

CONSTITUTIONAL INTERPRETATION

Legalism

The constitution already has a pre-determined right answer to any legal problem, and the judge's task is to find that predetermined answer by a mechanical process. No judicial choice.

- Use: Text of constitution, Precedent.

No longer tenable. Contemporary interpretation recognises judicial choice.

Literalism

Engineers case: Give words their natural & ordinary meaning. If the text is explicit, the text is conclusive. If the text is ambiguous, look at context of the Act.

- Use: Text of constitution, Precedent.

Dixon J: Strict & complete literalism remains the only safe way to interpret, because it rejects policy implications & keeps parties happy.

But – natural & ordinary meaning may not help.

Originalism

Goldsworthy: Interpret by looking at founders' intentions which in 1900 was publicly available.

- Use: Text of Constitution, Convention debates, Drafts.
- Interpretation can be adapted to changing circumstances by:
 - Following erroneous interpretation;
 - Judicial creativity when the Constitution is ambiguous, vague or internally inconsistent; or
 - Distinction between denotation & connotation of terms.
 - Connotation = qualities that something must have to come within the term (they don't change).
 - Denotation = all things that have those qualities (they may change).

Cole v Whitfield: History may be used for constitutional interpretation, not to substitute the meaning the founding fathers subjectively intended, but to identify (1) the contemporary meaning of language used, (2) the subject that language was directed to, and (3) the nature/objectives of federation.

Living Force Doctrine

Inglis Clark (Supported by Kirby J): Interpret according to intentions of present people who maintain the Constitution.

- Use: Text of constitution, Public attitudes.

Deane J: Meaning must change to meet contemporary attitudes.

Conclusion

Text of the Constitution is always important.

History can be used to establish context.

Meanings change to meet contemporary attitudes.

COMPOSITION & ELECTION OF FEDERAL PARLIAMENT

Constitutional Right to Vote?

Constitution assumes members of the Parliament are chosen by elections.

- S 7: The Senate shall be "directly chosen by the people of the States, voting".
- S 24: The House of Representatives shall be "directly chosen by the people of the Commonwealth".
- Ss 8 & 30 speak of "electors".

R v Pearson; ex parte Sipka

- Ss 7 & 24 supports an implied right to vote.
- S 41 guarantees the right to vote pursuant to ss 30 & 8. But ss 30 & 8 say "until the Parliament otherwise provides" → After *Commonwealth Franchise Act 1902*, no person's voting right is protected by s 41.

Who can vote?

Ss 8 & 30: Parliament can provide for the qualification of electors, but each elector shall vote only once
Commonwealth Electoral Act 1918 ss 93 & 94 (p411) determines who can vote in federal elections.

McGinty v WA, Langer v Cth: It is no longer possible for Parliament to base qualifications on sex, race, education level or property holdings (because the meaning of "people of the State/Cth" has changed).

Requirement that members of Parliament be "chosen"

Judd v McKeon: Compulsory voting does not preclude choice by the elector.

Langer v Cth

- Brennan: Constitution does not limit Parliament's selection of the method of voting, so long as the method allows a free choice.
- Dawson: Constitution does not require a particular electoral system → preferential voting system is within power.

Equality of Voting Power (One vote, one value?)

McGinty v WA: Constitution provides for representative government, not representative democracy → no guarantee of "one vote, one value" → electorates can differ in size.

Eligibility for Election to Parliament

Ss 16 & 34: The qualifications of members of Parliament are as Parliament has provided under *Commonwealth Electoral Act 1918* s 163(1) (p435).

S 44: People who are disqualified from being an elected member of Parliament.

- *Sue v Hill*: A person renounces a foreign citizenship if he has taken reasonable steps to renounce it.

FEDERALISM

Federalism is a system of government established by the Constitution, that locates power between local units (States) and a central body (Commonwealth).