



Natural Justice and the High Court of Australia

A study by the Australian Law Reform Commission

Final Report

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

Rose Arny



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

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 **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

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.

APAIS 1994: Australian public affairs information service , 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 Rose Army, 2002-04

Constitutional Law and Precedent Monika Florczak-Wątor, 2022-03-30 This collection examines case-based reasoning in constitutional adjudication: that is, how courts decide on constitutional cases by referring to their own prior case law and the case law of other national, foreign, and international courts. Argumentation based on judicial authority is now fundamental to the resolution of constitutional disputes. At the same time, it is the most common form of reasoning used by courts. This volume shows not only the strengths and weaknesses of such argumentation but also its serious methodological shortcomings. The book is comparative in nature, with individual chapters examining similar problems that different courts have resolved in different ways. The research covers three types of courts: namely, the civil law constitutional courts of Germany, Italy, Poland, Lithuania, and Hungary; the common law supreme courts of the United States, Canada, and Australia; and the European international courts represented by the European Court of Human Rights and the Court of Justice of the European Union. The

authors are distinguished scholars from various countries who specialise in constitutional justice issues This book will be of interest to legal theorists and practitioners and will be especially insightful for constitutional court judges The Open Access version of this book available at www.taylorfrancis.com has been made available under a Creative Commons Attribution Non Commercial No Derivatives 4.0 license *A Political, Legal and Economic Overview* Mauro Cappelletti, Monica Secombe, Joseph H. Weiler, 2013-08-26 No detailed description available for A Political Legal and Economic Overview

The Constitutional Jurisprudence and Judicial Method of the High Court of Australia Rachael Gray, 2008 This book reviews the movements that have occurred in the High Court's approach to constitutional issues during the Dixon Mason and Gleeson eras using the legal theory perspectives of legalism realism and pragmatism To date the relevance of theoretical reasoning to Australian constitutional jurisprudence has received relatively little attention Analysis of constitutional decisions has tended to focus on outcomes rather than method The book provides a contemporary comparative and analytical perspective on the manner in which theoretical perspectives can be used to understand and explain the movement of the High Court's constitutional jurisprudence The discussion is timely in view of the retirement of Chief Justice Gleeson in August 2008 which is likely to focus attention on the Gleeson Court's approach to constitutional issues and the Court's contribution to Australian law *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

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