



Natural Justice and the High Court of Australia

A study in common law constitutionalism

by
David Gonsky

Natural Justice And The High Court Of Australia A Study In Common Law Constitution

**Thomas Bustamante, Bernardo
Gonçalves Fernandes**



Natural Justice And The High Court Of Australia A Study In Common Law Constitution:

The Legal Protection of Rights in Australia Matthew Groves, Janina Boughey, Dan Meagher, 2019-11-14 How do you protect rights without a Bill of Rights Australia does not have a national bill or charter of rights and looks further away than ever from adopting one But it does have a range of individual elements sourced from common law statute and the Constitution which though unsystematic do provide Australians with some meaningful rights protection This book outlines and explains the unique human rights journey of Australia It moves beyond the criticisms long made of the Australian position that its formalism legalism and exceptionalism compromise its capacity for rights protection to consider how the many elements of its novel legal structure operate This book analyses the interlocking legal framework for the protection of rights in Australia A key theme of the book is that the many different elements of a fragmented scheme can add up to something significant albeit with significant gaps and flaws like any other legal rights protection framework It shows how the jumbled influences of a common law heritage a written constitution differing paths taken by jurisdictions within a single federal state statutory and common law innovations and a strong dose of comparative legal influences have led to the unique patchwork of rights protection in Australia It will provide valuable reading for all those researching in human rights constitutional and comparative law

Natural Justice and the High Court of Australia Ian Holloway, 2017-12-15 This title was first published in 2002 The original thesis of this book is that in Australia natural justice has become an aspect of constitutional rather than administrative law This view of procedural justice is developed in the context of UK and Commonwealth law in a way that brings both historical and doctrinal research to bear on important contemporary issues in judicial review The author traces the origins and fluctuating development of the idea and practice of natural justice in England and its adaptation to the planned state in Australia Consideration is given to the impact of the so called new property and the broadening protection of citizens rights the growing significance of the doctrine of legitimate expectations and the changing role of the notion of ultra vires as a legitimizing basis for judicial review The book culminates in a critical examination of the idea of common law constitutionalism and the need to develop present day rationales for the protection of procedural rights

Democratizing Constitutional Law Thomas Bustamante, Bernardo Gonçalves Fernandes, 2016-04-19 This volume critically discusses the relationship between democracy and constitutionalism It does so with a view to respond to objections raised by legal and political philosophers who are sceptical of judicial review based on the assumption that judicial review is an undemocratic institution The book builds on earlier literature on the moral justification of the authority of constitutional courts and on the current attempts to develop a system on weak judicial review Although different in their approach the chapters all focus on devising institutions procedures and in a more abstract way normative conceptions to democratize constitutional law These democratizing strategies may vary from a radical objection to the institution of judicial review to a more modest proposal to justify the authority of constitutional courts in their deliberative performance or to

create constitutional juries that may be more aware of a community's constitutional morality than constitutional courts are. The book connects abstract theoretical discussions about the moral justification of constitutionalism with concrete problems such as the relation between constitutional adjudication and deliberative democracy, the legitimacy of judicial review in international institutions, the need to create new institutions to democratize constitutionalism, the connections between philosophical conceptions and constitutional practices, the judicial review of constitutional amendments, and the criticism on strong judicial review.

The Constitution of Freedom András Sajó, Renáta Uitz, 2017-11-04 Constitutional democracy is more fragile and less natural than autocracy. While this may sound surprising to complacent democrats, more and more people find autocracy attractive because they were never forced to understand or imagine what despotism is. Generations who have lived in stable democracies with the promise that their enviable world will become the global normal find government rule without constitutionalism difficult to conceive. It is difficult but never too late to see one's own constitutional system as something that is fragile or up for grabs and in need of constant attention and care. In this book, András Sajó and Renáta Uitz explore how constitutionalism protects us and how it might be undone by its own means. Sajó and Uitz's intellectual history of the constitutional ideal is rich in contextual detail and informed by case studies that give an overview of both the theory and practice of constitutionalism worldwide. Classic constitutions are contrasted with twentieth-century and contemporary endeavours and experimentations in checks and balances. Their endeavour is neither apologetic and certainly not celebratory nor purely defensive; this book demonstrates why constitutionalism should continue to matter. Between the rise of populist anti-constitutional sentiment and the normalization of the apparatus of counter-terrorism, it is imperative that the political communities who seek to sustain democracy as freedom understand the importance of constitutionalism. This book is essential reading for students of law and general readers without prior knowledge of the field as well as those in politics who believe they know how government works. It shows what is at stake in the debate on constitutionalism.

Forthcoming Books Rosemary, 2002-04 *Principled Reasoning in Human Rights Adjudication* Se-shauna Wheatle, 2017-04-20 Implied constitutional principles form part of the landscape of the development of fundamental rights in common law jurisdictions affecting issues ranging from the remuneration of judges to the appropriation of property by the state. *Principled Reasoning in Human Rights Adjudication* offers thematic analysis of the use of the implied constitutional principles of the rule of law and separation of powers in human rights cases. The book examines the functions played by those principles in rights adjudication in Australia, Canada, the Commonwealth, Caribbean, and the United Kingdom. It argues that a complete understanding of implied constitutional principles requires thoroughgoing analysis of the sources and methods of implication and of the specific roles played by such principles in the adjudicative process. By disaggregating particular functions and placing those functions within their respective institutional contexts, this book develops an understanding of the features of cases in which implied constitutional principles are invoked and the work done by those principles.

Interpreting Constitutions Charles J. G. Sampford, Kim Preston, 1996 Constitutions can be viewed as the road map of liberal democracies And like any road map they need to be constantly reconsidered and redrawn as the territory develops and changes The contributors undertake this re interpretation on a number of levels They examine first the theoretical approaches to constitutional interpretation and then move on to implied rights There then follows a consideration of the role of the judiciary and parliament in constitutional interpretation drawing upon a number of examples from around the world

Aboriginal Customary Law: A Source of Common Law Title to Land Ulla Secher, 2014-12-01 Described as ground breaking in Kent McNeil s Foreword this book develops an alternative approach to conventional Aboriginal title doctrine It explains that aboriginal customary law can be a source of common law title to land in former British colonies whether they were acquired by settlement or by conquest or cession from another colonising power The doctrine of Common Law Aboriginal Customary Title provides a coherent approach to the source content proof and protection of Aboriginal land rights which overcomes problems arising from the law as currently understood and leads to more just results The doctrine s applicability in Australia Canada and South Africa is specifically demonstrated While the jurisprudential underpinnings for the doctrine are consistent with fundamental common law principles the author explains that the Australian High Court s decision in Mabo provides a broader basis for the doctrine a broader basis which is consistent with a re evaluation of case law from former British colonies in Africa as well as from the United States New Zealand and Canada In this context the book proffers a reconceptualisation of the Crown s title to land in former colonies and a reassessment of conventional doctrines including the doctrine of tenure and the doctrine of continuity With rare exceptions the existing literature does not probe as deeply or question fundamental assumptions as thoroughly as Dr Secher does in her research She goes to the root of the conceptual problems around the legal nature of Indigenous land rights and their vulnerability to extinguishment in the former colonial empire of the Crown This book is a formidable contribution that I expect will be influential in shifting legal thinking on Indigenous land rights in progressive new directions From the Foreword by Professor Kent McNeil to read the Foreword please click on the sample chapter link

Judging Democracy Haig Patapan, 2000-08-31 The High Court is taking an increasingly important role in shaping the contours of democracy in Australia In deciding fundamental democratic questions does the Court pursue a consistent and overarching democratic vision Or are its decisions essentially constrained by institutional and practical limitations Judging Democracy first published in 2000 addresses this question by examining the Court s recent decisions on human rights citizenship native title and separation of powers It represents the first major political and legal examination of the Court s new jurisprudence and the way it is influencing democracy and the institutions of governance in Australia A foreword to the book has been written by the former Chief Justice of the High Court Sir Anthony Mason

The Constitution of the Commonwealth of Australia Nicholas Aroney, Peter Gerangelos, Sarah Murray, James Stellios, 2015-09-11 This book provides an engaging and distinctive treatment for anyone seeking to understand the

significance and interpretation of the Constitution

Uncover the mysteries within Explore with is enigmatic creation, **Natural Justice And The High Court Of Australia A Study In Common Law Constitution** . This downloadable ebook, shrouded in suspense, is available in a PDF format (PDF Size: *). Dive into a world of uncertainty and anticipation. Download now to unravel the secrets hidden within the pages.

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