constitutional Law" (1986) 16 *Federal Law Review* 223.

Winterton G, Parliament, the Executive and the Governor-General, Melbourne UP, Melbourne, 1983.

Winterton G, "The British Grundnorm: Parliamentary Supremacy Re-Examined" (1976) 92 Law Quarterly Review 591.

Wright H, "Sovereignty of the People – The New Constitutional Grundnorm?" (1998) 26 *Federal Law Review* 165.

Zines L, The High Court and the Constitution, 5th ed, Federation Press, Sydney, 2008.

Zines L, "Changing Attitudes to Federalism and its Purpose", in French RS, Lindell G and Saunders C (eds), *Reflections on the Australian Constitution*, Federation Press, Sydney, 2003, p 86.

Zines L, "Nature of the Commonwealth" (1998) 20 Adelaide Law Review 83.

Zines L, "The Sovereignty of the People", in Coper M and Williams G (eds), Power, Parliament and the People, Federation Press, Sydney, 1997, p 91.

# CHAPTER 2: PARLIAMENTARY SOVEREIGNTY AND STATE CONSTITUTIONAL LAW

**[APP.490]** Allan TRS, Constitutional Justice: A Liberal Theory of the Rule of Law, Oxford UP, Oxford, 2001.

Allan TRS, Law, Liberty and Justice: the Legal Foundations of British Constitutionalism, Clarendon Press, Oxford, 1993.

Appleby G and Williams J, "A New Coat of Paint: Law and Order and the Refurbishment of *Kable*" (2012) 40 *Federal Law Review* 1.

Aroney N, "Popular Ratification of the State Constitutions", in Kildea P, Lynch A and Williams G (eds), *Tomorrow's Federation: Reforming Australian Government*, Federation Press, Sydney, 2012.

Aroney N, "Politics, Law and the Constitution in *McCawley's Case*" (2006) 30(3) *Melbourne University Law Review* 605.

Aroney N, "Thomas McCawley v The King", in Winterton G (ed), State Constitutional Landmarks, Federation Press, Sydney, 2006, p 69.

Bartl B and Gogarty B, "Tying *Kable* Down: The Uncertainty about the Independence and Impartiality of State Courts Following *Kable v DPP (NSW)* and Why it Matters" (2009) 32 *University of New South Wales Law Journal* 75.

Basten J, "The Supervisory Jurisdiction of the Supreme Courts" (2011) 85 Australian Law Journal 273.

Blackmore EG, The Law and Constitution of South Australia, SA Government Printer, Adelaide, 1894.

Carney G, *The Constitutional Systems of the Australian States and Territories*, Cambridge UP, Melbourne, 2006.

38 [APP.490]

Carney G, "An Overview of Manner and Form in Australia" (1989) 5 Queensland University of Technology Law Journal 69.

Chaile R and Puig GV, "Chapter III Courts and the Principle of Institutional Integrity: A Critique of Kirby J in Fardon v Attorney-General (Queensland)" (2011) 13(2) Constitutional Law and Policy Review 33.

Dixon O, "The Common Law as an Ultimate Constitutional Foundation" (1957) 31 Australian Law Journal 240 (reprinted in Dixon O, Jesting Pilate and Other Papers and Addresses, collected by Judge Woinarski, 2nd ed, William S Hein & Co, Buffalo, New York 1997, p 203).

Dixon O, "Concerning Judicial Method" (1956) 29 Australian Law Journal 468 (reprinted in Dixon O, Jesting Pilate and Other Papers and Addresses, collected by Judge Woinarski, 2nd ed, William S Hein & Co, Buffalo, New York 1997, p 152).

Friedmann W, "Trethowan's Case, Parliamentary Sovereignty, and the Limits of Legal Change" (1950) 24 Australian Law Journal 103.

Goldsworthy J, Parliamentary Sovereignty: Contemporary Debates, Cambridge UP, New York, 2010.

Goldsworthy J, "Trethowan's Case", in Winterton G (ed), *State Constitutional Landmarks*, Federation Press, Sydney, 2006, p 98.

Goldsworthy J, "Manner and Form Revisited: Reflections on *Marquet's* Case", in Groves M (ed), *Law and Government in Australia*, Federation Press, Sydney, 2005, p 18.

Goldsworthy J, The Sovereignty of Parliament: History and Philosophy, Clarendon P, Oxford, 1999.

Goldsworthy J, "The 'Principle in Ranasinghe' – A Reply to HP Lee" (1992) 15 University of New South Wales Law Journal 540.

Goldsworthy J, "Manner and Form in the Australian States" (1987) 16 Melbourne University Law Review 403.

Handsley E, "Public Confidence in the Judiciary: A Red Herring for the Separation of Judicial Power" (1998) 20 Sydney Law Review 183.

Handsley E, "Do Hard Laws Make Bad Cases? – The High Court's Decision in Kable v Director of Public Prosecutions (NSW)" (1997) 25 Federal Law Review 171.

Hart HLA, The Concept of Law, Clarendon Press, Oxford, 1961.

Johnston P and Hardcastle R, "State Courts: The Limits of Kable" (1998) 20 Sydney Law Review 216.

Lee HP, "The *Kable* Case: A Guard–Dog that Barked But Once?", in Winterton G (ed), *State Constitutional Landmarks*, Federation Press, Sydney, 2006, p 390.

Lee HP, "Legislative Comment: The Australia Act 1986: Some Legal Conundrums" (1998) 14 Monash University Law Review 298.

Lee HP, "'Manner and Form': an Imbroglio in Victoria" (1992) 15 University of New South Wales Law Journal 516.

Lumb RD, *The Constitutions of the Australian States*, 5th ed, University of Queensland Press, Brisbane, 1991.

MacIntyre C and Williams J (eds), *Peace Order and Good Government: State Constitutional and Parliamentary Reform*, Wakefield Press, Adelaide, 2003.

McCunn A, "The Search for a Single Standard for the *Kable* Principle" (2012) 19 *Australian Journal of Administrative Law* 93.

McDonald S, "Territory Courts and Federal Jurisdiction" (2005) 33 Federal Law Review 57.

Morison WL, The System of Law and Courts Governing New South Wales, 2nd ed, Butterworths, Sydney, 1984.

Ratnapala S and Crowe J, "Broadening the Reach of Chapter III: The Institutional Integrity of State Courts and the Constitutional Limits of State Legislative Power" (2012) 36 *Melbourne University Law Review* 175.

Roszkowski T and Goldsworthy J, "Symmetric Entrenchment of Manner and Form Requirements" (2012) 23 Public Law Review 216.

Steytler C and Field I, "The 'Institutional Integrity' Principle: Where Are We Now, and Where Are We Headed?" (2011) 35 University of Western Australia Law Review 227.

Southwood E, "Extending the *Kable* Doctrine: *South Australia v Totani*" (2011) 22 *Public Law Review* 89.

Spigelman J, "The Centrality of Jurisdictional Error" (2010) 21 *Public Law Review* 77. Taylor G, *The Constitution of Victoria*, Federation Press, Sydney, 2006.

Trindade FA, "The Australian States and the Doctrine of Extra-Territorial Legislative Incompetence" (1971) 45 Australian Law Journal 233.

Twomey A, "A Constitution for a New State: Dilemmas for the Northern Territory" (2007) 18 *Public Law Review* 200.

Twomey A, "*Clayton v Heffron*", in Winterton G (ed), *State Constitutional Landmarks*, Federation Press, Sydney, 2006, p 161.

Twomey A, "Implied Limitations on Legislative Power in the United Kingdom" (2006) 80 Australian Law Journal 40.

Twomey A, "Manner and Form Limitations on the Power to Amend State Constitutions" (2004) 15 *Public Law Review* 182.

Twomey A, The Constitution of New South Wales, Federation Press, Sydney, 2004.

Twomey A, "The Limitation of State Legislative Power" (2001) 4 Constitutional Law & Policy Review 13.

Wade HWR, "The Basis of Legal Sovereignty" [1955] Cambridge Law Journal 172.

Waugh J, "Deadlocks in State Parliaments", in Winterton G (ed), *State Constitutional Landmarks*, Federation Press, Sydney, 2006, p 185.

Wheeler F, "*BLF v Minister for Industrial Relations*: The Limits of State Legislative and Judicial Power", in Winterton G (ed), *State Constitutional Landmarks*, Federation Press, Sydney, 2006, p 362.

Wheeler F, "The *Kable* Doctrine and State Legislative Power Over State Courts" (2005) 20(2) Australasian Parliamentary Review 15.

Williams G, "The Path to Statehood: The Northern Territory as Australia's Seventh State" (2012) 2 Northern Territory Law Journal 145.

Williams JM, "Justice Boothby: A Disaster that Happened", in Winterton G (ed), *State* Constitutional Landmarks, Federation Press, Sydney, 2006, p 21.

Winterton G, "Australian States: Cinderellas No Longer?", in Winterton G (ed), *State* Constitutional Landmarks, Federation Press, Sydney, 2006, p 1.

Winterton G, "Can the Commonwealth Parliament Enact 'Manner and Form' Legislation?" (1980) 11 Federal Law Review 167.

Winterton G, "Constitutionally Entrenched Common Law Rights: Sacrificing Means to Ends?", in Sampford CJG and Preston KE (eds), *Interpreting Constitutions: Theories, Principles and Institutions*, Federation Press, Sydney, 1996, p 121.

Winterton G, "Justice Kirby's Coda in Durham" (2002) 13 Public Law Review 165.

Winterton G, "The British Grundnorm: Parliamentary Supremacy Re-examined" (1976) 92 Law Quarterly Review 591.

Young S and Murray S, "An Elegant Convergence? The Constitutional Entrenchment of Jurisdictional Error Review in Australia" (2011) Winter Oxford University Commonwealth Law Journal 117.

Zines L, Recent Developments in Chapter III: Kirk v Industrial Relations Commission of New South Wales & South Australia v Totani (CCCS/AACL Seminar, Melbourne Law School, Melbourne, 26 November 2010).

Zines L, "The Common Law in Australia: Its Nature and Constitutional Significance" (2004) 32 Federal Law Review 337.

Zines L, "A Judicially Created Bill of Rights" (1994) 16 Sydney Law Review 166.

## **CHAPTER 3: THE EXECUTIVE**

**[APP.500]** Administrative Review Council, *The Contracting out of Government Services: Report to the Attorney-General*, Administrative Review Council, 1998.

Allen J, *Inquiry into the Rise and Growth of the Royal Prerogative in England* (New ed. William Henry Bond and William Amer 1849).

Aronson M, "Ministerial Directions: The Battle of the Prerogatives" (1995) 7 Public Law Review 77.

Bankes N, "Constitutionalized Intergovernmental Agreements and Third Parties: Canada and Australia" (1992) 30 Alberta Law Review 524.

Bankes N, "Co-Operative Federalism: Third Parties and Intergovernmental Agreements and Arrangements in Canada and Australia" (1991) 29 Alberta Law Review 792.

Barnett D, "Statutory Corporations and the Crown" (2005) 28 University of New South Wales Law Journal 186.

Bellamy R, "Republicanism, Democracy, and Constitutionalism" [1905], in Laborde C and Maynor J (eds), *Republicanism and Political Theory*, Blackwell, Malden, 2008, pp 159-189.

Blake R, "Constitutional Monarchy: The Prerogative Powers", in Butler D et al (eds), *The Law, Politics, and the Constitution: Essays in Honour of Geoffrey Marshall*, Oxford UP, Oxford, 1999.

Brabner-Smith JW, "Judicial Limitations on Federal Appropriations" (1938) 25 Virginia Law Review 659.

Bradley AW, "Police Powers and the Prerogative" [1988] Public Law 298.

Buchanan HR, "Some Aspects of the Royal Prerogative" (1923) 35 Juridical Review 49.

Campbell E, "Parliament and the Executive", in Zines L (ed), Commentaries on the Australian Constitution: A Tribute to Geoffrey Sawer, Butterworths, Sydney, 1977.

Campbell E, "Parliamentary Appropriations" (1971) 4 Adelaide Law Review 145.

Campbell E, "The Federal Spending Power – Constitutional Limitations" (1967) 8 University of Western Australia Law Review 443.

Choudhry S, "Constitutional Change in the 21st Century: A New Debate over the Spending Power" (2008) 34 *Queen's Law Journal* 375.

Cobbett P, "'The Crown' as Representing 'the State'" (1903) 1 Commonwealth Law Journal 23.

Cohn M, "Judicial Review of Non-Statutory Powers after Bancoult" [2009] Public Law 260.

Cohn M, "Medieval Chains, Invisible Inks: On Non-Statutory Powers of the Executive" (2005) 25 Oxford Journal of Legal Studies 97.

Craig P, "Prerogative, Precedent and Power", in Forsyth C and Hare I (eds), *The Golden Metwand and the Crooked Cord: Essays on Public Law in Honour of Sir William Wade*, Clarendon Press, Oxford, 1998.

Craig P and Tomkins A (eds), *The Executive and Public Law: Power and Accountability in Comparative Perspective*, Oxford UP, Oxford, 2006.

Crommelin M, "The Executive", in Craven G (ed), *The Convention Debates 1891-1898:* Commentaries, Indices and Guide, Vol 6, Legal Books, Sydney, 1986, p 127.

Daintith T, "Regulation by Contract: The New Prerogative" (1979) 32 Current Legal Problems 41.

Daintith T and Page A, The Executive in the Constitution: Structure, Autonomy, and Internal Control, Oxford UP, Oxford, 1999.

Evans S, "Continuity and Flexibility: Executive Power in Australia", in Craig P and Tomkins A (eds), *The Executive and Public Law: Power and Accountability in Comparative Perspective*, Oxford UP, Oxford 2006, p 89.

Evans S, "The Rule of Law, Constitutionalism and the MV Tampa" (2002) 13 *Public Law Review* 94.

Evatt HV, The Royal Prerogative, Law Book Co, Sydney, 1987.

Fatovic C, "Constitutionalism and Contingency: Locke's Theory Of Prerogative" (2004) 25 *History of Political Thought* 276.

Fatovic C, "Constitutionalism and Presidential Prerogative: Jeffersonian and Hamiltonian Perspectives" (2004) 48 *American Journal of Political Science* 429.

French RS, "The Executive Power" (2010) 12 Constitutional Law and Policy Review 5.

Galligan B, A Federal Republic: Australia's Constitutional System of Government, Cambridge UP, Cambridge, 1995.

Genovese MA, Presidential Prerogative: Imperial Power in an Age of Terrorism, Stanford UP, Stanford, 2011.

Gerangelos PA, "The Executive Power of the Commonwealth of Australia: Section 61 of the Commonwealth Constitution, 'Nationhood' and the Future of the Prerogative" (2012) 12 Oxford University Commonwealth Law Journal 97.

Gerangelos PA, "Parliament, the Executive, the Governor-General and the Republic: The George Winterton Thesis", in Lee HP and Gerangelos PA (eds), *Constitutional Advancement in a Frozen Continent: Essays in Honour of George Winterton*, Federation Press, Sydney, 2009.

Gladstone D, "What shall we do with the Crown Prerogative?" (1998) 4 The Journal of Legislative Studies 1.

Goldring J, "Accountability of Commonwealth Statutory Authorities and Responsible Government" (1980) 11 Federal Law Review 353.

Goldring J, "Impact of Statutes on the Royal Prerogative; Australasian Attitudes as to the Rule in *Attorney-General v De Keyser's Royal Hotel Ltd*" (1974) 48 *Australian Law Journal* 434.

42 [APP.500]

Gray A, "Federal Spending Power in Three Federations: Australia, Canada and the United States" (2011) 40 Common Law World Review 13.

Groom LE, "Executive Power of Commonwealth – Whether Coextensive with Legislative Power: When is State Executive Power Displaced: Whether Commonwealth has Power by Executive Act to Permit Landing of Foreign Troops or Crews", in Brazil P and Mitchell M (eds), Opinions of Attorneys-General of the Commonwealth of Australia, with opinions of Solicitors-General and the Attorney-General's Department, Vol 1, Canberra, AGPS, 1981, p 358.

Harris BV, "Government 'Third Source' Action and Common Law Constitutionalism" (2010) 126 Law Quarterly Review 373.

Harris BV, "Replacement of the Royal Prerogative in New Zealand" (2009) 23 New Zealand Universities Law Review 285.

Harris BV, "The 'Third Source' of Authority for Government Action Revisited" (2007) 123 *Law Quarterly Review* 225.

Harris BV, "The 'Third Source' of Authority for Government Action" (1992) 123 Law Quarterly Review 626.

Horan C, "Judicial Review of Non-Statutory Executive Powers" (2003) 31 Federal Law Review 551.

House of Commons Public Administration Committee, *Taming the Prerogative: Strengthening Ministerial Accountability to Parliament*, 16 March 2004.

Jackson P, "The Royal Prerogative" (1964) 27 The Modern Law Review 709.

Kerr D, "Pape v Commissioner of Taxation: Fresh Fields for Federalism" (2009) 9 Queensland University of Technology Law and Justice Journal 311.

Kerr D, "The High Court and the Executive: Emerging Challenges to the Underlying Doctrines of Responsible Government and the Rule of Law" (2009) 28 University of Tasmania Law Review 145.

Kerr D and Williams G, "Review of executive action and the rule of law under the Australian Constitution" (2003) 14 *Public Law Review* 219.

Kleinerman BA, *The Discretionary President: The Promise and Peril of Executive Power*, University Press of Kansas, Kansas, 2009.

Kleinerman BA, "Can the Prince Really Be Tamed? Executive Prerogative, Popular Apathy, and the Constitutional Frame in Locke's 'Second Treatise'" (2007) 101 *The American Political Science Review* 209.

Lawson C, "Re-Invigorating the Accountability and Transparency of the Australian Government's Expenditure" (2008) 32 *Melbourne University Law Review* 879.

Lawson C, "Special Accounts under the Constitution: Amounts Appropriated for Designated Purposes" (2006) 29 University of New South Wales Law Journal 114.

Leigh I, "The Prerogative, Legislative Power and the Democratic Deficit: The Fire Brigades Union Case" [1995] 3 Web Journal of Current Legal Issues.

Lewis D, "Statutory Authorities and Constitutional Conventions – The Case of the Reserve Bank of Australia" (1987) 16 *Melbourne University Law Review* 348.

Lindell G, "The Combet Case and the Appropriation of Taxpayers' Funds for Political Advertising – An Erosion of Fundamental Principles?" (2007) 66 Australian Journal of Public Administration 307.

Maitland FW, "Crown as Corporation" (1901) 17 Law Quarterly Review 131.

Mansfield HC, *Taming the prince: the ambivalence of modern executive power*, Free Press, New York, 1989.

Mansfield HC, "The Modern Doctrine of Executive Power" (1987) 17 Presidential Studies Quarterly 237.

Mantziaris C, "The Executive – A Common Law Understanding of Legal Form and Responsibility", in Lindell GJ and others (eds), *Reflections on the Australian Constitution*, Federation Press, Sydney, 2003.

McEldowney JF, "The Control of Public Expenditure", in Jowell JL and Oliver D (eds), *The Changing Constitution*, 3rd ed, Clarendon Press, London, 1994.

McHarg A, "What is Delegated Legislation?" [2006] Public Law 539.

McLeod A, "The Executive and Financial Powers of the Commonwealth: Pape v Commissioner of Taxation" (2010) 32 Sydney Law Review 124.

Meekison JP (ed), Intergovernmental Relations in Federal Countries: A Series of Essays on the Practice of Federal Governance, The Forum of Federations, Ottawa, 2001.

Meyerson D, "Rethinking the Constitutionality of Delegated Legislation" (2003) 11 Australian Journal of Administrative Law 45.

Moore WH, "Law and Government" (1905-6) 3 Commonwealth Law Review 205.

Moore WH, "Crown as Corporation" (1904) 20 Law Quarterly Review 351.

Owens JE, and Pelizzo R (eds), *The "War on Terror" and the Growth of Executive Power?* A Comparative Analysis, Routledge, London, 2010.

Poole T, "United Kingdom: The Royal Prerogative" (2010) 8 International Journal of Constitutional Law 146.

Rakove JN, "Taking the Prerogative out of the Presidency: An Originalist Perspective" (2007) 37 Presidential Studies Quarterly 85.

Ramraj VV and Thiruvengadam AK, *Emergency Powers in Asia: Exploring the Limits of Legality*, Cambridge UP, Cambridge, 2010.

Richardson JE, "The Executive Power of the Commonwealth", in Zines L (ed), Commentaries on the Australian Constitution: A Tribute to Geoffrey Sawer, Butterworths, Sydney, 1977.

Saunders C, "The Sources and Scope of Commonwealth Power to Spend" (2009) 20 Public Law Review 251.

Saunders C, "Intergovernmental Agreements and the Executive Power" (2005) 16 Public Law Review 294.

Saunders C, "A New Direction for Intergovernmental Arrangements" (2001) 12 Public Law Review 274.

Saunders C, "Constitutional and Legal Aspects of Intergovernmental Relations in Australia", in Galligan B and others (eds), *Intergovernmental Relations and Public Policy*, Allen & Unwin, Sydney, 1991.

Saunders C, *The Impact of Intergovernmental Arrangements on Parliament*, Law School, University of Melbourne, Melbourne, 1985.

Saunders C, "The Development of the Commonwealth Spending Power" (1977) 11 Melbourne University Law Review 369.

Saunders C and Wilkins R, "Intergovernmental Relations in Australia", in Meekison JP (ed), Intergovernmental Relations in Federal Countries: A Series of Essays on the Practice of Federal Governance, The Forum of Federations, Ottawa, 2001.

Saunders C and Yam K, "Government regulation by contract: implications for the rule of law" (2004) 15 *Public Law* 51.

Seddon N, Government Contracts: Federal, State and Local, 5th ed, Federation Press, Sydney, 2013.

Seddon N, "The Crown" (2000) 28 Federal Law Review 245.

Selway B, "Of Kings and Officers – The Judicial Development of Public Law" (2005) 33 *Federal Law Review* 187.

Selway B, "All at Sea – Constitutional Assumptions and the Executive Power of the Commonwealth" (2003) 31 Federal Law Review 495.

Selway B, "The Rule of Law, Invalidity and the Executive" (1998) 9 Public Law Review 196.

Sharma C, "Defining Executive Power: Constitutional Reform for Grown-ups" (1997) 56 Australian Journal of Public Administration 107.

Sunkin M and Payne S, *The Nature of the Crown: A Legal and Political Analysis*, Oxford UP, Oxford, 1999.

Taggart M, "Corporatisation, Privatisation and Public Law" (1991) 2 Public Law Review 77.

Thomson JA, "Executive Power, Scope and Limitations: Some Notes From a Comparative Perspective" (1983) 62 *Texas Law Review* 559.

Twomey A, "Pushing the Boundaries of Executive Power – *Pape*, the Prerogative and Nationhood Powers" (2010) 34 *Melbourne University Law Review* 313.

Twomey A, *The Chameleon Crown: The Queen and her Australian Governors*, Federation Press, Sydney, 2006.

Vincenzi C, Crown Powers, Subjects, and Citizens, Pinter, London, 1998.

Wade HWR, "Procedure and Prerogative in Public Law" (1985) 101 Law Quarterly Review 180.

Wade HWR, "Judicial Control of 'Prerogative'" (1977) 93 Law Quarterly Review 325.

Waugh J, "Chung Teong Toy v Musgrove and the Commonwealth Executive" (1991) 2 Public Law Review 160.

Willheim E, "MV Tampa: The Australian Response" (2003) 15 International Journal of Refugee Law 159.

Winterton G, "Reserve Powers in an Australian Republic" (1993) 12 University of Tasmania Law Review 249.

Winterton G, "The Concept of Extra-Constitutional Executive Power in Domestic Affairs" (1979) 7 Hastings Constitutional Law Quarterly 1.

Winterton G, "The Relationship Between Commonwealth Legislative and Executive Power" (2004) 25 Adelaide Law Review 21.

Winterton G, "The Limits and Use of Executive Power by Government" (2003) 31 *Federal Law Review* 421.

Winterton G, "The Evolution of a Separate Australian Crown" (1993) 19 Monash University Law Review 1.

Winterton G, "The Prerogative in Novel Situations" (1983) 99 Law Quarterly Review 407. Winterton G, Parliament, the Executive and the Governor-General: A Constitutional Analysis, Melbourne UP, Melbourne, 1983.

Zines L, "The Inherent Executive Power of the Commonwealth" (2005) 16 Public Law Review 279.

# **CHAPTER 4: INCONSISTENCY**

**[APP.510]** Hanks P, "'Inconsistent' Commonwealth and State Laws: Centralising Government Power in the Australian Federation" (1976) *Federal Law Review* 107.

Katz L, "*Ex parte Daniell* and the Operation of Inoperative Laws" (1976) 7 Federal Law Review 66.

Lee HP, "Retrospective Amendment of Federal Laws and Inconsistency Doctrine in Australia" (1985) 15 Federal Law Review 335.

Lindell G, "Grappling with Inconsistency between Commonwealth and State Legislation and the Link with Statutory Interpretation" (2005) 8 Constitutional Law & Policy Review 25.

Lindell G and Mason A, "The Resolution of Inconsistent State and Territory Legislation" (2010) 38 *Federal Law Review* 391.

Morabito V and Strain H, "The Section 109 'Cover the Field' Test of Inconsistency: An Undesirable Legal Fiction" (1993) 12 University of Tasmania Law Review 182.

Murray-Jones A, "The Tests for Inconsistency Under Section 109 of the Constitution" (1979) 10 Federal Law Review 25.

Rumble G, "Manufacturing and Avoiding Constitution Section 109 Inconsistency: Law and Practice" (2010) 38 Federal Law Review 445.

Rumble GA, "The Nature of Inconsistency Under Section 109 of the Constitution" (1980) 11 *Federal Law Review* 40.

Sawer G, "Repugnancy and Inconsistency of Legislation" [1980] Cambrian Law Review 101.

Sawer G, "Substance and Form in the Relations Between Federal and State Legislation in Australia", in Tammelo I, Blackshield A and Campbell E (eds), *Australian Studies in Legal Philosophy*, Berlin, Hermann Luchterhand, 1963, p 61.

Tammelo I, "The Tests for Inconsistency between Commonwealth and State Laws" (1956) 30 *Australian Law Journal* 496.

Williams G, "The Return of State Awards – Section 109 of the Constitution and the Workplace Relations Act 1996 (Cth)" (1997) 10 Australian Journal of Labour Law 170.

# **CHAPTER 5: COMMERCE AND CORPORATIONS**

#### **Commerce Power**

**[APP.520]** Berger R, "Judicial Manipulation of the Commerce Clause" (1996) 74 Texas Law Review 695, Symposium, "Commerce Clause and United States v Lopez" (1996) 74 Texas Law Review 695–838.

Coper M, "The Scope of the Commonwealth's Power to Establish Intra-State Airline Services" [1977] Australian Current Law-DT 37.

Entin JL, Symposium, "The New Federalism after United States v Lopez" (1996) 46 Case Western Reserve Law Review 635–933.

Gray A, "Reinterpreting the Trade and Commerce Power" (2008) 36 Australian Business Law Review 29.

Herlihy JM, "Constitutional Constraints on Trade and Commerce in Australia and Canada" (1976) 9 University of Queensland Law Journal 188.

Hutchins PW and Kenniff PJ, "The Concept of Interstate Commerce: A Case Study of Judicial Review in Canada, the United States and Australia" (1969) 10 Les Cahiers de Droit 705.

Killenbeck MR, Symposium, "The Commerce Clause: Past, Present, and Future" (2003) 55 Arkansas Law Review 711 ff.

Lane P, *Lane's Commentary on the Australian Constitution*, 2nd ed, Lawbook Co, Sydney, 1997.

Lane PH, Trade and Commerce in Constitutional Law (United States and Australia), SJD thesis, Harvard Law School, Cambridge, Massachusetts, 1964.

Lane PH, "Trade and Commerce: Definition and Degree" (1961) 35 Australian Law Journal 278.

Lane PH, Section 51(i) and s 92 of the Constitution: In Themselves and in Relation to Each Other, LLM thesis, University of Sydney, 1960.

Lane PH, "Trade and Commerce: Constitution Section 51(i)" (1960) 34 Australian Law Journal 99.

Lindell G, "The Scope of the Defence and Other Powers in the Light of *Thomas v* Mowbray" (2008) 10(3) Constitutional Law and Policy Review 42-50.

Lindell G, "Commonwealth Control of Ports as an Exercise of the Commonwealth's 'First and Most General Power'?" (2005) 16 Public Law Review 271.

Mason A, "The Role of a Constitutional Court in a Federation: A Comparison of the Australian and the United States Experience" (1986) 16 Federal Law Review 1.

McCann D, "First Head Revisited: A Single Industrial Relations System under the Trade and Commerce Power" (2004) 26 Sydney Law Review 75.

Murray S, "Back to ABC after XYZ: Should we be Concerned about 'International Concern'?" (2007) 35 Federal Law Review 315.

Nygh P, "An Analysis of Judicial Approaches to the Interpretation of the Commerce Clause in Australia and the United States" (1967) 5 Sydney Law Review 353.

Nygh P, Economic Fact and Constitutional Theory in Australia and the United States: Being a Comparative Study of the Method of Judicial Adjustment in the Interpretation of the Constitutional Arrangements relating to Commerce and the Increasing Integration of the National Economy, SJD thesis, University of Michigan, Ann Arbor, 1966.

Philips J and Uliel E, "United States v Lopez: Constitutional Interpretation in the United States and Australia" (1995) 18 University of New South Wales Law Journal 532.

Pollak LH, Symposium, "Reflections on United States v Lopez" (1995) 94 Michigan Law Review 533.

Roos O, "Alarmed But Not Alert in the 'War on Terror'? The High Court, *Thomas v* Mowbray and the Defence Power" (2008) 15 James Cook University Law Review 169.

Saul B, "Terrorism as Crime or War: Militarising Crime and Disrupting the Constitutional Settlement?" (2008) 19 *Public Law Review* 20.

Sharp PG, "The First Paragraph of Section 55" (2005) 33 Federal Law Review 569.

Wheeler F, "Commonwealth Power over Infrastructure: Constitutional Tools for National Economic Regulation" (2007) 2 *Public Policy* 195.

### **Corporations Power**

**[APP.530]** Aroney N, "Constitutional Choices in the Work Choices Case, or What Exactly is Wrong with the Reserved Powers Doctrine?" (2008) 32(1) Melbourne University Law Review 1.

Austin RP, "Corporate Confusion: Commonwealth Companies and Securities Regulation after the Constitutional Challenge" [1990] *Australian Corporation Law Bulletin* 27.

Barnett D, "The Corporations Power and Federalism: Key Aspects of the Constitutional Validity of the Work Choices Act" (2006) 29 University of New South Wales Law Journal 91. (Pre-Work Choices Case)

Blackshield T, "New South Wales v Commonwealth: Corporations and Connections" (2007) 31 Melbourne University Law Review 1135.

Carney G, "Section 51(xx): No Power of Incorporation" (1990) 2 Bond Law Review 79.

Catanzariti J, "High Court Tick to Work Choices Further Entrenches the Corporations Power" (2007) 45(1) Law Society Journal 50.

Corcoran S, "Corporate Law and the Australian Constitution: A History of Section 51(xx) of the Australian Constitution" (1994) 15 *Journal of Legal History* 131.

Craven G, "Industrial Relations, the Constitution and Federalism: Facing the Avalanche" (2006) 29 University of New South Wales Law Journal 203. (Pre-Work Choices Case)

Crawford J, "The High Court and the Corporations Power: Incorporation 'Reserved' to the States" [1990] *Australian Corporation Law Bulletin* 32.

Dean R, "Corporations: Increasing Power to Canberra?" (2008) 82 Law Institute Journal 60.

Evans S, Work Choices: The High Court Challenge, Lawbook Co, Sydney, 2007.

Ford W, "The Corporatisation of Australian Labour Law: Completing Howard's Unfinished Business" (2006) 19 Australian Journal of Labour Law 144. (Pre-Work Choices Case)

Gisonda E, "Work Choices: A Betrayal of Original Meaning?", in Upholding the Australian Constitution Vol 19: Proceedings of the Nineteenth Conference of the Samuel Griffith Society, Samuel Griffith Society, Melbourne, 2007, p 77.

Gouliaditis N, "The Meaning of 'Trading or Financial Corporations': Future Directions" (2008) 19 Public Law Review 110.

Johnston A and Orr G, "Does the Corporations Power Extend to Reconstituting Corporations?" (2011) 39 Federal Law Review 71.

Kennett G, "Constitutional Interpretation in the Corporations Case" (1990) 19 Federal Law Review 223.

Lane PH, "Commonwealth Control of Corporate Industrial Relations" (2001) 75 Australian Law Journal 670.

Lindell G, "The Corporations and Races Powers" (1984) 14 Federal Law Review 219.

Lloyd BL, "The Constitutional Validity of the Trade Practices Act and Regulation of the Conduct of Holding Companies" (1993) 21 *Federal Law Review* 279.

Mason A, "The Role of a Constitutional Court in a Federation: A Comparison of the Australian and the United States Experience" (1986) 16 Federal Law Review 1.

McCallum R, "The Australian Constitution and the Shaping of Our Federal and State Labour Laws" (2005) 10 *Deakin Law Review* 460.

McQueen R, "Why High Court Judges Make Poor Historians: The Corporations Act Case and Early Attempts to Establish a National System of Company Regulation in Australia" (1990) 19 Federal Law Review 245.

Roos O, "From Labor's Pain Comes Labor's Gain? The High Court's Decision in the Work Choices Case and the Commonwealth's Corporations Power" (2007) 11 Southern Cross University Law Review 81.

Roth L and Griffith G, *The Workplace Relations Case – Implications for the States*, NSW Parliamentary Library Research Service, Briefing Paper No 18/06, available at: http://www.parliament.nsw.gov.au.

Seddon N and Bottomley S, "Commonwealth Companies and the Constitution" (1998) 26 *Federal Law Review* 271.

Simmonds R, "The Commonwealth Cannot Incorporate under the Corporations Power: New South Wales v The Commonwealth" (1990) 20 University of Western Australia Law Review 641.

Stewart A, "Federal Labour Law and New Uses for the Corporations Power" (2001) 14 *Australian Journal of Labour Law* 145.

Stewart A and Williams G, Work Choices – What the High Court Said, Federation Press, Sydney, 2007.

Teo E, "Crossing a Constitutional Rubicon? The Corporations Power and the Workplace Relations Amendment (Work Choices) Act 2005" (2007) 9(4) Constitutional Law & Policy Review 62.

Wheeler F, "Commonwealth Power over Infrastructure: Constitutional Tools for National Economic Regulation" (2007) 2 *Public Policy* 195.

Winterton G, "Comment on Section 51(xx)" (1984) 14 Federal Law Review 258.

## **CHAPTER 6: EXTERNAL AFFAIRS AND DEFENCE**

#### **External Affairs Power**

**[APP.540]** Allars M, "One Small Step for Legal Doctrine, One Giant Leap Towards Integrity in Government: *Teoh's Case* and the Internationalisation of Administrative Law" (1995) 17 *Sydney Law Review* 204.

Alston P and Chiam M (eds), *Treaty-Making and Australia: Globalisation versus Sovereignty?*, Federation Press, Sydney, 1995.

Barwick G, "A View on External Affairs", in *Upholding the Australian Constitution Vol 6: Proceedings of the Sixth Conference of the Samuel Griffith Society*, Samuel Griffith Society, Melbourne, 1996, p 1 (edited and reprinted in (1995) 25 University of Western Australia Law Review 233).

Burmester H, "Federal Clauses: An Australian Perspective" (1985) 34 International and Comparative Law Quarterly 522.

Burmester H, "The Australian States and Participation in the Foreign Policy Process" (1978) 9 Federal Law Review 257.

Burmester H and Balkin R, *International Law and Australian Domestic Law*, Attorney-General's Department, March 1994.

Byrnes A and Charlesworth H, "Federalism and the International Legal Order: Recent Developments in Australia" (1985) 79 American Journal of International Law 622.

Byrnes AC, "The Implementation of Treaties in Australia after the Tasmanian Dams Case: The External Affairs Power and the Influence of Federalism" (1985) 8 Boston College International and Comparative Law Review 275.

Coper M, "The Proper Scope of the External Affairs Power", in *Upholding the Australian* Constitution Vol 5: Proceedings of the Fifth Conference of the Samuel Griffith Society, Samuel Griffith Society, Melbourne, 1995, p 47.

Coper M, Encounters with the Australian Constitution, CCH Australia, NSW, 1987, revised ed 1988, pp 1–48, 424–426.

Coper M, The Franklin Dam Case, Butterworths, Sydney, 1983.

Coper M and Williams G (eds), *The Cauldron of Constitutional Change*, Federation Press, Sydney, 1997, pp 3–26.

Corney G, "Mutant Stare Decisis: The Interpretation of Statutes which Incorporate International Treaties into Australian Law" (1994) 18 University of Queensland Law Journal 50.

Crock M, "Federalism and the External Affairs Power" (1983) 14 Melbourne University Law Review 238.

Doeker G, *The Treaty-Making Power in the Commonwealth of Australia*, Martinus Nijhoff, The Hague, 1966.

Donaghue S, "Balancing Sovereignty and International Law: The Domestic Impact of International Law in Australia" (1995) 17 Adelaide Law Review 213.

Durack P, *The External Affairs Power*, Federalism Project Issues Paper No 1, Institute of Public Affairs, Perth, October 1994.

Edson E, "Section 51(xxix) of the *Australian Constitution* and 'Matters of International Concern': Is There Anything to be Concerned About?" (2008) 29 Adelaide Law Review 269.

External Affairs Sub-Committee, "Report to Standing Committee", in *Minutes of Proceedings and Official Record of Debates of the Australian Constitutional Convention*: Brisbane 1985 (2 vols).

Fisher GE, "External Affairs and Federalism in the Tasmanian Dam Case" (1985) 1 Queensland Institute of Technology Law Journal 157.

Fitzgerald B, "*Horta v Commonwealth*: A Case in the High Court of Australia Concerning the Validity of the Timor Gap Treaty and its Domestic Implementation" (1995) 44 *International and Comparative Law Quarterly* 643.

Handsley E, "Legal Fictions and Confusion as Strategies for Protecting Human Rights: A Dissenting View on Teoh's Case" (1997) 2(1) *Newcastle Law Review* 56.

Heerey P, "The Commonwealth's Use of the External Affairs Power" (1995) 14 University of Tasmania Law Review 189.

Howard C, "Amending the External Affairs Power", in *Upholding the Australian* Constitution Vol 5: Proceedings of the Fifth Conference of the Samuel Griffith Society, Samuel Griffith Society, Melbourne, 1995, p 1 (Discussion by Winterton G, p 71; Coper M, p 75 and Howard C, p 77).

Howard C, "External Affairs Power of the Commonwealth" (1983) 60(4) Current Affairs Bulletin 16.

Howard C, "The Explosive Implications of the External Affairs Power" (1988) 42(2) *Institute of Public Affairs Review* 7.

Howard C, "The Proposed External Affairs Power Referendum", in Upholding the Australian Constitution Vol 7: Proceedings of the Seventh Conference of the Samuel Griffith Society, Samuel Griffith Society, Melbourne, 1996, p 1.

Howard C, "When External Means Internal", in *Upholding the Australian Constitution Vol 1: Proceedings of the Inaugural Conference of the Samuel Griffith Society*, Samuel Griffith Society, Melbourne, 1992, p 141.

Hulme SEK, "The Foreign Affairs Power: The State of the Debate", in Upholding the Australian Constitution Vol 6: Proceedings of the Sixth Conference of the Samuel Griffith Society, Samuel Griffith Society, Melbourne, 1996, p 9.

Kidwai MHM, "External Affairs Power and the Constitutions of British Dominions" (1976) 9 University of Queensland Law Journal 167.

**50** [APP.540]

Kidwai MHM, External Affairs, International Law and the Commonwealth States: Comparative Study of External Affairs Power in the Member States of the Commonwealth of Nations and Its Impact on the Application of Rules of Customary International Law and on the Implementation of Treaties by the Domestic Courts, PhD thesis, 2 Vols, University of Melbourne, 1973.

Knoll DD, "Nationhood, International Obligation and Federal Structure: An Historical Overview of the Australian Experience" (1986) 4 *Dickinson Journal of International Law* 213

Lee HP, "The High Court and the External Affairs Power", in Lee HP and Winterton G (eds), *Australian Constitutional Perspectives*, Law Book Co, Sydney, 1992, p 60.

Ludeke JT, "The External Affairs Power: Another Province for Law and Order?" (1994) 68 Australian Law Journal 250.

Lumb RD, "The External Affairs Power and Constitutional Reform" (1988) 62 Australian Law Journal 679.

Lumb RD, "The Franklin Dam Decision and the External Affairs Power: A Comment" (1984) 13 University of Queensland Law Journal 138.

Marlin R, "The External Affairs Power and Environmental Protection in Australia" (1996) 24 Federal Law Review 71.

Mason A, "The Influence of International and Transnational Law on Australian Municipal Law" (1996) 7 *Public Law Review* 20.

McDermott PM, "External Affairs and Treaties: The Founding Fathers' Perspective" (1990) 16 University of Queensland Law Journal 123.

McGinley GPJ, "The Status of Treaties in Australian Law: The Principle of Walker v Baird Reconsidered" (1990) 12 Adelaide Law Review 367.

Mitchell R, "The Effect of the External Affairs Power Upon the Balance of Power Between Commonwealth and States" (1995) 2 *Canberra Law Review* 103.

O'Connor D, "The Effect of Australia's International Obligations on the Development of Our System of Industrial Relations" (1995) 1(1) Newcastle Law Review 1.

O'Connell DP (ed), International Law in Australia, Law Book Co, Sydney, 1966.

Opeskin BR and Rothwell DR (eds), *International Law and Australian Federalism*, Melbourne UP, Melbourne, 1997.

Opeskin BR and Rothwell DR, "The Impact of Treaties on Australian Federalism" (1995) 27 Case Western Reserve Journal of International Law 1.

Roberts S, "*Minister of State for Immigration and Ethnic Affairs v Ah Hin Teoh*: The High Court Decision and the Government's Reaction to it" (1995) 2 *Australian Journal of Human Rights* 135.

Rothwell D, "The High Court and the External Affairs Power: A Consideration of Its Outer and Inner Limits" (1993) 15 Adelaide Law Review 209.

Rothwell D, "The Daintree Rainforest Decision and its Implications" (1990) 20 Queensland Law Society Journal 19.

Rumble GA, "Federalism, External Affairs and Treaties: Recent Developments in Australia" (1984) 17 Case Western Reserve Journal of International Law 1.

Ryan KW (ed), International Law in Australia, 2nd ed, Law Book Co, Sydney, 1984.

Saunders C, "Articles of Faith or Lucky Breaks? The Constitutional Law of International Agreement in Australia" (1995) 17 Sydney Law Review 150.

Sawer G, "Australian Constitutional Law in Relation to International Relations and International Law", in Ryan KW (ed), *International Law in Australia*, 2nd ed, Law Book Co, Sydney, 1984, p 35.

Sawer G, "The External Affairs Power" (1984) 14 *Federal Law Review* 199 (Commentary by Crommelin M, at 209 and Rose D, at 216).

Sawer G, "The External Affairs Powers of the Commonwealth and Koowarta's Case" (1982) 54 Australian Quarterly 420.

Sawer G, "Execution of Treaties by Legislation in the Commonwealth of Australia" (1956) 2 University of Queensland Law Journal 297.

Senate Legal and Constitutional References Committee, *Trick or Treaty?*, *Commonwealth Power to Make and Implement Treaties*, Senate, Canberra, November 1995.

Stephen N, *The Expansion of International Law – Sovereignty and External Affairs*, Sir Earle Page Memorial Trust Lecture, 15 September 1994.

Symposium, "The Internationalisation of Australian Law" (1995) 17 Sydney Law Review 119–346.

The Australian and New Zealand Society of International Law, *Proceedings*, Vol 1, Melbourne UP, Melbourne, 1935.

Thomson JA, "Is it a Mess? The High Court and the War Crimes Case: External Affairs, Defence, Judicial Power and the Australian Constitution" (1992) 22 University of Western Australia Law Review 197.

Thomson JA, "International Relations of States of Regional and Federal Systems: Australia", in Tay AES (ed), *Law and Australian Legal Thinking in the 1980s: A Collection of the Australian Contributions to the 12th International Congress of Comparative Law*, University of Sydney, 1986, p 463.

Thomson JA, "A United States Guide to Constitutional Limitations Upon Treaties as a Source of Australian Municipal Law" (1977) 13 *University of Western Australia Law Review* 110 (Pt 1), at 153 (Pt 2).

Trone J, Federal Constitutions and International Relations, University of Queensland P, Brisbane, 2001.

Trone J, "Federalism-Based 'Fragmentaion of the Decision Making Process' in Foreign Relations", in Moens G (ed), *Constitutional and International Law Perspectives*, University of Queensland P, Brisbane, 2000, p 115.

Twomey A, "Geographical Externality and Extraterritoriality: XYZ v Commonwealth" (2006) 17 Public Law Review 256.

Twomey A, "Treaty Making and Implementation in Australia" (1996) 7 Public Law Review 4.

Twomey A, "Minister for Immigration and Ethnic Affairs v Teoh" (1995) 23 Federal Law Review 348.

Twomey A, *Procedure and Practice of Entering and Implementing International Treaties*, Background Paper No 27, [Commonwealth] Parliamentary Research Service, Department of the Parliamentary Library, Canberra, February 1995.

Van Son PB, "The Australian Constitution: The External Affairs Power and Federalism" (1982) 12 California Western International Law Journal 46.

Walker K, "Horta v The Commonwealth" (1994) 19 Melbourne University Law Review 1114.

**52** [APP.540]

Walker K and Mathew P, "Minister for Immigration v Ah Hin Teoh" (1995) 20 Melbourne University Law Review 236.

Ward C, "Applicant A v Minister for Immigration and Ethnic Affairs (1997) 142 ALR 331: Principles of Interpretation Applicable to Legislation Adopting Treaties" (1998) 26 Federal Law Review 207.

Winterton G, "A Framework for Reforming the External Affairs Power", in Upholding the Australian Constitution Vol 5: Proceedings of the Fifth Conference of the Samuel Griffith Society, Samuel Griffith Society, Melbourne, 1995, p 17.

Winterton G, "Limits to the Use of the 'Treaty Power'" in Alston P and Chiam M (eds), *Treaty-Making and Australia: Globalisation versus Sovereignty?*, Federation Press, Sydney, 1995, p 29.

Zines L, "The Tasmanian Dam Case", in Lee HP and Winterton G (eds), Australian Constitutional Landmarks, Cambridge UP, Cambridge, 2003, p 262.

### **Defence Power**

**[APP.550]** Anderson R, "Australian Communist Party v The Commonwealth" (1951) 1 University of Queensland Law Journal 34.

Beasley FR, "Australia's Communist Party Dissolution Act" (1951) 29 Canadian Bar Review 490.

Derham DP, "The Defence Power", in Else-Mitchell R (ed), *Essays on the Australian* Constitution, 2nd ed, Law Book Co, Sydney, 1961, p 157.

Head M, "Military Call-Out Legislation – Some Legal and Constitutional Questions" (2001) 29 Federal Law Review 273.

Kirby M, "HV Evatt, The Anti-Communist Referendum and Liberty in Australia" (1990) 7 Australian Bar Review 93.

Lee HP, "Salus Populi Suprema Lex Esto: Constitutional Fidelity in Troubled Times", in Lee HP and Gerangelos PA (eds), Constitutional Advancement in a Frozen Continent: Essays in Honour of George Winterton, Federation Press, Sydney, 2009.

Lee HP, Emergency Powers, Law Book Co, Sydney 1984.

Mitchell A and Voon T, "Defence of the Indefensible? Constitutional Validity of Military Service Tribunals in Australia" (1999) 27 *Federal Law Review* 499.

Sawer G, "Defence Power of the Commonwealth in Time of Peace" (1953) 6 *Res Judicatae* 214.

Sawer G, "The Defence Power of the Commonwealth in Time of War" (1946) 20 Australian Law Journal 295.

Sugerman B and Dignam W, "The Defence Power and Total War" (1943) 17 Australian Law Journal 207.

Symposium, "The Constitution and Military Justice" (1990) 20 University of Western Australia Law Review 4.

Winterton G, "The Communist Party Case", in Lee HP and Winterton G (eds), *Australian* Constitutional Landmarks, Cambridge UP, Cambridge, 2003, p 108.

Williams G, "The Suppression of Communism by Force of Law: Australia in the Early 1950s" (1996) 42 Australian Journal of Politics and History 220.

Williams G, "Reading the Judicial Mind: Appellate Argument in the Communist Party Case" (1993) 15 Sydney Law Review 3.

Winterton G, "The Significance of the Communist Party Case" (1992) 18 Melbourne University Law Review 630 (a shorter version is "Dissolving the Communists: The Communist Party Case and its Significance", in Evatt HV, Atkin E and Evans B, Seeing Red: The Communist Party Dissolution Act and the Referendum 1951: Lessons for Constitutional Reform, Evatt Foundation, Sydney, 1992, p 133).

## **CHAPTER 7: COMMONWEALTH FINANCIAL POWERS**

#### Taxation

**[APP.560]** French R, *Tax and the Constitution*, 27th National Convention of the Tax Institute, DG Hill Memorial Lecture, Canberra, March 2012, available at http://www.hcourt.gov.au/assets/publications.

French R, The Prohibitions in Sections 51(ii) and 99 of the Commonwealth Constitution against Discriminating Between or Giving Preference to States in Laws of Taxation, Trade, Commerce and Revenue, PhD thesis, University of Melbourne, December 2004.

Gerangelos PA, "Tax Co-ordination between Regions in Australia – Role of the Courts", in Lang M, Pistone P, Schuch J and Staringer C (eds), *Horizontal Tax Coordination*, IBFD, Amsterdam, 2012.

Johnston P, "A Taxing Time: The High Court and the Tax Provisions of the Constitution" (1993) 23 University of Western Australia Law Review.

Lindell GJ, "Form and Substance: 'Discrimination' in Modern Constitutional Law: The Position After Street's Case" (1992) 21 *Federal Law Review* 140.

Lynch A, "Commonwealth Financial Powers – Taxation, Direct Spending and Grants – Scope and Limitations" (2011) 6 *Public Policy* 23. (Comments by Johnson P (p 33).)

McLeod N, "State Taxation: Unrequited Revenue and the Shadow of Section 90" (1994) 22 *Federal Law Review* 476.

Rose D, "Discrimination and Preference", in Brennan G (ed), Constitutional Reform and Fiscal Federalism, Centre for Research on Federal Financial Relations Occasional Paper No 42, ANU, Canberra, 1987, p 61.

Rose D, "Discrimination, Uniformity and Preference – Some Aspects of the Express Constitutional Provisions" in Zines L (ed), *Commentaries on the Australian Constitution: A Tribute to Geoffrey Sawer*, Butterworths, Sydney, 1977, p 191.

Saunders C, "The Uniform Income Tax Cases", in Lee HP and Winterton G (eds), Australian Constitutional Landmarks, Cambridge UP, Cambridge, 2003, p 62.

Saunders C, "Concepts of Equality in the Australian Constitution", in Lindell G (ed), *Future Directions in Australian Constitutional Law*, Federation Press, Sydney, 1994, p 209.

Warren N, "Henry Review, State Taxation and the Federation" (2010) 43 Australian Economic Review 409.

Zines L, "Form and Substance: 'Discrimination' in Modern Constitutional Law" (1992) 21 *Federal Law Review* 136.

### Grants

**[APP.570]** ALP Advisory Group on Federal-State Reform, A Framework to Guide the Future Development of Specific Purpose Payments (SPPs), Commissioned by the Australian Labor Party, July 2007.

#### 54 [APP.560]

Appleby G, "There Must be Limits: The Commonwealth Spending Power" (2009) 37 *Federal Law Review* 93.

Bailey KH, "The Uniform Tax Plan (1942)" (1944) 20 Economic Record 170.

Banting KG, Brown DM and Courchene TJ (eds), *The Future of Fiscal Federalism*, *Institute of Intergovernmental Relations*, Queen's University, Kingston, Ontario, 1994.

Bennett S and Webb R, *Specific Purpose Payments and the Australian Federal System*, Parliamentary Library Research Paper, No 17, Canberra, January 2008.

Brennan G, "The Parameters of Constitutional Change" (2009) 35 Monash University Law Review 1.

Campbell E, "The Commonwealth Grants Power" (1969) 3 Federal Law Review 221.

Collins DJ (ed), Vertical Fiscal Imbalance and the Allocation of Taxing Powers, Australian Tax Research Foundation, Sydney, 1993.

Commonwealth Grants Commission, *Equality in Diversity: History of the Commonwealth Grants Commission*, 2d ed, AGPS, Canberra, 1995.

Commonwealth of Australia, Report of the Committee on Uniform Taxation, AGPS, Canberra, 1942.

Council of Australian Governments, *Intergovernmental Agreement on Federal Financial Relations*, Council of Australian Governments, Canberra, November 2008, available at http://www.federalfinancialrelations.gov.au.

Fenna A, "Commonwealth Fiscal Power and Australian Federalism" (2008) University of New South Wales Law Journal 509.

Galligan B, "Fiscal Federalism: Then and Now", in Appleby G, Aroney NT and John T (eds), *The Future of Australian Federalism: International and Comparative Perspectives*, Cambridge UP, Cambridge, 2012, p 320.

Galligan B, A Federal Republic: Australia's Constitutional System of Government, Cambridge UP, Melbourne, 1995, chs 8 and 9.

Gibbs H, "Vertical Fiscal Imbalance and the Allocation of Tax Powers: Constitutional Reform", in Collins DJ (ed), *Vertical Fiscal Imbalance and the Allocation of Taxing Powers*, Australian Tax Research Foundation, Sydney, 1993, p 331.

Gray A, "Federal Spending Power in Three Federations: Australia, Canada and the United States" (2011) 40 Common Law World Review 13.

Institute of Public Affairs Ltd, Task 1: Overlap and Duplication Among Australian Governments: Do Specific Purpose Grants Achieve Their Purpose?, Prepared for the Department of Premier and Cabinet, Victoria, 6 October 1995.

Lane WR, "Financial Relationships and Section 96" (1975) 34 *Public Administration* 45. Lehmann G, "Grants Subvert Constitution", *Australian*, 20 November 1992, p 25.

Lynch A, "Commonwealth Financial Powers – Taxation, Direct Spending and Grants – Scope and Limitations" (2011) 6 *Public Policy* 23. (Comments by Johnson P (p 33).)

Maddock R, "Unification of Income Taxes in Australia" (1982) 28 Australian Journal of Politics & History 354.

Mathews R and Grewal B, *Fiscal Federalism in Australia: From Whitlam to Keating*, CSES Working Paper No 1, Centre for Strategic Economic Studies, Victoria University, Melbourne, March 1995.

Mathews RL and Jay WRC, Federal Finance: Intergovernmental Financial Relations in Australia Since Federation, Nelson, Melbourne, 1972.

Myers AJ, "The Grants Power: Key to Commonwealth–State Financial Relations" (1970) 7 Melbourne University Law Review 549.

Parliament of the Commonwealth of Australia, Joint Committee of Public Accounts, *The Administration of Specific Purpose Payments: A Focus on Outcomes*, Report 342, AGPS, Canberra, November 1995 (Cth Parl Paper 301/1995).

Saunders C, "Cooperative Arrangements in Comparative Perspective", in Appleby G, Aroney NT and John T (eds), *The Future of Australian Federalism: International and Comparative Perspectives*, Cambridge UP, Cambridge, 2012, p 414.

Saunders C, "The Sources and Scope of Commonwealth Power to Spend" (2009) 20 Public Law Review 256.

Saunders C, "The Uniform Income Tax Cases" in Lee HP and Winterton G (eds), Australian Constitutional Landmarks, Cambridge UP, Cambridge, 2003, p 62.

Saunders C, "Vertical Fiscal Imbalance: Constitutional Origins", in Collins DJ (ed), Vertical Fiscal Imbalance and the Allocation of Taxing Powers, Australian Tax Research Foundation, Sydney, 1993, p 55.

Saunders C, "Fiscal Federalism A General and Unholy Scramble", in Craven G (ed), Australian Federation: Towards the Second Century, Melbourne UP, Melbourne, 1992, p 101.

Saunders C, "Towards a Theory for Section 96" (1987–88) 16 Melbourne University Law Review 1 (Pt 1), 699 (Pt 2).

Saunders C, "Commonwealth Power Over Grants", in G Brennan (ed), *Constitutional Reform and Fiscal Federalism*, Centre for Research on Federal Financial Relations Occasional Paper No 42, ANU, Canberra, 1987, p 35.

Saunders C, "The Hardest Nut to Crack: The Financial Settlement in the Commonwealth Constitution", in Craven G (ed), *The Convention Debates 1891-1898*, Legal Books, Sydney, 1986, vol 6, p 149.

Sawer G, Cooperative Federalism and Responsible Government in Australia, Fourth Alfred Deakin Lecture, 16 September 1970.

Sharman C, "Changing Federal Finance: The Politics of the Reintroduction of State Income Taxes", in Collins DJ (ed), *Vertical Fiscal Imbalance and the Allocation of Taxing Powers*, Australian Tax Research Foundation, Sydney, 1993, p 221.

Smith JP, Taxing Popularity: The Story of Taxation in Australia, Federalism Research Centre, Canberra, 1993.

Taylor G, "The Division of Power in Federal Systems: Comparative Lessons for Australia", in Appleby G, Aroney NT and John T (eds), *The Future of Australian Federalism: International and Comparative Perspectives*, Cambridge UP, Cambridge, 2012, p 96.

Twomey A, "The Future of Australian Federalism – Following the Money" (2009) 24 *Australasian Parliamentary Review* 11.

Twomey A, "Commonwealth Coercion and Cooperation", in *Upholding the Australian* Constitution Vol 20: Proceedings of the Twentieth Conference of the Samuel Griffith Society, Samuel Griffith Society, Melbourne, 2008, p 64.

Walsh C, "Fixing Fiscal Federalism", in Carling R (ed), Where to for Australian Federalism?, Centre for Independent Studies, St Leonards, 2008, p 43.

Walsh C, "Vertical Fiscal Imbalance: The Issues", in Collins DJ (ed), *Vertical Fiscal Imbalance and the Allocation of Taxing Powers*, Australian Tax Research Foundation, Sydney, 1993, p 31.

**56** [APP.570]

Wiltshire K, "Australian Federalism: The Business Perspective" (2008) 31 University of New South Wales Law Journal 583.

Winterton G, *The Appropriation Power of the Commonwealth*, LLM thesis, University of Western Australia, Perth, 1968.

#### Appropriation

[APP.580] Campbell E, "Parliamentary Appropriations" (1971) 4 Adelaide L Review 145.

Campbell E, "The Federal Spending Power: Constitutional Limitations" (1968) 8 University of Western Australia Law Review 443.

Crommelin M and Evans G, "Explorations and Adventures with Commonwealth Powers", in Evans G (ed), *Labor and the Constitution 1972–1975*, Heinemann, Melbourne, 1977, p 24.

Saunders CA, "The Development of the Commonwealth Spending Power" (1978) 11 Melbourne University Law Review 369.

Saunders C, "Parliamentary Appropriation", in Saunders C et al, *Current Constitutional Problems in Australia*, Centre for Research on Federal Financial Relations, Canberra, 1982, p 1.

Winterton G, *The Appropriation Power of the Commonwealth*, LLM thesis, University of Western Australia, Perth, 1968.

# **CHAPTER 8: FREEDOM OF INTERSTATE TRADE AND COMMERCE**

**[APP.590]** Ball E, "Section 92 and the Regulation of E-Commerce: A Casenote on *Betfair Pty Ltd v Western Australia*" (2008) 36 *Federal Law Review* 265.

Beasley FR, "The Commonwealth Constitution: Section 92 – Its History in the Federal Conventions" (1948) 1 *University of Western Australia Law Review* 97 (Pt 1), 273 (Pt 2), 433 (Pt 3).

Bell A, "Section 92, Factual Discrimination and the High Court" (1991) 20 Federal Law Review 240.

Carney G, "The Re-Interpretation of Section 92: The Decline of Free Enterprise and the Rise of Free Trade" (1991) 3 *Bond Law Review* 149.

Connolly P, "Cole v Whitfield – The Repeal of Section 92 of the Constitution?" (1991) 16 University of Queensland Law Journal 290.

Coper M, "Section 92 of the Australian Constitution since Cole v Whitfield", in Lee HP and Winterton G (eds), Australian Constitutional Perspectives, Law Book Co, Sydney, 1992, p 129.

Coper M, "Intercourse between States? It's Virgin Territory", Sydney Morning Herald, 14 May 1991, p 13.

Coper M, The Curious Case of the Callow Crayfish: The New Law Relating to Section 92 of the Australian Constitution, Discussion Paper No 1, Legislative Research Service, Department of the [Commonwealth] Parliamentary Library, July 1989.

Coper M, "The Second Coming of the Fourth Arm: The Role and Functions of the Inter-State Commission" (1989) 63 Australian Law Journal 731.

Coper M, Encounters with the Australian Constitution, CCH Australia, NSW, 1987, revised ed 1988, pp 275–314, 439–441.

Coper M, Freedom of Interstate Trade under the Australian Constitution, Butterworths, Sydney, 1983.

Cullen R, "Section 92: Quo Vadis?" (1989) 19 University of Western Australia Law Review 90.

Howard C, "Casenotes: Cole v Whitfield and Bath v Alston Holdings Pty Ltd" (1988) 16 Melbourne University Law Review 852.

Howard C, "Section 92 and the Discrimination Test" (1988) 62 *Law Institute Journal* 644. Howard C, "Section 92 of the Constitution: The First Rift in the New Order" (1988) 62 *Law Institute Journal* 760.

Kiefel S, "Section 92: Markets, Protectionism and Proportionality: Australian and European Perspectives" (2010) 36 Monash University Law Review 1.

La Nauze JA, "A Little Bit of Lawyers' Language: The History of 'Absolutely Free', 1890–1900", in Martin AW (ed), *Essays in Australian Federation*, Melbourne UP, Melbourne, 1969, p 57 (reprinted in La Nauze JA, No Ordinary Act: Essays on Federation and the Constitution, Melbourne UP, Melbourne, 2001, p 111).

Lane PH, "The Present Test for Invalidity under Section 92 of the Constitution" (1988) 62 *Australian Law Journal* 604.

May AL, The Battle for the Banks, Sydney UP, Sydney, 1968.

Oreb N, "Case Note: Betting Across Borders – Betfair Pty Limited v Western Australia" (2009) 31 Sydney Law Review 607.

Puig GV, "Intercolonial Free Trade: The Drafting History of Section 92 of the Australian Constitution" (2011) 30 University of Tasmania Law Review 1.

Puig GV, "Section 92 since Betfair Pty Ltd v Western Australia" (2009) 11(4) Constitutional Law and Policy Review 152.

Puig GV, "A European Saving Test for Section 92 of the Australian Constitution" (2008) 13 Deakin Law Review 99.

Puig GV, The High Court of Australia and Section 92 of the Australian Constitution: A Critique of the Cole v Whitfield Test, Lawbook Co, Sydney, 2008.

Rose D, "Cole v Whitfield: 'Absolutely Free' Trade", in Lee HP and Winterton G (eds), Australian Constitutional Landmarks, Cambridge UP, Cambridge, 2003, p 335.

Simpson A, "Betfair Pty Ltd v Western Australia" (2008) 19 Public Law Review 191.

Simpson A, "Grounding the High Court's Modern Section 92 Jurisprudence: The Case for Improper Purpose as the Touchstone" (2005) 33 *Federal Law Review* 445.

Smith PJ, "Free Movement of Goods Within the EC and s 92 of the Australian Constitution" (1998) 72 Australian Law Journal 465.

Sonter D, "Intention or Effect? Commonwealth and State Legislation after Cole v Whitfield" (1995) 69 Australian Law Journal 332.

Staker C, "Section 92 of the Constitution and the European Court of Justice" (1990) 19 *Federal Law Review* 322.

Starke JG, "The Cole v Whitfield Test for Section 92 Explained and Applied: The Demise of the Theory of 'Individual Rights'" (1991) 65 Australian Law Journal 123.

Starke JG, "The Inter-State Commission and Section 92 of the Constitution" (1988) 62 Australian Law Journal 586.

Stellios J, "The Intercourse Limb of Section 92 and the High Court's Decision in APLA Ltd v Legal Services Commission (NSW)" (2006) 17 Public Law Review 10.

### **CHAPTER 9: EXCISE DUTIES**

**[APP.600]** Access Economics, An Access Economics Study on The Distribution of Federal/ State Financial Power, Commissioned by the West Australian Ministry of the Premier and Cabinet on behalf of the governments of the States and Territories, September 1995.

Arndt HW, "Judicial Review under Section 90 of the Constitution: An Economist's View" (1952) 25 Australian Law Journal 667 (Pt 1), 706 (Pt 2).

Caleo C, "Section 90 and Excise Duties: A Crisis of Interpretation" (1987) 16 Melbourne University Law Review 296.

Cass DZ, "Lionel Murphy and Section 90 of the Constitution", in Coper M and Williams G (eds), *Justice Lionel Murphy: Influential or Merely Prescient?*, Federation Press, Sydney 1997, p 19 (Commentary by Caleo C, p 44).

Collins D, "High Court Tax Judgment is a Mystery to Economists", Australian Financial Review, 14 December 1993, p 14.

Coper M, "The High Court and Section 90 of the Constitution" (1976) 7 Federal Law Review 1.

Craven G, "The High Court and the States", in *Upholding the Australian Constitution* Vol 6: Proceedings of the Sixth Conference of the Samuel Griffith Society, Samuel Griffith Society, Melbourne, 1995, p 65.

Dick RA, "A Loss of State Autonomy: Implications of the *Ha* and *Hammond* Decisions" (1998) 27 Australian Tax Review 30.

Dixon N, "Section 90 - Ninety Years On" (1993) 21 Federal Law Review 228.

Durack PD and Wilson RD, "Do We Need a New Constitution for the Commonwealth?" (1967) 41 Australian Law Journal 231.

Gibbs H, "Introduction to Conference on Reshaping Fiscal Federalism in Australia", in Warren NA (ed), *Reshaping Fiscal Federalism in Australia*, Australian Tax Research Foundation, Sydney 1997, p 17.

Gibbs H, "A Hateful Tax? Section 90 of the Constitution", in *Upholding the Australian* Constitution Vol 5: Proceedings of the Fifth Conference of the Samuel Griffith Society, Samuel Griffith Society, Melbourne, 1995, p 121.

Gibbs H, "The Need for Taxation Reform" (1993) 10 Australian Tax Forum 1.

Gibbs H, "Vertical Fiscal Imbalance and the Allocation of Tax Powers: Constitutional Reform", in Collins DJ (ed), *Vertical Fiscal Imbalance and the Allocation of Taxing Powers*, Australian Tax Research Foundation, Sydney, 1993, p 331.

Gordon B, "What is an Excise Duty? Nineteenth Century Literature and the Australian Constitution" (1989) 11 HETSA Bulletin 22.

Grewal B, "Economic Integration and Federalism: Two Views from the High Court of Australia", in *Upholding the Australian Constitution Vol 9: Proceedings of the Ninth Conference of the Samuel Griffith Society*, Samuel Griffith Society, Melbourne, 1997, p 127.

Griffith G, *The Future of State Revenue: The High Court Decision in Ha and Hammond*, Briefing Paper No 16/97, NSW Parliamentary Library Research Service, Sydney, 1997.

Halliday N, "Casenote on Ha" (1998) 20 Sydney Law Review 158.

Hanks P, "Section 90 of the Commonwealth Constitution: Fiscal Federalism or Economic Unity?" (1986) 10 Adelaide Law Review 365.

Lindell G, "Excise", in Coper M and Williams G (eds), *The Cauldron of Constitutional Change*, Federation Press, Sydney, 1997, p 33.

Lowe G, "Hematite Petroleum Pty Ltd v Victoria: Breakthroughs in the Interpretation of Section 90 of the Constitution?" (1986) 12 Monash University Law Review 107.

McLeod N, "State Taxation: Unrequited Revenue and the Shadow of Section 90" (1994) 22 *Federal Law Review* 476.

McMonnies R, "Ngo Ngo Ha and the High Court v New South Wales: Historical Purpose in History and Law" (1999) 27 Federal Law Review 471.

Moloney G, "Casenote on Harper v Minister for Sea Fisheries" (1989) 8 AMPLA Bulletin 155.

Morabito V and Bellamy N, "State Licence Fees, the Constitution and the High Court" (1997) 71(10) Law Institute Journal 60.

Nahan M, "More Power to the States", *Australian Financial Review*, 21 August 1998, p 37. New South Wales Tax Task Force, *Tax Reform and NSW Economic Development: Review* of the State Tax System, Sydney, August, 1988.

Opeskin B, "Section 90 of the Constitution and the Problem of Precedent" (1986) 16 *Federal Law Review* 170.

Parker KH, "Implications of Pipelines Tax Case for State Resource Revenue" [1984] Australian Mining & Petroleum Law Association Yearbook 1. (Comments by Saunders C, p 22 and Carson NR, p 29).)

Pearson G and Lehmann G, "Are State Payroll Taxes Unconstitutional?" (1990) 24 *Taxation in Australia* 864.

Petchey J and Shapiro P, "An Economist's View of Section 90 of the Australian Constitution", in Warren NA (ed), *Reshaping Fiscal Federalism in Australia*, Australian Tax Research Foundation, Sydney 1997, p 41.

Petchey J and Shapiro P, "Chariot Wheels and Section 90" (1995) 11(1) Policy 13.

Puig G V and Chaile R, "For a Narrow Interpretation of Section 90 of the Australian *Constitution*: The Excise Duty System as a Guarantee of Free Trade in an Internal Market" (2010) 29 *University of Queensland Law Journal* 319.

Rose D, "Excise: Reflections on the NSW Cigarette Case" (1998) 1 Constitutional Law & Policy Review 15.

Rose D, "Excise", in Coper M and Williams G (eds), *The Cauldron of Constitutional Change*, Federation Press, Sydney, 1997, p 39.

Saunders C, "The High Court, Section 90 and the Australian Federation", in Warren NA (ed), *Reshaping Fiscal Federalism in Australia*, Australian Tax Research Foundation, Sydney 1997, p 21.

Saunders C, "Constitutional Limits on State Taxation", in Mathews RL (ed), *Tax Reform and the States*, Centre for Research on Federal Financial Relations, ANU, Canberra, 1985, p 15.

Sawer G, "The Future of State Taxes: Constitutional Issues", in Mathews RL (ed), *Fiscal Federalism: Retrospect and Prospect*, Research Monograph No 7, Centre for Research on Federal Financial Relations, ANU, Canberra, 1974, p 193.

Selway B, "Excise", in Coper M and Williams G (eds), *The Cauldron of Constitutional Change*, Federation Press, Sydney, 1997, p 27.

Shapiro P and Petchey J, "'Shall Become Exclusive': An Economic Analysis of Section 90" (1994) 70 *Economic Record* 171.

Spry M, "Tax Reform; or Constitutional Reform? *Ha and Hammond v NSW*" (1977) 17(9) *Proctor* 24.

**60** [APP.600]

Victoria, Report of the Committee of Inquiry into Revenue Raising in Victoria, Melbourne, May 1983.

Walsh C, "Another Taxing Problem Awaits State Governments", Australian Financial Review, 8 December 1993, p 14.

Warren NA (ed), Reshaping Fiscal Federalism in Australia, Australian Tax Research Foundation, Sydney 1997.

Webb R, *Developments in Commonwealth–State Relations Since 2000–01*, Commonwealth Parliamentary Library Research Brief no 11, 2005-06, available at: http://www.aph.gov.au/library.

Western Australia, Treasury Department, Intergovernmental Relations Division, *Revenue Sharing or Tax Base Sharing? Directions for Financial Reform of Australia's Federation*, Discussion Paper, Perth, June 1998.

Williams J, "'Come in Spinner', Section 90 of the Constitution and the Future of State Government Finances" (1999) 21 Sydney Law Review 627.

Wiltshire K, "Centre of Gravity", The Courier Mail (Brisbane), 2 March 2005, p 19.

Working Party on Tax Powers, *Taxation and the Fiscal Imbalance Between Levels of Australian Government: Responsibility, Accountability and Efficiency*, Canberra, 4 October 1991.

# CHAPTER 10: EXPRESS RIGHTS AND FREEDOMS

#### General

**[APP.610]** Allan J, "Portia, Bassanio or Dick the Butcher? Constraining Judges in the Twenty-First Century" (2006) 17 King's College Law Journal 1.

Allan J, "A Defence of the Status Quo", in Campbell T, Goldsworthy J and Stone A (eds), *Protecting Human Rights: Instruments and Institutions*, Oxford UP, Oxford 2003, p 175.

Allan J and Cullen RC, "A Bill of Rights Odyssey for Australia: The Sirens are Calling" (1997) 19 University of Queensland Law Journal 171.

Alston P (ed), *Towards an Australian Bill of Rights*, CIPL (ANU) and HREOC, Canberra, 1994.

Aroney N, "Lost in Translation: From Political Communication to Legal Communication?" (2005) 28 University of New South Wales Law Journal 833.

Bailey P, "Righting the Constitution without a Bill of Rights" (1995) 24 Federal Law Review 1.

Bailey P, Human Rights: Australia in an International Context, Butterworths, Sydney, 1990.

Brennan G, "The Impact of a Bill of Rights on the Role of the Judiciary: An Australian Perspective", in Alston P (ed), *Promoting Human Rights Through Bills of Rights: Comparative Perspectives*, Oxford UP, Oxford, 1999, p 454.

Brennan F, Legislating Liberty: A Bill of Rights for Australia?, UQP, Brisbane, 1998.

Brennan F, "An Australian Convert from a Constitutional Bill of Rights" (1996) 7 Public Law Review 132.

Brennan F, "Thirty Years On, Do We Need a Bill of Rights?" (1996) 18 Adelaide Law Review 123.

Campbell T, Goldsworthy J and Stone A (eds), *Protecting Human Rights: Instruments and Institutions*, Oxford UP, Oxford 2003.

Campbell T, Goldsworthy J and Stone A (eds), *Protecting Rights Without a Bill of Rights*, Ashgate, London 2006.

Charlesworth H, Writing in Rights: Australia and the Protection of Human Rights, UNSW P, Sydney, 2002.

Charlesworth H, A Constitutional Bill of Rights: North American Experience and Australian Prospect, SJD thesis, Harvard Law School, Cambridge, Massachusetts, August 1985.

Clark D, *Principles of Australian Public Law*, LexisNexis Butterworths, Sydney, 2003, ch 12 "Human Rights".

Coper M, Encounters with the Australian Constitution, CCH Australia, NSW, 1987, revised ed 1988, pp 315–358.

Creighton P, An Examination of the Judicial Interpretation of Sections 80, 116 and 117 of the Australian Constitution, LLB (Hons) thesis, University of Western Australia, Perth, 1975.

de Jersey P, An Australian Bill of Rights – Arguments For and Against, Australian Lawyers Alliance Conference, Cairns, 20 October 2005, available at: http://www.courts.qld.gov.au.

Doyle J, "Common Law Rights and Democratic Rights", in Finn PD, *Essays on Law and Government*, Vol 1, Principles and values, Law Book Co, North Ryde, 1995, p 144.

EARC Report, Individuals' Rights & Freedoms: A Bill of Rights and Other Freedoms for Queensland – The Implications for Australia?, UQP, Brisbane, 1993.

Evans C and Evans S, Australian Bills of Rights – The Law of the Victorian Charter and the ACT Human Rights Act, LexisNexis Butterworths, Sydney, 2008.

Fitzgerald B F, "International Human Rights and the High Court of Australia" (1994) 1 James Cook University Law Review 78.

Galligan B and Sampford C (eds), *Rethinking Human Rights*, Federation Press, Sydney, 1997.

Gibbs H, "A Constitutional Bill of Rights?" (1986) 45 Australian Journal of Public Administration 171.

Goldsworthy J, "The Constitutional Protection of Rights in Australia", in Craven G (ed), *Australian Federation: Towards the Second Century*, Melbourne UP, Melbourne, 1992, p 151.

Hanks P, "Constitutional Guarantees", in Lee HP and Winterton G (eds), Australian Constitutional Perspectives, Law Book Co, Sydney, 1992, p 92.

Hiebert J, "Parliamentary Bills of Rights: An Alternative Model?" (2006) 69 Modern Law Review 7.

Kirby M, "The Bill of Rights Debate", Australian Lawyer, December 1994, p 16.

Kirk J, "Rights, Review and Reasons for Restraint" (2001) 23 Sydney Law Review 19. Mason A, "A Bill of Rights for Australia?" (1989) 5 Australian Bar Review 79.

McHugh M, A Human Rights Act, the Courts and the Constitution, Paper delivered to the Australian Human Rights Commission, 5 March 2009, http://www.humanrights.gov.au.

Meagher R P, "Civil Rights: Some Reflections" (1998) 72 Australian Law Journal 47.

Moens G, "The Wrongs of a Constitutionally Entrenched Bill of Rights", in Stephenson MA and Turner C (eds), *Republic or Monarchy? Legal and Constitutional Issues*, UQP, Brisbane, 1994, p 233.

National Human Rights Consultation Committee, National Human Rights Consultation Report, AGD, 2009, available at: http://www.ag.gov.au/RightsAndProtections/HumanRights.

Omar I, "Towards a Meaningful Discourse on Rights in Australia" (1996) 1(2) Newcastle Law Review 15.

**62** [APP.610]

O'Neill N, Rice S and Douglas R, *Retreat from Injustice: Human Rights Law in Australia*, 2nd ed, Federation Press, Sydney, 2004.

Patapan H, "Competing Visions of Liberalism: Theoretical Underpinnings of the Bill of Rights Debate in Australia" (1997) 21 Melbourne University Law Review 497.

Patapan H, "The Dead Hand of the Founders? Original Intent and the Constitutional Protection of Rights and Freedoms in Australia" (1997) 25 Federal Law Review 211.

Rose D, "Judicial Reasonings and Responsibilities in Constitutional Cases" (1994) 20 Monash University Law Review 195.

Stellios J, "State/Territory Human Rights Legislation in a Federal Judicial System" (2008) 19 *Public Law Review* 52.

Stellios J, "The High Court's Recent Encounters with section 80 Jury Trials" (2005) 29(3) *Criminal Law Journal* 139.

Symposium, "Constitutional Rights for Australia?" (1994) 16 Sydney Law Review 145-305.

Taylor G, "Citizenship Rights and the Australian Constitution" (2001) 12 Public Law Review 205.

Thomson JA, "Slouching Towards Tenterfield: The Constitutionalization of Tort Law in Australia" (1995) 3 Tort Law Review 81.

Thomson JA, "An Australian Bill of Rights: Glorious Promises, Concealed Dangers" (1994) 19 Melbourne University Law Review 1020.

Toohey J, "A Matter of Justice: Human Rights in Australian Law" (1998) 27 University of Western Australia Law Review 129.

Toohey J, "A Government of Laws and Not of Men?" (1993) 4 Public Law Review 158.

Twomey A, "The Federal Constitutional Right to Vote in Australia" (2000) 28 Federal Law Review 125.

Wilcox M, An Australian Charter of Rights?, Law Book Co, Sydney, 1993.

Williams J, "The Constitutional Amendment Process: Poetry for the Ages", in Lee HP and Gerangelos PA (eds), *Constitutional Advancement in a Frozen Continent: Essays in Honour of George Winterton*, Federation Press, Sydney, 2009.

Williams G, A Bill of Rights For Australia, UNSW P, Sydney, 2000.

Williams G, Human Rights Under the Australian Constitution, Oxford UP, Melbourne, 1998.

Williams J, "Race, Citizenship and the Formation of the Constitution: Andrew Inglis Clark and the '14th Amendment'" (1996) 42 Australian Journal of Politics and History 10.

Winterton G, "An Australian Rights Council", in Campbell T, Goldsworthy J and Stone A (eds), *Protecting Rights Without a Bill of Rights*, Ashgate, London 2006, p 305.

Winterton G, "Constitutionally Entrenched Common Law Rights: Sacrificing Means to Ends?", in Sampford CJG and Preston KE (eds), *Interpreting Constitutions: Theories, Principles and Institutions*, Federation Press, Sydney, 1996, p 121.

Zines L, "Constitutionally Protected Individual Rights", in Finn PD, *Essays on Law and Government*, Vol 2, The Citizen and the State in the Courts, Law Book Co, North Ryde, 1996, p 136.

Zines L, "A Judicially Created Bill of Rights?" (1994) 16 Sydney Law Review 166.

#### **Acquisition of Property**

**[APP.620]** Allen T, "Acquisition of Property on Just Terms" (2000) 22 Sydney Law Review 351.

Brennan S, "Section 51(xxxi) and the Acquisition of Property under Commonwealth-State Arrangements: The Relevance to Native Title Extinguishment on Just Terms" (2011) 15 *Australian Indigenous Law Review* 74.

Brennan S, "Wurridjal v Commonwealth: The Northern Territory Intervention and Just Terms for the Acquisition of Property" (2009) 33 Melbourne University Law Review 957.

Brown AJ, "When Does Property Become Territory?: Nuclear Waste, Federal Land Acquisition and Constitutional Requirements for State Consent" (2007) 28 Adelaide Law Review 113.

Cox M, "Acquiring Property on Just Terms" (1994) 19 Melbourne University Law Review 768.

Crommelin M, "The Legal Character of Resource Titles" (1998) 17 Australian Mining and Petroleum Law Journal 57.

Dixon R, "Overriding Guarantee of Just Terms or Supplementary Source of Power?: Rethinking s 51(xxxi) of the Constitution" (2005) 27 Sydney Law Review 639.

Evans S, "Property and Drafting of the Australian Constitution" (2001) 29 Federal Law Review 121.

Evans S, "When is an Acquisition of Property Not an Acquisition of Property?" (2000) 11 *Public Law Review* 183.

Hanks P, "Adjusting Medicare Benefits: Acquisition of Property?" (1992) 14 Sydney Law Review 495.

Hsieh W, "Section 51(xxxi) of the Australian Constitution and the Compulsory Acquisition of Native Title" (2011) 32 Adelaide Law Review 287.

Lloyd S, "Compulsory Acquisition and Informal Agreements: *Spencer v Commonwealth*" (2011) 33 *Sydney Law Review* 137.

O'Connor P, "The Changing Paradigm of Property and the Framing of Regulation as a 'Taking'" (2011) 36 Monash University Law Review 50.

Stubbs M, "The Acquisition of Indigenous Property on Just Terms: Wurridjal v Commonwealth" (2011) 33 Sydney Law Review 119.

Winnett C, "'Just Terms' or Just Money? Section 51(xxxi), Native Title and Non-Monetary Terms of Acquisition" (2010) 33 University of New South Wales Law Journal 776.

#### **Right of State Electors**

**[APP.630]** Lucy R, "Turnbull's List: Sections 25 and 41 in a Republican's Constitutional Eschatology" (1995) 67(3) *Australian Quarterly* 52.

Robson KG, A Prospective and Workable Construction of Section 41 of the Commonwealth Constitution, B Juris (Hons) thesis, Faculty of Law, University of Western Australia, Perth, September 1983.

### Trial by jury

**[APP.640]** Anonymous, "Section 80 of the Commonwealth Constitution and Trial by Jury" (1986) 60 Australian Law Journal 423.

Editorial, "Right to Trial by Jury, the Constitution and the High Court" (1986) 19 Australian and New Zealand Journal of Criminology 65.

Evatt HV, "The Jury System in Australia" (1936) 10 Australian Law Journal (Supp) 49.

Fell G, "The Role of the Jury in Criminal Cases – Entrenched or Vulnerable?" (1987) 11 Sydney Law Review 374.

Freiberg A, "Jury Selection and Trials of Commonwealth Offences" (1987) 3 Australian Bar Review 260.

Jefferson G, "Trial by Jury: The High Court Holds Majority Verdicts Unconstitutional" (1993) 18 Alternative Law Journal 242.

Nicholson JH, Section 80 of the Constitution: Judicial Interpretation and the Intentions of the Founders, Master of Public Law Thesis, Australian National University, Canberra, March 1989.

Pannam C, "Trial by Jury and Section 80 of the Australian Constitution" (1968) 6 Sydney Law Review 1.

Ricketson S, Trial by Jury and S[ection] 80 of the Commonwealth Constitution, Government Printer, Melbourne, March 1983.

Selway B, "Anthony John Brownlee and Section 80" (2002) 13 Public Law Review 7.

Simpson A and Wood M, "A Puny Thing Indeed – *Cheng v The Queen* and the Constitutional Right to Trial By Jury" (2001) 29 *Federal Law Review* 95.

Stellios J, "The Constitutional Jury – 'A Bulwark of Liberty'?" (2005) 27 Sydney Law Review 113.

Stellios J, "The High Court's Recent Encounters with Section 80 Jury Trials" (2005) 29 Criminal Law Journal 139.

Stellios J, "Brownlee v The Queen: Method in Madness" (2001) 29 Federal Law Review 319.

### Religion

**[APP.650]** Anonymous, "An Unpublished Judgment on s 116 of the Constitution" (1974) 48 *Australian Law Journal* 161.

Bates F, "The Courts and Religious Practice – Some Comparative Developments in Australia and Elsewhere" (1989) Australian Current Law 36001.

Bennett DC, "Casenote on Attorney-General for Victoria; *Ex Rel Black v Commonwealth*" (1981) 12 *Federal Law Review* 271.

Birch IKF, "State-Aid at the Bar: The Dogs Case" [1984] *Melbourne Studies in Education* 31.

Cumbrae-Stewart FD, "Section 116 of the Constitution" (1946) 20 Australian Law Journal 207.

Darian-Smith M, "Casenote on Church of the New Faith v Commissioner for Pay-Roll Tax" (1984) 14 Melbourne University Law Review 539.

Ely R, Unto God and Caesar: Religious Issues in the Emerging Commonwealth 1891–1906, Melbourne UP, Melbourne, 1976.

Ely R, "Andrew Inglis Clark and Church-State Separation" (1975) 8 Journal of Religious History 21.

Ely R, God, the Churches, and the Making of the Australian Commonwealth, PhD thesis, University of Tasmania, Hobart, 1975.

Gaze B and Jones M, Law, Liberty and Australian Democracy, Law Book Co, Sydney, 1990, ch 7.

Hillman W, *State-aid in Australia and the United States of America: A Judicial Review*, M Ed thesis, University of Western Australia, Perth, 1985.

Hogan M, "Separation of Church and State: Section 116 of the Australian Constitution" (1981) 53 Australian Quarterly 214.

Kaye B, "An Australian Definition of Religion" (1991) 14 University of New South Wales Law Journal 332.

McLeish S, "Making Sense of Religion and the Constitution: A Fresh Start for Section 116" (1992) 18 Monash University Law Review 207.

Moens G, "Church and State Relations in Australia and the United States: The Purpose and Effect Approaches and the Neutrality Principle" [1996] *Brigham Young University Law Review* 787.

Moens G, "The Action–Belief Dichotomy and Freedom of Religion" (1989) 12 Sydney Law Review 195.

Mortensen RD, The Secular Commonwealth: Constitutional Government, Law and Religion, PhD thesis, University of Queensland, Brisbane, 1995.

Pannam CL, "Travelling Section 116 with a US Road Map" (1963) 4 Melbourne University Law Review 41.

Phillips W, Defending 'A Christian Country': Churchmen and Society in New South Wales in the 1880s and After, UQP, Brisbane, 1981.

Puls J, "The Wall of Separation: Section 116, The First Amendment and Constitutional Religious Guarantees" (1998) 26 Federal Law Review 139.

Sadurski W, "Neutrality of Law Towards Religion" (1990) 12 Sydney Law Review 420. Sadurski W, "On Legal Definitions of 'Religion'" (1989) 63 Australian Law Journal 834.

#### **Rights of Residents**

**[APP.660]** Ebbeck G, "The Future for Section 117 as a Constitutional Guarantee" (1993) 4 *Public Law Review* 89.

Ebbeck G, "Section 117: The Obscure Provision" (1991) 13 Adelaide Law Review 23.

Lee HP and Paterson J, "Australian Nationhood in the Constitutional Interpretation of Section 117" (2000) 8 Asia Pacific Law Review 169.

Lindell G J, "Form and Substance: 'Discrimination' in Modern Constitutional Law: The Position After Street's Case" (1992) 21 *Federal Law Review* 140.

Mathieson M, "Section 117 of the Constitution: The Unfinished Rehabilitation" (1999) 27 *Federal Law Review* 393.

Pannam C, "Discrimination on the Basis of State Residence in Australia and the United States" (1967) 6 Melbourne University Law Review 105.

Rose D, "Discrimination, Uniformity and Preference – Some Aspects of the Express Constitutional Provisions", in Zines L (ed), *Commentaries on the Australian Constitution: A Tribute to Geoffrey Sawer*, Butterworths, Sydney, 1977, p 191.

### **CHAPTER 11: IMPLIED RIGHTS AND FREEDOMS**

**[APP.670]** Allan J, "Roach, Rowe and (No)'Riginalism" (2012) 36 Melbourne University Law Review 743.

Anderson G W, "Corporations, Democracy and the Implied Freedom of Political Communication" (1998) 22 Melbourne University Law Review 1.

Arcioni E, "Developments in Free speech law in Australia: Coleman and Mulholland" (2005) 33 Federal Law Review 333

Arcioni E, "Politics, Police and Proportionality – An Opportunity to Explore the Lange Test: Coleman v Power" (2003) 25 Sydney Law Review 379.

Aroney N, "The Implied Rights Revolution: Sacrificing Means to Ends?", in Lee HP and Gerangelos P (eds), *Constitutional Change in a Frozen Continent: Festschrift for George Winterton*, Federation Press, Sydney, 2009.

Aroney N, "Justice McHugh, Representative Government and the Elimination of Balancing" (2006) 28 Sydney Law Review 505.

Aroney N, "Lost in Translation: From Political Communication to legal Communication?" (2005) 28 University of New South Wales Law Journal 833.

Aroney N, *Freedom of Speech in the Constitution*, Centre for Independent Studies, Sydney, 1998.

Aroney N, "A Seductive Plausibility: Freedom of Speech in the Constitution" (1995) 18 University of Queensland Law Journal 249.

Bartlett P and Edwards J, "Reasonable Free Speech" (1997) 32(8) Australian Lawyer 12. Blackford R, "Judicial Power, Political Liberty and the Post-Industrial State" (1997) 71 Australian Law Journal 267.

Blackshield AR, "Reinterpreting the Constitution", in Brett J et al (eds), *Developments in Australian Politics*, MacMillan, Sydney, 1994, p 23.

Blackshield AR, "The Implied Freedom of Communication", in Lindell G (ed), *Future Directions in Australian Constitutional Law*, Federation Press, Sydney, 1994, p 232.

Bogen DS, "The Religion Clauses and Freedom of Speech in Australia and the United States: Incidental Restrictions and Generally Applicable Laws" (1997) 46 *Drake Law Review* 53.

Bogen DS, "Telling the Truth and Paying for It: A Comparison of Two Cases – Restrictions on Political Speech in Australia and Commercial Speech in the United States" (1996) 7 *Indiana International and Comparative Law Review* 111.

Bogen DS, "Comparing Implied and Express Freedoms" (1995) 2 James Cook University Law Review 190.

Bronitt S and Williams G, "Political Freedom as an Outlaw: Republican Theory and Political Protest" (1996) 18 Adelaide Law Review 289.

Butler D, "Constitutional Protection for Defamatory Communications concerning Government and Political Matters" (1997) 18 Queensland Lawyer 39.

Campbell E and Lee HP, "Criticism of Judges and Freedom of Expression" (2003) 8 Media & Arts Law Review 77.

Campbell T and Sadurski W (eds), *Freedom of Communication*, Dartmouth Publishing Co, Aldershot, England, 1994.

Carney G, "Representing Democracy or Reinforcing Inequality? Electoral Distribution and McGinty v Western Australia" (1997) 25 Federal Law Review 351.

Carney G, "The Implied Freedom of Political Discussion – Its Impact on State Constitutions" (1995) 23 Federal Law Review 180.

Cass D, "Through the Looking Glass: The High Court and the Right to Speech" (1993) 4 *Public Law Review* 229.

Cassimatis AE "Theophanous – A Review of Recent Defamation Decisions" (1997) 5 Torts Law Journal 102.

Cassimatis AE, "Defamation – The Constitutional Public Officer Defence" (1996) 4 Tort Law Review 27.

Cassimatis AE, "The Law of Defamation in Queensland – The Defence of Fair Comment and the Constitutional Public Officer Defence" (1996) 16 *Queensland Lawyer* 159.

Chesterman M, "The Common Law Rules in Defamation – OK?" (1998) 6 Tort Law Review 9.

Chesterman M, "Privileges and Freedoms for Defamatory Political Speech" (1997) 19 Adelaide Law Review 155.

Coper M and Williams G (eds), *The Cauldron of Constitutional Change*, Federation Press, Sydney, 1997, pp 83–109 (Gageler S, Kennett G, Glass, A).

Creighton P, "The Implied Guarantee of Free Political Communication" (1993) 23 University of Western Australia Law Review 163.

Donaghue S, "The Clamour of Silent Constitutional Principles" (1996) 24 Federal Law Review 133.

Douglas N, "Freedom of Expression under the Australian Constitution" (1993) 16 University of New South Wales Law Journal 315.

Douglas R, "The Constitutional Freedom to Insult: The Insignificance of Coleman v Power" (2005) 16 Public Law Review 23.

Doyle R, "The Industrial/Political Dichotomy: The Impact of the Freedom of Communication Cases on Industrial Law" (1995) 2 Australian Journal of Labour Law 91.

Eastman K, "Langer v The Commonwealth of Australia: The High Court's Retreat on the Implied Guarantee of Freedom of Communication" (1996) 3 Australian Journal of Human Rights 152.

Emerton P, "Political Freedoms and Entitlements in the Australian Constitution – An Example of Referential Intentions Yielding Unintended Legal Consequences" (2010) 28 Federal Law Review 169.

Fitzgerald B, "Proportionality and Australian Constitutionalism" (1993) 12 University of Tasmania Law Review 263.

Fullilove M, "Giving the Devil Benefit of Law: Free Speech and Hate Speech under the United States and Australian Constitutions" [1994] *Australasian Law Students' Association Academic Journal* 457.

Goldsworthy J, "Constitutional Implications and Freedom of Political Speech: A Reply to Stephen Donaghue" (1997) 23 Monash University Law Review 362.

Goldsworthy J, "The High Court, Implied Rights and Constitutional Change" (1995) 39(3) *Quadrant* 46.

Griffiths L, "The implied freedom of political communication: the state of the law post Coleman and Mulholland" (2005) 12 James Cook University Law Review 93.

Guest Z, "The Judiciary and the Freedom of Political Communication: The Protection of Judgment on Australia's Judges" (2006) 17 *Public Law Review 5*.

Hope J, "A Constitutional Right to a Fair Trial? Implications for the Reform of the Australian Criminal Justice System" (1996) 24 Federal Law Review 173.

Hughes A, "The High Court and Implied Constitutional Rights: Exploring Freedom of Communication" (1994) 1 Deakin Law Review 173.

Jones M, "Free Speech Revisited: The Implications of Lange & Levy" (1997) 4 Australian Journal of Human Rights 188.

Jones T, "Freedom of Political Communication in Australia" (1996) 45 ICLQ 392.

**68** [APP.670]

Kainthaje P, "Strict Construction Meets Deconstruction: A Constructive Defence of Implied Rights" (1996) 12 Australian Journal of Law and Society 1.

Kennett G, "The Freedom Ride: Where to Now?" (1998) 9 Public Law Review 111.

Kennett G, "Individual Rights, The High Court and the Constitution" (1994) 19 Melbourne University Law Review 581.

Kesby A, "Mann v O'Neill: Absolute Privilege in the Law of Defamation" (1998) 20 Sydney Law Review 473.

Kirk J, "Constitutional Implications (II): Doctrines of Equality and Democracy" (2000) 25 Melbourne University Law Review 24.

Kirk J, "Constitutional Implications from Representative Democracy" (1995) 23 Federal Law Review 37.

Lacey W, "Inherent Jurisdiction, Judicial Power and Implied Guarantees Under Chapter III of the Constitution" (2003) 31 *Federal Law Review* 57.

Lee HP, "The 'Reasonably Appropriate and Adapted' Test and the Implied Freedom of Political Communication", in Groves M (ed), *Law and Government in Australia*, Federation Press, Sydney, 2005, p 59.

Lee HP, "The Implied Freedom of Political Communication", in Lee HP and Winterton G (eds), *Australian Constitutional Landmarks*, Cambridge UP, Cambridge, 2003, p 383.

Lee HP, "Protecting Fundamental Rights in Australia", in Iyer V (ed), Constitutional Perpsectives – Essays in Honour and Memory of HM Seervai, Universal Law Publishing, Delhi, 2001, 197.

Lee HP, "Proportionality in Australian Constitutional Adjudication", in Lindell G (ed), *Future Directions in Australian Constitutional Law*, Federation Press, Sydney, 1994, p 126.

Lee HP, "The Australian High Court and Implied Fundamental Guarantees" [1993] *Public Law* 606.

Lim B, "An Australian Reads 'Living Originalism'" (2012) 34 Sydney Law Review 809.

Lindell G, "Theophanous and Stephens Revisited" (1997) 20 University of New South Wales Law Journal 195.

Loveland I, "Sullivan v The New York Times Goes Down Under" [1996] Public Law 126. Maher LW, "Defamation, Free Speech and Local Government Politics" (1995) 3 Torts Law Journal 116.

Mason A, "One Vote, One Value v. The Parliamentary Tradition – The Federal Experience", in C Forsyth and I Hare (eds), *The Golden Metwand and the Crooked Cord*, Clarendon P, Oxford, 1998, p 333.

McDonald L, "The Denizens of Democracy: The High Court and the 'Free Speech' Cases" (1994) 5 *Public Law Review* 160.

McHugh M, "Does Chapter III of the Constitution Protect Substantive as Well as Procedural Rights?" (2001) 21 Australian Bar Review 235 (also 3 Constitutional Law & Policy Review 57).

Meagher D, "The Brennan Conception of the Implied Freedom: Theory, Proportionality and Deference" (2011) 30(1) University of Queensland Law Journal 119.

Meagher D, "The 'Fighting Words' Doctrine: Off the First Amendment Canvass and into the Implied Freedom Ring?" (2005) 28 University of New South Wales Law Journal 852.

Meagher D, "The Protection of Political Communication Under the Australian Constitution" (2005) 28 University of New South Wales Law Journal 30.

Miller J, "Casenote on Langer" (1996) 1(3) Newcastle Law Review 119.

Miller J, "The End of Freedom, Method in Theophanous" (1996) 1(2) Newcastle Law Review 39.

Moore T and Maddox G, "Rights, Jurisdiction and Responsible Government – The Spectre of Capital Television" (1995) 33 Journal of Commonwealth and Comparative Politics 400.

O'Brien D, "Parliamentary Privilege and the Implied Freedom of Speech" (1995) 25 Queensland Law Society Journal 569.

O'Meara S, "Theophanous and Stephens: The Constitutional Freedom of Communication and Defamation Law" (1995) 3 Torts Law Journal 105.

O'Neil R M, "Freedom of Expression and Public Affairs in Australia and the United States: Does a Written Bill of Rights Really Matter?" (1994) 22 *Federal Law Review* 1.

Parker C, "Protection of Judicial Process as an Implied Constitutional Principle" (1994) 16 Adelaide Law Review 341.

Patmore G, "Making Sense of Representative Democracy and the Implied Freedom of Political Communication in the High Court of Australia: Three Possible Models" (1998) 7 *Griffith Law Review* 97.

Potter R, "Constitutional Defamation Defence Disappears as *Theophanous* Effectively Overruled" (1997) 16(3) Communications Law Bulletin 1.

Rares S, "Free Speech and the Law" (1995) 13 Australian Bar Review 209.

Richardson M, "Freedom of Political Discussion and Intellectual Property Law in Australia" (1997) 11 European Intellectual Property Review 631.

Richardson M, "Constitutional Freedom of Political Speech in Defamation Law: Some Insights from a Utilitarian–Economic Perspective" (1996) 4 Torts Law Journal 242.

Rosenberg GN and Williams JM, "Do Not Go Gently into that Good Right: The First Amendment in the High Court of Australia" [1997] Supreme Court Review 439.

Sackville R, "How Fragile are the Courts? Freedom of Speech and Criticism of the Judiciary" (2005) 31(2) Monash University Law Review 191.

Saunders C, "Concepts of Equality in the Australian Constitution", in Lindell G (ed), *Future Directions in Australian Constitutional Law*, Federation Press, Sydney, 1994, p 209.

Sedgwick D, "The Implied Freedom of Political Communication: An Empty Promise?" (2003) 7 University of Western Sydney Law Review 35.

Smallbone DA, "Recent Suggestions of an Implied 'Bill of Rights' in the Constitution, Considered as Part of a General Trend in Constitutional Interpretation" (1993) 21 Federal Law Review 254.

Speagle D, "Casenote on *Capital Television*" (1992) 18 Melbourne University Law Review 938.

Stone A, "'Insult and Emotion, Calumny and Invective': Twenty Years of Freedom of Political Communication" (2011) 30 University of Queensland Law Journal 79.

Stone A, "Australia's Constitutional Rights and the Problem of Interpretive Disagreement" (2005) 27 Sydney Law Review 29.

Stone A, "The Limits of Constitutional Tex and Structure Revisited" (2005) 28 University of New South Wales Law Journal 842.

Stone A, "Rights, Personal Rights and Freedoms: The Nature of the Freedom of Political Communication" (2001) 25 Melbourne University Law Review 374.

Stone A, "The Freedom of Political Communication since *Lange*", in Stone A and Williams G (eds), *The High Court at the Crossroads: Essays in Constitutional Law*, Federation Press, Sydney, 2000, p 1.

Stone A, "Case Note: *Lange*, *Levy* and the Direction of the Freedom of Political Communication under the Australian Constitution" (1998) 21 University of New South Wales Law Journal 117.

Stone A, "Freedom of Political Communication, the Constitution and the Common Law" (1998) 26 *Federal Law Review* 219.

Stone A and Evans S, "Freedom of Speech and Insult in the High Court of Australia" (2006) 4 *International Journal of Constitutional Law* 677.

Symposium, "So *Lange* to *Theophanous*" (1997) 44 *Gazette of Law and Journalism* 2–12. Trindade FA, "Defamation in the Course of Political Discourse – The New Common Law Defence" (1998) 114 *Law Quarterly Review* 1.

Twomey A, "Federal Constitutional Right to Vote in Australia" (2000) 28 Federal Law Review 125.

Twomey A, "Dead Ducks and Endangered Political Communication – Levy v State of Victoria and Lange v Australian Broadcasting Corporation" (1997) 19 Sydney Law Review 76.

Walker B, "Has Lange Really Settled the Common Law?" (1997) 4 Public Law Review 216.

Walker K, "It's a Miracle! High Court Unanimity on Free Speech" (1997) 22 Alternative Law Journal 179.

Walker K and Dunn K, "Mr Langer is Not Entitled to be an Agitator: Albert Langer v Commonwealth" (1996) 20 Melbourne University Law Review 909.

Walker S, "Lange v ABC: The High Court Rethinks the 'Constitutionalism' of Defamation Law" (1998) 6 Torts Law Journal 9.

Williams G, "Freedom of Political Discussion and Australian Electoral Laws" (1997) 4 Canberra Law Review 5.

Williams G, "Sounding the Core of Representative Democracy: Implied Freedoms and Electoral Reform" (1996) 20 *Melbourne University Law Review* 848 (includes bibliography on implied freedom of political discussion).

Williams G, "Engineers is Dead, Long Live the Engineers!" (1995) 17 Sydney Law Review 62.

Williams G, "Civil Liberties and the Constitution – A Question of Interpretation" (1994) 5 *Public Law Review* 82.

Winterton G, "Constitutionally Entrenched Common Law Rights: Sacrificing Means to Ends?", in Sampford CJG and Preston KE (eds), *Interpreting Constitutions: Theories, Principles and Institutions*, Federation Press, Sydney, 1996, p 121.

Winterton G, "Free Speech Rights and Voting Wrongs", Age, 23 February 1996, p A15 (on Langer).

Winterton G, "The Separation of Judicial Power as an Implied Bill of Rights", in Lindell G (ed), *Future Directions in Australian Constitutional Law*, Federation Press, Sydney, 1994, p 185.

Winterton G, "Extra Constitutional Notions in Australian Constitutional Law" (1986) 16 Federal Law Review 223-239

Young PW, "Contempt and Free Speech" (1996) 70 Australian Law Journal 283. Zines L, "A Judicially Created Bill of Rights?" (1994) 16 Sydney Law Review 166.

# **CHAPTER 12: INTERGOVERNMENTAL IMMUNITIES**

**[APP.680]** Aroney N, The Constitution of a Federal Commonwealth: The Making and Meaning of the Australian Constitution, Cambridge UP, Cambridge, 2009.

Aroney N, "Constitutional Choices in the Work Choices Case, or What Exactly is Wrong with the Reserved Powers Doctrine?" (2008) 32(1) Melbourne University Law Review 1.

Aroney N, "The Griffith Doctrine: Reservation and Immunity", in White M and Rahemtula A (eds), *Queensland Judges on the High Court*, Supreme Court of Queensland Library, Brisbane, 2003, p 219.

Booker K and Glass A, "The Engineers Case", in Lee HP and Winterton G (eds), *Australian* Constitutional Landmarks, Cambridge UP, Cambridge, 2003, p 34.

Callinan I, "Griffith as the Chief Justice of the High Court of Australia", in White M and Rahemtula A (eds), *Sir Samuel Griffith: The Law and the Constitution*, Law Book Co, Sydney, 2002, p 11.

Cerny A, "To What Extent is the Commonwealth Immune from State Laws?" (1997) 12(2) *Australian Property Law Bulletin* 14.

Connolly T, *Implications from Federalism*, Master of Public Law Thesis, Australian National University, Canberra, July 1987.

Coper M, Encounters with the Australian Constitution, CCH Australia, NSW, 1987, revised ed 1988, pp 186–198.

Coper M and Williams G (eds), How Many Cheers for Engineers?, Federation Press, Sydney, 1997.

Coper M and Williams G (eds), *The Cauldron of Constitutional Change*, Federation Press, Sydney, 1997, pp 59–79 (Blackshield T, Mason K, Kenny S).

Craven G, "The Engineers' Case: Time for a Change?", in Upholding the Australian Constitution Vol 8: Proceedings of the Eighth Conference of the Samuel Griffith Society, Samuel Griffith Society, Melbourne, 1997, p 73.

Dixon N, "Limiting the Doctrine of Intergovernmental Immunity" (1993) 9 Queensland University of Technology Law Journal 1.

Douglas N, "Federal Implications in the Construction of Commonwealth Legislative Power: A Legal Analysis of their Use" (1985) 16 University of Western Australia Law Review 105.

Doyle J, "1947 Revisited: The Immunity of the Commonwealth from State Law", in Lindell G (ed), *Future Directions in Australian Constitutional Law*, Federation Press, Sydney, 1994, p 47.

Evans G, "Rethinking Commonwealth Immunity" (1971) 8 Melbourne University Law Review 521.

Evans H and Laing R (eds), Odgers' Australian Senate Practice, 13th ed, Department of the Senate, Canberra, 2012.

Finlay HA, "In Search of the Unstated Premise: An Essay in Constitutional Interpretation" (1982) 56 Australian Law Journal 465.

Fraser A, *The Spirit of the Laws: Republicanism and the Unfinished Project of Modernity*, University of Toronto Press, Toronto, 1990.

Gageler S, Foundations of Australian Federalism, LLM thesis, Harvard Law School, Cambridge, Massachusetts, April 1987.

Gageler S, "Foundations of Australian Federalism and the Role of Judicial Review" (1987) 17 *Federal Law Review* 162.

72 [APP.680]

Galligan B, Politics of the High Court: A Study of the Judicial Branch of Government in Australia, University of Queensland Press, St Lucia, 1987.

Hill G, "Austin v Commonwealth: Discrimination and the Melbourne Corporation Doctrine" (2003) 14 Public Law Review 80.

Howard C, "Some Problems of Commonwealth Immunity and Exclusive Legislative Powers" (1972) 5 Federal Law Review 31.

Jackson V C, "Federalism and the Uses and Limits of Law: Printz and Principle" (1998) 111 *Harvard Law Review* 2180.

Katz L, "The Test for Determining the Applicability to the States of Federal Statutes Which Do Not Expressly Bind Them" (1994) 11 *Australian Bar Review* 222.

Kincaid J and Aroney N (eds), *Courts in Federal Countries*, forthcoming, Oxford UP, 2014. Kneebone S, "Claims Against the Commonwealth and States and their Instrumentalities in Federal Jurisdiction: Section 64 of the Judiciary Act" (1996) 24 *Federal Law Review* 93.

Latham RTE, "The Law and the Commonwealth", in Hancock WK, Survey of British Commonwealth Affairs, Vol 1: Problems of Nationality 1918–1936, Oxford UP, Oxford, 1937.

Lee HP, "Commonwealth Liability to State Law – The Enigmatic Case of *Pirrie v McFarlane*" (1987) 17 *Federal Law Review* 132.

Mason A, "The High Court in Sir Samuel Griffith's Time: Contemporary Parallels and Contrasts" (1994) 3 *Griffith Law Review* 179.

Mason A, "The Role of a Constitutional Court in a Federation: A Comparison of the Australian and the United States Experience" (1986) 16 Federal Law Review 1 at 17–21.

McCorquodale J, "Immunity of Commonwealth Government Business Enterprises from State Laws" (1992) 66 Australian Law Journal 406.

McNairn CHH, *Governmental and Intergovernmental Immunity in Australia and Canada*, Australian National UP, Canberra, 1978.

Meagher RP and Gummow WMC, "Sir Owen Dixon's Heresy" (1980) 54 Australian Law Journal 25.

Mescher I, "Wither Commonwealth Immunity?" (1998) 17 Australian Bar Review 23 (Commentary by Selway BM, 42 and Robertson A, 45).

Moens GA and Trone J, Lumb & Moens' The Constitution of the Commonwealth of Australia Annotated, 7th ed, LexisNexis Butterworths, Sydney, 2007.

Nethercote J, "The Engineers' Case: Seventy Five Years On", in *Upholding the Australian* Constitution Vol 6: Proceedings of the Sixth Conference of the Samuel Griffith Society, Samuel Griffith Society, Melbourne, 1996, p 239.

Ong DSK, "The Federal Balance: The Australian Constitution and its Implied Power, Implied Prohibition and Incidental Powers" (1984) 14 *Melbourne University Law Review* 660.

Parkinson C, "The Early High Court and the Doctrine of the Immunity of Instrumentalities" (2002) 13 *Public Law Review* 26.

Penhallurick C, "Commonwealth Immunity as a Constitutional Implication" (2001) 29 *Federal Law Review* 151.

Sackville R, "The Doctrine of Immunity of Instrumentalities in the United States and Australia: A Comparative Analysis" (1969) 7 *Melbourne University Law Review* 15.

Sawer G, Australian Federalism in the Courts, Melbourne UP, Melbourne, 1967.

[APP.680] **73** 

Sawer G, "State Statutes and the Commonwealth" (1961) 1 University Tasmania Law Review 580.

Senate Standing Committee on Legal and Constitutional Affairs, *The Doctrine of the Shield* of the Crown, Senate Printing Unit, Canberra, December 1992.

Simmonds R, "Book Review" (1979) 57 Canadian Bar Review 143.

Simpson A, "State Immunity from Commonwealth Laws: Austin v Commonwealth and Dilemmas of Doctrinal Design" (2004) 32 University of Western Australia Law Review 44.

Simpson A, "The Australian Education Union Case: A Quiet Revolution?" (1998) 7 Griffith Law Review 30.

Stokes M, "Are There Separate State Crowns?" (1998) 20 Sydney Law Review 128

Tappere C, "Casenote on *Queensland Electricity Commission v Commonwealth*" (1986) 16 Federal Law Review 305.

Taylor G, "Commonwealth v Western Australia and the Operation in Federal Systems of the Presumption that Statutes do not apply to the Crown" (2000) 24 Melbourne University Law Review 77.

Twomey A, "Federal Limitations on the Legislative Power of the States and the Commonwealth to Bind one another" (2003) 31 *Federal Law Review* 507.

Walker G de Q, "The Seven Pillars of Centralism: Engineers' Case and Federalism" (2002) 76 Australian Law Journal 678.

Williams G, "Engineers is Dead, Long Live the Engineers!" (1995) 17 Sydney Law Review 62.

Winterton G, "The High Court and Federalism: A Centenary Evaluation", in Cane P (ed), *Centenary Essays for the High Court of Australia*, LexisNexis Butterworths, Sydney, 2004, p 197.

Winterton G, "The Evolution of a Separate Australian Crown" (1993) 19 Monash University Law Review 1.

Zines L, The High Court and the Constitution, 5th ed, Federation Press, Sydney, 2008.

Zines L, "The Binding Effect of State Law on the Commonwealth", in Groves M (ed), *Law* and Government in Australia, Federation Press, Sydney, 2005, p 1.

Zines L, The High Court and the Constitution, 4th ed, Butterworths, Sydney, 1997.

Zines L, "Sir Owen Dixon's Theory of Federalism" (1965) 1 Federal Law Review 221.

### **CHAPTER 13: THE SEPARATION OF JUDICIAL POWER**

**[APP.690]** Bagaric M, "Separation of Powers Doctrine in Australia: De Facto Human Rights Charter" (2011) 7 *International Journal of Punishment and Sentencing* 25.

Bateman W and Stellios J, "Chapter III of the Constitution, Federal Jurisdiction and Dialogue Charters of Human Rights" (2012) 36 Melbourne University Law Review 1.

Bateman W, "Procedural Due Process under the Australian Constitution" (2009) 31 Sydney Law Review 411.

Blackford R, "Judicial Power, Political Liberty and the Post-Industrial State" (1997) 71 Australian Law Journal 267.

Cowman MG, "Separation of Judicial Power: Brandy v Human Rights and Equal Opportunity Commission" (1995) 2 Deakin Law Review 119.

Crock ME, "Climbing Jacob's Ladder: The High Court and the Administrative Detention of Asylum Seekers in Australia" (1993) 15 Sydney Law Review 338.

74 [APP.690]

Durbach A, "Fixing the Brandy Prohibition" (1995) 20 Alternative Law Journal 137.

Elmore G and Gray A, "The Constitutionality of Minimum Mandatory Sentencing Regimes" (2012) 22 Journal of Judicial Administration 37.

Emerton P and Lee HP, "Judges and Non-Judicial Functions in Australia", in Lee HP (ed), *Judiciaries in Comparative Perspective*, Cambridge UP, Cambridge, 2011, p 403.

Finnis J M, "Separation of Powers in the Australian Constitution" (1968) 3 Adelaide Law Review 159.

Gerangelos PA, *The Separation of Powers and Legislative Interference in Judicial Process:* Constitutional Principles and Limitations, Hart Publishing, Oxford, 2009.

Gerangelos PA, "The Separation of Powers and Legislative Interference in Pending Cases" (2008) 30 Sydney Law Review 61.

Gerangelos PA, "Interpretational Methodology in Separation of Powers Jurisprudence: The Formalist/Functionalist Debate" (2005) 8 Constitutional Law and Policy Review 1.

Gerangelos PA, "The Decisional Independence of Chapter III Courts and Constitutional Limitations on Legislative Power: Notes From the United States" (2005) 33 Federal Law Review 391.

Gerangelos PA, The Separation of Powers and Legislative Interference with Judicial Functions: A Comparative Analysis, PhD thesis, University of NSW, Sydney, February 2004.

Gerangelos PA, "The Separation of Powers and Legislative Interference with Judicial Functions in Pending Cases" (2002) 30 *Federal Law Review* 1.

Gordon JS, "Imprisonment and the Separation of Judicial Power: A Defence of a Categorical Immunity from Non-Criminal Detention" (2012) 31 *Melbourne University Law Review* 41.

Gwyn WB, The Meaning of the Separation of Powers, Tulane UP, New Orleans, 1965.

Keyzer P, "Preserving Due Process or Warehousing the Undesirables: To What End the Separation of Judicial Power of the Commonwealth?" (2008) 30 Sydney Law Review 101 (comments by Handsley E, p 115).

Lynch A, "Case Note: *Thomas v Mowbray*: Australia's 'War on Terror' Reaches the High Court" (2008) 32 Melbourne University Law Review 1182.

MacIntyre G, "Brandy: Against the Spirit of Our Laws?" (1995) 3(79) Aboriginal Law Bulletin 20.

Mantziaris C, "Commonwealth Judicial Power for Interim Control Orders: The Chapter III Questions Not Answered" (2009) 10 Constitutional Law and Policy Review 65.

Mason A, "Mandatory Sentencing: Implications for Judicial Independence" (2001) 7(2) *Australian Journal of Human Rights* 21.

Mason A, "A New Perspective on Separation of Powers" (1996) 82 Canberra Bulletin of Public Administration 1.

McClelland R, "The Separation of Powers: The Fundamentals of Good Government" (2008) 84 Precedent 4.

McDonald S, "Involuntary Detention and the Separation of Judicial Power" (2007) 35 *Federal Law Review* 25.

Meyerson D, "Using Judges to Manage Risk: The Case of *Thomas v Mowbray*" (2008) 36 *Federal Law Review* 209.

Morris AJH, "Constitutional Validity of Enforcement Procedures under Federal Anti-Discrimination Legislation" (1994) 68 Australian Law Journal 193.

Morris AJH, "Ruling Ends Legislative Experiment", *The Weekend Australian*, 25–26 February 1995, p 8.

Nand J, "Judicial Power and Administrative Tribunals: The Decision in *Brandy v HREOC*" (1997) *AIAL Forum*, No 14, 15.

Nesbitt K, "Preventative Detention of Terrorist Suspects in Australia and the United States: A Comparative Constitutional Analysis" (2007) 17 *Boston University Public Interest Law Journal* 39.

Omar I, "Darkness on the Edge of Town: The High Court and Human Rights in the Brandy Case" (1995) 2 Australian Journal of Human Rights 115.

Power S, "Constitutional Validity of Enforcement Procedures under Commonwealth Anti-Discrimination Legislation: Response to Article by Morris AJH, QC" (1994) 68 *Australian Law Journal* 434.

Ratnapala S, "Bureaucratic Rulings Lack Guarantees of the Courts", *The Australian*, 27 February 1995, p 11.

Ratnapala S, "Harry Brandy's Case and its Implications for Taxation Administration in Australia" (1995) 18 University of Queensland Law Journal 233.

Ratnapala S, John T, Karean V and Koch C, *Australian Constitutional Law: Commentary and Cases*, Oxford UP, Melbourne, 2006.

Rose D, "Judicial Reasonings and Responsibilities in Constitutional Cases" (1994) 20 Monash University Law Review 195

Sallmann PA, "Mandatory Sentencing: A Bird's-eye View" (2005) 14 Journal of Judicial Administration 177.

Saunders C, "The Separation of Powers", in Opeskin B and Wheeler F (eds), *The Australian Federal Judicial System*, Melbourne UP, Melbourne, 2000, p 3.

Stellios J, "Reconceiving the Separation of Judicial Power" (2011) 22 *Public Law Review* 113.

Treyde R, "Enforcing Human Rights: The Response to Brandy" (1996) 7 Public Law Review 15.

Vile MJC, Constitutionalism and the Separation of Powers, Clarendon P, Oxford, 1967, 2nd ed, Liberty P, Indianapolis, 1998.

Walker K, "Persona Designata, Incompatibility and the Separation of Powers" (1997) 8 *Public Law Review* 153.

Wheeler F, "The Separation of Judicial Power and Progressive Interpretation", in Lee HP and Gerangelos PA (eds), *Constitutional Advancement in a Frozen Continent: Essays in Honour of George Winterton*, Federation Press, Sydney, 2009, p 222.

Wheeler F, "The Boilermakers Case", in Lee HP and Winterton G (eds), Australian Constitutional Landmarks, Cambridge UP, Cambridge, 2003, p 160.

Wheeler F, "Federal Judges as Holders of Non-judicial Office", in Opeskin B and Wheeler F, *The Australian Federal Judicial System*, Carlton South, Melbourne UP, 2000, p 442.

Wheeler F, "Original Intent and the Doctrine of the Separation of Powers in Australia" (1996) 7 Public Law Review 96.

Wheeler FD, *The Separation of Federal Judicial Power: A Purposive Analysis*, PhD thesis, Australian National University, Canberra, February 1999.

Winterton G, "The Communist Party Case", in Lee HP and Winterton G (eds), *Australian* Constitutional Landmarks, Cambridge UP, Cambridge, 2003, p 108.

76 [APP.690]

Winterton G, "The Separation of Judicial Power as an Implied Bill of Rights", in Lindell G (ed), *Future Directions in Australian Constitutional Law*, Federation Press, Sydney, 1994, p 185.

Winterton G, "Introduction", in Moore WH, The Constitution of the Commonwealth of Australia, 2nd ed, 1910, Maxwell, Melbourne; 1997 reprint, p v.

Winterton G, Parliament, the Executive and the Governor-General, Melbourne UP, Melbourne, 1983.

Zines L, The High Court and the Constitution, 5th ed, Federation Press, Sydney, 2008, ch 10.

Zines L, "A Judicially Created Bill of Rights?" (1994) 16 Sydney Law Review 166.

### **CHAPTER 14: CONSTITUTIONAL INTERPRETATION**

[APP.700] Ackerman B, "The Living Constitution" (2007) 120 Harvard Law Review 1738.

Allan J and Kirby M, "A Public Conversation on Constitutionalism and the Judiciary between Professor James Allan and the Hon Michael Kirby AC CMG" (2009) 33 *Melbourne University Law Review* 1032.

Allister P, *Structure and Architecture: Explorations in Constitutional Design*, LLB (Hons) thesis, University of Western Australia, Perth, 2 October 1998.

Amar AR, "The Supreme Court, 1999 Term – Foreword: The Document and the Doctrine" (2000) 114 *Harvard Law Review* 26.

Aroney N, "Reasonable Disagreement, Democracy and the Judicial Safeguards of Federalism" (2008) 27 University of Queensland Law Journal 129.

Aroney N, "Comparative law in Australian Constitutional Jurisprudence" (2007) 26 University of Queensland Law Journal 317.

Aroney N, "The Gestative Propensity of Constitutional Implications" (1997) 13(1) Policy 26.

Bagaric M, "Originalism: Why Some Things Should Never Change – Or at Least Not Too Quickly" (2000) 19 University of Tasmania Law Review 173.

Balkin J and Levinson S, "The Canons of Constitutional Law" (1998) 111 Harvard Law Review 963.

Balkin JM, Living Originalism, Harvard UP, Cambridge, Massachusetts, 2011.

Balkin JM, "Framework Originalism and the Living Constitution" (2009) 103 Northwestern University Law Review 549.

Ball M, "Stories of Origins and Constitutional Possibilities" (1989) 87 Michigan Law Review 2280.

Barak A, The Judge in a Democracy, Princeton UP, Princeton, 2006.

Barak A, "Foreword: A Judge on Judging: The Role of a Supreme Court in a Democracy" (2002) 116 *Harvard Law Review* 16.

Beltz H, "History, Theory and the Constitution" (1994) 11 Constitutional Commentary 45. Berger R, Government By Judiciary: The Transformation of the Fourteenth Amendment, 2nd ed, Liberty Fund, Indianapolis, 1997.

Berman M, "Originalism is Bunk" (2009) 84 New York University Law Review 1.

Birch C, "Mill, Frege and the High Court: The Connotation/Denotation Distinction in Constitutional Interpretation" (2003) 23 Australian Bar Review 296.

Black CL, Structure and Relationship in Constitutional Law, Louisiana State UP, Baton Rouge, 1969.

Bobbitt P, Constitutional Interpretation, Blackwell, Oxford, 1991.

Bobbitt P, Constitutional Fate, Oxford UP, New York, 1982.

Booker K, Glass A and Watt R, Federal Constitutional Law: An Introduction, 2nd ed, Butterworths, Sydney, 1998, pp 273–289.

Bork RH, Coercing Virtue: The Worldwide Rule of Judges, AEI P, Washington, DC, 2003.

Bork RH, *The Tempting of America: The Political Seduction of the Law*, Free Press, New York, 1990.

Brest P, "The Misconceived Quest for Original Understanding" (1980) 60 Boston University Law Review 204.

Breyer SG, Active Liberty: Interpreting a Democratic Constitution, Oxford UP, Oxford, 2008.

Breyer S, Active Liberty: Interpreting Our Democratic Constitution, Alfred A Knopf, New York, 2005.

Bruns G, "Law and Language: A Hermeneutics of the Legal Text", in G Leigh (ed), *Legal Hermeneutics*, U California P, Berkeley, 1992, p 23.

Burmester H, "The Presumption of Constitutionality" (1983) 13 *Federal Law Review* 277. Campos P, Schlag P and Smith SD, *Against the Law*, Duke UP, Durham, 1996.

Camps P, "Against Constitutional Theory" (1992) 4 Yale Journal of Law and Humanities 279.

Carter LH, Contemporary Constitutional Lawmaking: The Supreme Court and the Art of Politics, Pergamon P, New York, 1985.

Castles A, "Justiciability: Political Questions", in Stein L (ed), *Locus Standi*, Law Book Co, Sydney, 1979, p 202.

Charlesworth H, "Dangerous Liaisons: Globalisation and Australian Public Law" (1998) 20 Adelaide Law Review 57.

Claus L, "Implication and the Concept of a Constitution" (1995) 69 Australian Law Journal 887.

Coper M, "The People and the Judges: Constitutional Referendums and Judicial Interpretation", in Lindell (ed), Lindell G (ed), *Future Directions in Australian Constitutional Law*, Federation Press, Sydney, 1994, p 73.

Coper M, Encounters with the Australian Constitution, CCH Australia, NSW, 1987, revised ed 1988, pp 399-422, 447-449.

Coper M, "Interpreting the Constitution: A Handbook for Judges and Commentators", in A Blackshield (ed), *Legal Change: Essays in Honour of Julius Stone*, Butterworths, Sydney, 1983, p 52.

Craven G, "Heresy as Orthodoxy: Were the Founders Progressivists?" (2003) 31 Federal Law Review 87.

Craven G, "Reflections on Judicial Activism: More in Sorrow than in Anger", in *Upholding the Australian Constitution Vol 9: Proceedings of the Ninth Conference of the Samuel Griffith Society*, Samuel Griffith Society, Melbourne, 1997, p 187.

Craven G, "Original Intent and the Australian Constitution – Coming Soon to a Court Near You" (1990) 1 *Public Law Review* 166.

Craven G, "The Convention Debates – Still More Sinned Against Than Sinning" (1998) 1 The New Federalist: The Journal of Australian Federation History 67.

Craven G, "The High Court and the Founders: An Unfaithful Servant" (1997) 30 Papers on Parliament 63.

Craven G, "The Crisis of Constitutional Literalism in Australia", in Lee HP and Winterton G (eds), *Australian Constitutional Perspectives*, Law Book Co, Sydney, 1992, p 1.

Dawson D, "Intention and the Constitution: Whose Intent?" (1990) 6 Australian Bar Review 93.

Dawson D and Nicholls M, "Sir Owen Dixon and Judicial Method" (1986) 15 Melbourne University Law Review 543.

Dixon O, "The Common Law as an Ultimate Constitutional Foundation" (1957) 31 Australian Law Journal 240 (reprinted in Dixon O, Jesting Pilate and Other Papers and Addresses, collected by Judge Woinarski, 2nd ed, William S Hein & Co, Buffalo, New York 1997, pp 203–213).

Donaghue S, "The Clamour of Silent Constitutional Principles" (1996) 24 Federal Law Review 133.

Dorf M, "Integrating Normative and Descriptive Constitutional Theory: The Case of Original Meaning" (1997) 85 *Georgetown Law Journal* 1765 (Responses by Lawson G, p 1823, Lessig L, p 1837 and Fleming J, p 1849 with a reply by Dorf, p 1857).

Doyle J, "Common Law Rights and Democratic Rights", in Finn PD, *Essays on Law and Government*, Vol 1, Principles and values, Law Book Co, North Ryde, 1995, p 144.

Dworkin R, Justice for Hedgehogs, Harvard UP, Cambridge, Massachusetts, 2011, pp 400-416.

Dworkin R, Freedom's Law, Oxford UP, Oxford, 1996, pp 1-38.

Dworkin R, Law's Empire, Harvard UP, Cambridge, Massachusetts, 1986, pp 355-399.

Dworkin R, Taking Rights Seriously, Harvard UP, Cambridge, Massachusetts, 1977.

Easterbrook FH, "Pragmatism's Role in Interpretation" (2008) 31 Harvard Journal of Law *© Public Policy* 901.

R Ekins, "The Intention of Parliament" [2010] Public Law 709

Endicott T, "Putting Interpretation in its Place" (1994) 13 Law and Philosophy 451.

Fallon Jr RH, "Are Originalist Constitutional Theories Principled, Or Are They Rationalizations for Conservatism?" (2011) 34 Harvard Journal of Law & Public Policy 5.

Farber D, "Legal Pragmatism and the Constitution" (1987-1988) 72 Minnesota Law Review 1331.

Fish S, "Intention Is All There Is: A Critical Analysis of Aharon Barak's Purposive Interpretation in Law" (2008) 29 Cardozo Law Review 1109.

Frankfurter F, "John Marshall and the Judicial Function" (1955) 69 Harvard Law Review 217.

Freeman S, "Original Meaning, Democratic Interpretation, and the Constitution" (1992) 21 *Philosophy and Public Affairs* 3.

Gerhardt MJ and Rowe TD, Constitutional Theory: Arguments and Perspectives, Michie Co, Charlottesville, Virginia, 1993.

Glass A "A Hermeneutical Standpoint", in Goldsworthy J and Campbell T (eds), *Legal Interpretation in Democratic States*, Ashgate, Aldershot, 2002, p 131.

Glass A "Interpretation/ Application/ Decisionmaking" (2000) 25 Australian Journal of Legal Philosophy 97.

Glass A, "Implied Rights", in Coper M and Williams G (eds), *The Cauldron of Constitutional Change*, Federation Press, Sydney, 1997, p 99.

Gleeson M, "The Constitutional Decisions of the Founding Fathers" (2007) 81 Australian Law Journal 791.

Goldstein LF, *In Defense of the Text: Democracy and Constitutional Theory*, Rowman and Littlefield, Savage, Maryland, 1991.

Goldsworthy J, "Constitutional Interpretation: Originalism" (2009) 4(4) Philosophy Compass 682.

Goldsworthy J, "Australia: Devotion to Legalism", in J Goldsworthy (ed), *Interpreting* Constitutions: A Comparative Study, Oxford UP, Oxford, 2006, 106.

Goldsworthy J, "Raz on Constitutional Interpretation" (2003) 2 Law and Philosophy 167 Goldsworthy J, "Legislation, Interpretation, and Judicial Review" (2001) 51 University of Toronto Law Journal 75.

Goldsworthy J, "Interpreting the Constitution in its Second Century" (2000) 24 Melbourne University Law Review 677.

Goldsworthy J, "Constitutional Implications and Freedom of Political Speech: A Reply to Stephen Donaghue" (1997) 23 Monash University Law Review 362.

Goldsworthy J, "Originalism in Constitutional Interpretation" (1997) 25 Federal Law Review 1.

Goldsworthy J, "Implications in Language, Law and the Constitution", in Lindell G (ed), *Future Directions in Australian Constitutional Law*, Federation Press, Sydney, 1994, p 150.

Goldsworthy J, "Realism About the High Court" (1988) 18 Federal Law Review 27 (Replies by Galligan B, p 40 and Goldsworthy J, p 50).

Grant S, "Judicial Supremacy and Nonjudicial Interpretation of the Constitution" (1997) 24 Hastings Constitutional Law Quarterly 359.

Greenberg MD and Litman H, "The Meaning of Original Meaning" (1998) 86 Georgetown Law Journal 569.

Grey T, "The Uses of an Unwritten Constitution" (1988) 64 Chicago-Kent Law Review 211.

Grey T, "The Constitution as Scripture" (1984) 37 Stanford Law Review 1.

Grey T, "Do We Have an Unwritten Constitution?" (1975) 27 *Stanford Law Review* 703. Handler M, Leiter B and Handler C, "A Reconsideration of the Relevance and Materiality

of the Preamble in Constitutional Interpretation" (1990) 12 Cardozo Law Review 117.

Heydon JD, "Theories of Constitutional Interpretation: A Taxonomy" [2007] *Bar News* 12.

Heydon JD, "Judicial Activism and the Death of the Rule of Law" (2003) 23 Australian Bar Review 110.

High Court Symposium (1998) 57 Australian Journal of Public Administration 68-98.

Hill G, "Originalist v Progressive Interpretations of the Constitution" (2000) 11 Public Law Review 159.

Himmelfarb D, "The Preamble in Constitutional Interpretation" (1991) 2 Constitutional Law Journal 127.

Hoffheimer M, "Copying Constitutional Text: Natural Law, Constitutionalism, Authority" (1995) 4 S California Interdisciplinary Law Journal 653.

Hovell D and Williams G, "A Tale Of Two Systems: The Use Of International Law in Constitutional Interpretation in Australia and South Africa" (2005) 29 *Melbourne University Law Review* 95.

Howard C, "Sir Owen Dixon: Giant Who Enriched the Law" (1986) 15 Melbourne University Law Review 575.

Huscroft G and Miller B (eds), *The Challenge of Originalism: Theories of Constitutional Interpretation*, Cambridge UP, Cambridge, 2011.

Jackson DF, "The Implications of the Constitution", 2006 Sir Maurice Byers Lecture, *Bar* News (NSW Bar), Winter 2006, p 28.

Jackson DF, "Internationalisation of Rights and the Constitution", in French R, Lindell GJ and Saunders C (eds), *Reflections on the Australian Constitution*, Federation Press, Sydney, 2003, p 105.

Kavanagh A, "The Idea of a Living Constitution" (2003) 16 Canadian Journal of Law and Jurisprudence 55.

Kay R, "Original Intentions, Standard Meanings, and the Legal Character of the Constitution" (1989) 6 Constitutional Commentary 39.

Kay R, "Adherence to the Original Intentions in Constitutional Adjudication: Three Objections and Responses" (1988) 82 Northwestern University Law Review 226.

Kenny S, "The High Court of Australia and Modes of Constitutional Interpretation", in Judicial Commission of New South Wales, *Statutory Interpretation: Principles and Pragmatism for a New Age*, Education Monograph 4, Sydney, June 2007.

Kirby M, "Constitutional Interpretation and Original Intent: A Form of Ancestor Worship" (2000) 24 *Melbourne University Law Review* 1.

Kirk J, "Constitutional Implications (I): Nature, Legitimacy, Classification, Examples" (2000) 24 *Melbourne University Law Review* 645.

Kirk J, "Constitutional Interpretation and a Theory of Evolutionary Originalism" (1999) 27 Federal Law Review 323.

Kirk J, "Constitutional Guarantees, Characterisation and the Concept of Proportionality" (1997) 21 *Melbourne University Law Review* 1.

Lawson G and Moore C, "The Executive Power of Constitutional Interpretation" (1996) 81 *Iowa Law Review* 1267.

Lee HP, "Proportionality in Australian Constitutional Adjudication", in Lindell G (ed), *Future Directions in Australian Constitutional Law*, Federation Press, Sydney, 1994, p 126.

Lessig L, "Understanding Changed Readings: Fidelity and Theory" (1995) 47 Stanford Law Review 395.

Lessig L, "Fidelity in Translation" (1993) 71 Texas Law Review 1165.

Lim B, "An Australian Reads 'Living Originalism'" (2012) 34 Sydney Law Review 809.

Lindell G, "The Justiciability of Political Questions: Recent Developments", in Lee HP and Winterton G (eds), *Australian Constitutional Perspectives*, Law Book Co, Sydney, 1992, p 180.

Llewellyn K, "The Constitution as an Institution" (1934) 34 Columbia Law Review 1.

Lumb R D, "Problems of Characterisation of Federal Powers in the High Court" [1982] *Australian Current Law Digest* 45.

MacCullum G, "Legislative Intent" (1966) 75 Yale Law Journal 754.

Marmor A, Positive Law and Objective Values, Oxford UP, Oxford, 2001.

Mason A, "Constitutional Interpretation: Some Thoughts" (1998) 20 Adelaide Law Review 49.

Mason A, "The Interpretation of a Constitution in a Modern Liberal Democracy", in Sampford CJG and Preston KE (eds), *Interpreting Constitutions: Theories, Principles and Institutions*, Federation Press, Sydney, 1996.

Mason, "Trends in Constitutional Interpretation" (1995) 18 University of New South Wales Law Journal 237.

Mason K, "What is Wrong with Top-Down Legal Reasoning" (2004) 78 Australian Law Journal 574.

McCamish C, "The Use of Historical Materials in Interpreting the Commonwealth Constitution" (1996) 70 Australian Law Journal 638.

McConnell M, "Institutions and Interpretation: A Critique of City of Boerne v Flores" (1997) 111 Harvard Law Review 153.

McKenna M, Politics and Public Administration Group, "First Words: The Preamble to the Australian Constitution" (2001) 24 University of New South Wales Law Journal 382.

McKenna M, "The Tyranny of Fashion: John Howard's Preamble to the Australian Constitution" (1999) 10 Public Law Review 163.

Meagher D, "The Times are They A-Changin? Can the Commonwealth Parliament Legislate for Same Sex Marriages?" (2003) 17 Australian Journal of Family Law 134.

Miller GP, "The President's Power of Interpretation: Implications of a Unified Theory of Constitutional Law" (1993) 56(4) Law and Contemporary Problems 35.

Monaghan HP, "Stare Decisis and Constitutional Adjudication" (1988) 88 Columbia Law Review 723.

Nicholson G, "The Concept of 'One Australia' and the Place of Territories" (1997) 25 *Federal Law Review* 281.

Noirse V, "Making Constitutional Doctrine in a Realist Age" (1997) 145 University of Pennsylvania Law Review 1401.

Perry MJ, The Constitution in the Courts: Law or Politics? Oxford UP, New York, 1994.

Perry MJ, The Constitution, the Courts, and Human Rights: An Inquiry into the Legitimacy of Constitutional Policymaking by the Judiciary, Yale UP, New Haven, 1982.

Poole T, "Back to the Future? Unearthing the Theory of Common Law Constitutionalism" (2003) 23 Oxford Journal of Legal Studies 435.

Posner R, "Against Constitutional Theory" (1998) 73 New York University Law Review 1. Post R, "Theories of Constitutional Interpretation" (1990) 30 Representations 13 reprinted

in Post R (ed), Law and the Order of Culture, U California P, Berkeley, 1991, p 13.

Powell HJ, "Rules for Originalists" (1987) 73 Virginia Law Review 659.

Powell HJ, "The Original Understanding of Original Intent" (1985) 98 Harvard Law Review 885.

Rakove JN (ed), Interpreting the Constitution: The Debate Over Original Intent, Northeastern UP, Boston, 1990.

Rakove JN, "The Original Intention of Original Understanding" (1996) 13 Constitutional Commentary 159.

Raz J, "On the Authority and Interpretations of Constitutions. Some Preliminaries", in Alexander L (ed) *Constitutionalism: Philosophical Foundations*, Cambridge UP, Cambridge, 1998, p 152.

Rich W, "Approaches to Constitutional Interpretation in Australia: an American Perspective" (1993) 12 University of Tasmania Law Review 150.

Rossum R, Antonin Scalia's Jurisprudence: Text and Tradition, University Press of Kansas, Lawrence, 2006.

Round T, *Representation – Reinforcement and Australian Constitutionalism*, PhD thesis, Griffith University School of Politics and Public Policy, December 2001.

Sackville R, "Techniques of Constitutional Interpretation: Five Recent Cases" (2008) 10(2) Constitutional Law and Policy Review 22.

Sampford CJG and Preston KE (eds), *Interpreting Constitutions: Theories, Principles and Institutions*, Federation Press, Sydney, 1996.

Saunders C, "Influences of Federalism on Constitutional Interpretation in Australia" (1987) 20 University of California Davis Law Review 353.

Saunders C, "Interpreting the Constitution" (2004) 15 Public Law Review 289.

Saunders C, "Non-justiciability in Australian Constitutional Law", in Galligan DJ (ed), *Essays in Legal Theory: A Collaborative Work*, Melbourne UP, Melbourne, 1984, p 29.

Sawer G, "Political Questions" (1963) 15 University of Toronto Law Journal 49.

Scalia A, A Matter of Interpretation: Federal Courts and the Law, Princeton UP, Princeton, 1998.

Scalia A and Garner BA, Reading Law: The Interpretation of Legal Texts, West Group, New York, 2012.

Schoff P, "The High Court and History: It Still Hasn't Found(ed) What It's Looking For" (1994) 5 Public Law Review 253.

Selway B, "Constitutional Interpretation in the High Court of Australia", in White M and Rahemtula A (eds), *Queensland Judges on the High Court*, Supreme Court of Queensland Library, Brisbane, 2003, p 1.

Selway B, "Methodologies of Constitutional Interpretation in the High Court of Australia" (2003) 14 *Public Law Review* 234.

Selway B, "The Rise and Rise of the Proportionality Test in Public Law" (1996) 7 Public Law Review 212.

Siegel S, "The Federal Government's Power to Enact Color–Conscious Laws: An Originalist Inquiry" (1998) 92 Northwestern University Law Review 477.

Simpson A and Williams G, "International Law and Constitutional Interpretation" (2000) 11 *Public Law Review* 205.

Stokes M, "Contested Concepts, General Terms and Constitutional Evolution" (2007) 29 Sydney Law Review 683.

Stokes M, "The Interpretation of Legal Terms Used in the Definition of Commonwealth Powers" (2007) 35 Federal Law Review 240.

Stokes M, "Interpretation and Change in Constitutional Law: A Reply to Jeffrey Goldsworthy" (1996) 21 Australian Journal of Legal Philosophy 1.

Stone A, "Comparativism in Constitutional Interpretation" [2009] New Zealand Law Review 45.

Stone B, "A Preamble to the Australian Constitution: A Criticism of the Debate" (2000) 35 Australian Journal of Political Science 291.

Strauss D, "Common Law Constitutional Interpretation" (1996) 63 University of Chicago Law Review 877.

Sunstein CR, "If People Would be Outraged by Their Rulings, Should Judges Care?" (2007) 60 *Stanford Law Review* 155.

"Symposium: Debating the Living Constitution" (2011) 59 Drake Law Review 961.

"Symposium: Original Ideas on Originalism" (2009) 103 Northwestern University Law Review 491.

"Symposium on Philip Bobbitt's Constitutional Interpretation" (1994) 72 Texas Law Review 1703–1967.

Thomson JA, "American and Australian Constitutions: Continuing Adventures in Comparative Constitutional Law" (1997) 30 John Marshall Law Review 627.

Thomson JA, "Non–Justiciability and the Australian Constitution", in Coper M and Williams G (eds), *Power, Parliament and the People*, Federation Press, Sydney, 1997, p 56.

Thomson JA, "Principles and Theories of Constitutional Interpretation and Adjudication: Some Preliminary Notes" (1982) 13 *Melbourne University Law Review* 597.

Tribe L, "Taking Text and Structure Seriously: Reflections on Free-Form Method in Constitutional Interpretation" (1995) 108 Harvard Law Review 1221.

Tribe L and Dorf M, *On Reading the Constitution*, Harvard UP, Cambridge, Massachusetts, 1991.

Twomey A, Constitutional Recognition of Indigenous Australians in a Preamble, Report No 2, Constitutional Reform Unit, Sydney University, 2011.

Waldron J, Torture, Terror, and Trade-Offs: Philosophy for the White House, Oxford UP, Oxford, 2010.

Waldron J, "The Core of the Case Against Judicial Review" (2006) 115 Yale Law Journal 1346.

Waldron J, Law and Disagreement, Oxford UP, Oxford, 1999.

Walker K, "International Law as a Tool of Constitutional Interpretation" (2002) 28 Monash University Law Review 85.

Waluchow W, "Constitutions as Living Trees: An Idiot Defends" (2005) 18 Canadian Journal of Law and Jurisprudence 207.

Waugh J, "Interpreting the Constitution" (1997) 6 Res Publica 5.

Wellington H, Interpreting the Constitution, Yale UP, New Haven, 1990.

Williams G, "A Republican Tradition for Australia?" (1995) 23 Federal Law Review 133.

Williams G, "What Role for Republicanism? A Reply to Andrew Fraser" (1995) 23 Federal Law Review 376.

Williams J, "The Australian Constitution and the Challenge of Theory", in C Sampford and T Round (eds), *Beyond the Republic: Meeting the Global Challenges to Constitutionalism*, Federation Press, Sydney, 2001, p 119.

Winterton G, "Popular Sovereignty and Constitutional Continuity" (1998) 26 Federal Law Review 1.

Winterton G, "A New Constitutional Preamble" (1997) 8 Public Law Review 186.

Wolfe C, How to Read the Constitution: Originalism, Constitutional Interpretation, and Judicial Power, Rowman and Littlefield, Lanham, Maryland, 1996.

Wright J, "The Nature of the Australian Constitution: Limitations of the Revisionist Approaches" (2000) 28 Federal Law Review 345.

Young E, "Rediscovering Conservatism: Burkean Political Theory and Constitutional Interpretation" (1994) 72 North Carolina Law Review 619.

Zines L, The High Court and the Constitution, 5th ed, Federation Press, Sydney, 2008, pp 424-485.

Zines L, "The Common Law in Australia: Its Nature and Constitutional Significance" (2004) 32 Federal Law Review 341.

Zines L, "Legalism, Realism and Judicial Rhetoric in Constitutional Law" (2002) 5 Constitutional Law & Policy Review 21.

Zines L, "The Present State of Constitutional Interpretation", in Stone A and Williams G (eds), *The High Court at the Crossroads: Essays in Constitutional Law*, Federation Press, Sydney, 2000, p 224.

Zines L, "Courts Unmaking the Laws", in *Courts in a Representative Democracy*, Australian Institute of Judicial Administration, Melbourne, 1995, p 125 (commentary by J Doyle, p 143).

Zines L, "Characterisation of Commonwealth Laws", in Lee HP and Winterton G (eds), *Australian Constitutional Perspectives*, Law Book Co, Sydney, 1992, p 33.

Zines L, "The High Court and the Constitution: The Search for Objective Criteria", in Tay AES (ed), *Law-Making in Australia*, Edward Arnold, London, 1980, p 207.

## **INTERNET CONSTITUTIONAL LAW SITES**

### [APP.710] Australia

- Australasian Federation Conference (February 1890) and Convention Debates (1891–1898), available at: http://parlinfo.aph.gov.au
- Australian Federation Full Text Database (University of Sydney), available at: http://setis.library.usyd.edu.au
- Australian Constitutional Law, University of Adelaide, available at: http://www.law.adelaide.edu.au/library
- Australian Public Law, Charles Darwin University, available at: http://www.cdu.edu.au/law
- Centre for Comparative Constitutional Law, University of Melbourne, available at: http://law.unimelb.edu.au/cccs
- Constitution Alteration Referendum Results, available at: http://www.aph.gov.au
- Creating and Changing the Constitution (Australian Policy Online), available at: http://www.apo.org.au
- Gilbert and Tobin Centre for Public Law, University of New South Wales, available at: http://www.gtcentre.unsw.edu.au
- National Archives of Australia, Documenting a Democracy, available at: http://www.foundingdocs.gov.au
- Northern Territory University, available at: http://www.ntu.edu.au
- The Samuel Griffith Society, publications, available at: http://www.samuelgriffith.org.au/papers/publications.html
- Weblaw, Commonwealth Parliamentary Library, available at: http://www.aph.gov.au/library

#### [APP.720] National Constitutions

• Constitution Finder, University of Richmond, available at: http://confinder.richmond.edu

# [APP.730] United States

- Annotated United States Constitution, available at: http://www.gpoaccess.gov/constitution/index.html
- Avalon Project, Yale Law School, available at: http://www.law.yale.edu
- Constitution Society, available at: http://www.constitution.org
- Liberty Library of Constitutional Classics, available at: http://www.constitution.org/liberlib.htm
- Library of Congress, Historical Documents, available at: http://memory.loc.gov/ammem/help/constRedir.html
- Online Library of Liberty, available at: http://oll.libertyfund.org
- Patriotic Post, Historic Documents, available at: http://patriotpost.us/histdocs