

A STRUCTURAL OVERVIEW OF THE AUSTRALIAN SYSTEM OF PUBLIC LAW

Summary

- Dichotomy between administrative and judicial review
- A rights based approach in constitutional interpretation

Australia - A Constitutional Hybrid

- Enactment of *Commonwealth of Australia Constitution Act 1900* (Imp) - beginning of operation of Constitution, Commonwealth of Australia
- UK - representative and responsible government, constitutional monarchy
 - Queen as symbolic monarch, GG representative, powers in constitution e.g. s59 - can annul or disallow laws made by federal parliament
 - Convention - act on advice of PM, other ministers
 - *Representative government* - government by the citizens/people through their elected representatives
 - *Responsible government* - executive arm of government responsible to Parliament to actions
- US - federalism, separation of powers, judicial review
 - Protecting power of people against power of government
 - Distributing power, no single consolidated chain of command
 - *Federalism* - allocation of governmental/legislative powers among different territories
 - *Separation of powers* - legislative, judicial and executive functions allocated
 - *Judicial review* - checks and balances through courts, can strike down laws, govt. action inconsistent with C
- Constitutional monarchy - power implied in monarchy limited by ideas and principles of constitutionalism
- AV Dicey - *Introduction to the Study of the Law of the Constitution*
 - Constitutional law - 'all rules which directly or indirectly affect the distribution or the exercise of the sovereign power in the state'
- Sir Ivor Jennings - *The Law and the Constitution*
 - Constitution - 'the rules governing the composition, powers and methods of operation of the main institutions of government, and the general principles applicable to their relations to the citizens'
 - Focus on effects of power exercise - arbitrary/oppressive
- Adam Tomkins - *Public Law*
 - Constitutions:
 - Establish institutions and interrelationships
 - Explain place and role of the people
 - Express political values to which a particular society lays claim
- Giovanni Satori - *Constitutionalism: A Preliminary Discussion*
 - Constitution establishes fundamental law/set of principles to restrict arbitrary power
 - *Nominal constitution* - deals only with formalisation of power structure
 - *Façade constitution* - espouses to the principles of limited government, but in practice does not secure them
- Written vs. unwritten constitution
 - *Written* - single solemn document, founds a political community, defines chief political institutions, confers powers, circumscribes limits of powers e.g. American
 - Still requirement for constitutional conventions - for practical convenience, or beliefs about how government ought to be conducted
 - *Unwritten* - no single document e.g. UK