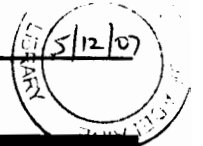


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THE CONSTITUTIONAL JURISPRUDENCE OF THE HIGH COURT OF AUSTRALIA: LEGALISM, REALISM, PRAGMATISM, JUDICIAL POWER AND THE DIXON, MASON AND GLEESON ERAS

by

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Abstract

The discussion presented in this thesis will analyse the relationship between the *judicial approach* of members of the High Court and the wider sphere of *theoretical assumptions* that surround law generally and constitutional interpretation in particular. The theoretical perspectives that will be considered in this thesis are the ideas associated with *legalism, realism, natural law reasoning* and *pragmatism*. The analysis presented will critically analyse the judicial approaches of the Dixon, Mason and Gleeson eras. The area of constitutional law that is examined in detail is the law relating to *judicial power*.

The central thesis of this work is that the Gleeson High Court is a largely a-theoretical Court, in that, decisions of the Court are characterised by a low-level of abstraction, and the Gleeson Court does not theorise at length about the reasons for adopting a particular judicial approach. It will be argued that the methodology of the current High Court is legalistic with a number of elements of pragmatic thought also being of relevance. In the context of decisions relating to judicial power it will be concluded that a central issue for the Court has been a concern to protect the integrity of the federal judiciary. The Gleeson Court's approach will be distinguished from the realist based jurisprudence of the Mason Court, which articulated the relevance of legal theory and tended to make broad statements of legal principle. It will be argued that the approach of the Gleeson Court also diverges from Dixonian legalism, which the analysis presented in this thesis will establish is a theoretical form of legalism. The thesis will present the view that more theorised forms of legal reasoning are to be preferred over largely a-theoretical approaches.

Table of Contents

CHAPTER 1: INTRODUCTION	1
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PART I

CHAPTER 2: LEGALISM, DIXONIAN LEGALISM AND THE GLEESON COURT	19
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I INTRODUCTION	19
II PERCEPTIONS OF THE GLEESON COURT AND LEGALISM	22
III LEGALISM	31
IV DIXONIAN LEGALISM	37
V LEGALISM AND THE GLEESON COURT	47
A <i>The Gleeson Court: Faith in Legalism</i>	50
B <i>Realism and the Response of Legalism: A Comparison of the Dixon and Gleeson Approaches</i>	58
VI CONCLUSION	63

CHAPTER 3: REALISM AND THE MASON ERA	65
---	----

I INTRODUCTION	65
II REALISM	68
III THE 'DEMISE OF LEGALISM' AND THE MASON ERA	76
A <i>Justice Murphy, Social and Political Values</i>	77
B <i>The Evolving Jurisprudence of Sir Anthony Mason</i>	80
1 <i>Social and Political Change in Australian Society</i>	80
2 <i>Overseas Developments: Legal Change in Common Law Jurisdictions</i>	81
3 <i>The Intellectual Climate: Change from Outside the Legal Profession</i>	84
4 <i>Self-perception: Sir Anthony Mason and the Role of the Judiciary</i>	86
5 <i>The Parameters of Legal Debate and the Influence of Deane J.</i>	89
C <i>The Multitude of Influences upon the Movement from Legalism</i>	89
IV THE MASON ERA: JUDICIAL CHOICE, JUDICIAL POLICY AND PURPOSIVE INTERPRETATION	91
A <i>Judicial Choice</i>	92
B <i>Judicial Policy</i>	98
C <i>Purposive Interpretation</i>	102
V THE JURISPRUDENCE OF THE GLEESON ERA AND THE REALISM OF THE MASON ERA AS AN ALTERNATIVE TO LEGALISM	106
VI CONCLUSION: REALISM AND THE MASON ERA THE ANTECEDENT TO THE APPROACH OF THE GLEESON COURT	112

CHAPTER 4: NATURAL LAW AND THE JURISPRUDENCE OF JUSTICES DEANE AND TOOHEY 121

I INTRODUCTION..... 121

II A NATURAL LAW PERSPECTIVE 125

 A *John Locke*..... 127

III THE JURISPRUDENCE OF JUSTICES DEANE AND TOOHEY 130

 A *Natural Law Perspectives and the Interest of the Individual*..... 131

 B *Natural Law Perspectives: Influential Rather than Directory in the Jurisprudence of Justice Deane and Toohey*..... 135

 C *The Broadening of Legal Debate*..... 136

IV THE GLEESON COURT: DISTANCING FROM THE APPROACH OF JUSTICES DEANE AND TOOHEY 138

V CONCLUSION..... 141

CHAPTER 5: CONTEMPORARY PRAGMATIC THOUGHT 145

I INTRODUCTION..... 145

II CONSTITUTIONAL INTERPRETATION AND PRAGMATISM IN THE UNITED STATES AND AUSTRALIA 147

III DEFINING AND DISTINGUISHING PRAGMATISM 155

IV THE CENTRAL TENETS OF PRAGMATIC APPROACHES 157

 A *Conceptualism* 157

 B *Instrumentalism* 162

 C *Perspectivism*..... 166

IV LEGAL PRAGMATISM AND ITS PROPONENTS 168

 A *Judge Richard Posner*..... 169

 B *Professor Cass Sunstein* 175

 1 *High-level Theoretical Arguments and the Complex Nature of Human Relations* 177

 2 *The Benefits of Consensus* 178

 3 *Precedents and Incompletely Theorized Agreements* 179

 4 *High Level Theory, Social Reform and the Judicial Role* 181

V CRITICISMS OF PRAGMATISM..... 183

 A *The Depiction of Legal Theories by Pragmatic Writers* 184

 B *The Benefits of Theoretical Reasoning* 186

 C *Transparency and Ideology in Legal Reasoning* 191

IV CONCLUSION..... 195

CHAPTER 6: THEORY, PRAGMATISM AND THE GLEESON COURT 199

I INTRODUCTION..... 199

II PRAGMATISM AND THE GLEESON COURT 199

 A *No Over-arching Theory*..... 201

 B *The Diversity Approach*..... 202

 C *Consequentialism*..... 204

 D *Low Level Theorizing* 207

 E *Pragmatic Elements in the Approach of the Gleeson Court* 211

III CONCLUSION TO PART I: A CONCEPTUAL FRAMEWORK FOR THE APPROACH OF THE GLEESON COURT..... 214

PART II

CHAPTER 7: FOUNDATIONAL DEVELOPMENTS CONCERNING THE SEPARATION OF POWERS DOCTRINE IN AUSTRALIAN JURISPRUDENCE 221

I INTRODUCTION TO PART II	221
A <i>Outline of Part II</i>	224
1 <i>Chapter 7</i>	224
2 <i>Chapter 8</i>	225
3 <i>Chapter 9</i>	226
4 <i>Chapter 10</i>	226
II THE IMPORTANCE OF THE SEPARATION OF JUDICIAL POWER	228
A <i>The Separation of Powers Doctrine</i>	229
B <i>Judicial Independence</i>	232
C <i>Marbury v Madison</i>	236
D <i>An Uniquely Australian Doctrine of the Separation of Powers</i>	237
III AUSTRALIAN CONSTITUTIONAL PROVISIONS CONCERNING JUDICIAL POWER ...	241
IV INITIAL DEVELOPMENTS CONCERNING THE FIRST LIMB OF THE SEPARATION OF JUDICIAL POWERS DOCTRINE	245
A <i>New South Wales v The Commonwealth</i>	246
B <i>Alexander's Case</i>	248
V INITIAL DEVELOPMENTS CONCERNING THE SECOND LIMB OF THE SEPARATION OF JUDICIAL POWERS DOCTRINE	252
A <i>The Reasoning of the Majority in In re Judiciary and Navigation Acts</i>	254
B <i>The Narrow Implication and the Dissent of Higgins J</i>	256
C <i>In re Judiciary and the Influence of Legalism</i>	257
VI BOILERMAKERS AND THE TWO LIMBS OF THE SEPARATION OF JUDICIAL POWERS DOCTRINE	259
A <i>Boilermakers and Dixonian Legalism</i>	262
B <i>Boilermakers and Australian Federalism</i>	267
C <i>Judicial Independence and the Boilermakers' doctrine</i>	268
D <i>The Reinterpretation of the Boilermakers Decision</i>	270
E <i>The Ending of the Litigation in Boilermakers</i>	272
IV CONCLUSION	272

CHAPTER 8: CHAPTER III AND THE MASON ERA..... 279

I INTRODUCTION	279
II DOUBTS ABOUT THE BOILERMAKERS' DOCTRINE	281
III JUDICIAL POWER, THE INDIVIDUAL AND THEORY IN CONSTITUTIONAL INTERPRETATION	286
IV CHU KHENG LIM V MINISTER FOR IMMIGRATION, LOCAL GOVERNMENT AND ETHNIC AFFAIRS: THE USE OF THEORETICAL REASONING IN CONSTITUTIONAL INTERPRETATION	287
A <i>The Facts</i>	288
B <i>The Decision</i>	289
C <i>Chu Kheng Lim; Theoretical Reasoning and the Individual</i>	293
V POLYUKOVICH V COMMONWEALTH	297
IV CONCLUSION: THEORIES AND JUDICIAL POWER	309

**CHAPTER 9: THE BRENNAN ERA: CHAPTER III, CONSTITUTIONAL PRINCIPLE AND
METHODOLOGICAL CHANGE..... 313**

I INTRODUCTION..... 313
**II THE BRENNAN COURT, THE SEPARATION OF JUDICIAL POWER AND THE FLEXIBLE
PRACTICAL ARRANGEMENTS GOVERNING THE EXERCISE OF FEDERAL JUDICIAL
POWER..... 316**
**III CONTINUITY AND CHANGE: THE BRENNAN ERA AND THE SEPARATION OF
JUDICIAL POWER..... 321**
IV KABLE V DIRECTOR OF PUBLIC PROSECUTIONS 323
 A *Kable v Director of Public Prosecutions and the Integrity of the Federal Judiciary*..... 324
 B *Kable v Director of Public Prosecutions and Constitutional Methodology* 330
IV CONCLUSION..... 331

**CHAPTER 10: SUBSTANTIVE AND METHODOLOGICAL CHANGE IN CHAPTER III
JURISPRUDENCE AND THE GLEESON ERA 335**

I INTRODUCTION..... 335
II RE WAKIM; PRACTICALITY AND CONSTITUTIONAL PRINCIPLE 338
 A *Text and Policy: Re Wakim, the Gleeson Court and Legalism* 340
 B *Policy considerations and the Nature of the Australian Federal System* 346
 1 *Co-operative Federalism* 347
 2 *Commonwealth Consent* 349
 C *Re Wakim and the Integrity of the Federal Judiciary*..... 352
 D *Trends emerging from the decision in Re Wakim* 353
**III AL-KATEB V GODWIN; LIBERTY OF THE NON-CITIZEN, LEGISLATIVE POWERS AND
THE INTEGRITY OF THE FEDERAL JUDICIARY..... 356**
 A *Principles of Statutory Construction* 359
 B *The Constitutional Issue and Al-Kateb*..... 365
 C *Al-Kateb and Constitutional Movement*..... 367
**IV LIBERTY OF THE CITIZEN AND THE FEDERAL JUDICIARY: THE GLEESON COURT
AND THE GLEESON COURT AND THE KABLE PRINCIPLES 369**
 A *Baker v The Queen: Institutional and Individual Constitutional Protections* 371
 B *Fardon v Attorney-General (Queensland)*..... 374
 C *Fardon: Federal Structure and Individual Protections*..... 381
VII FORGE V AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION 382
 A *The Decision of Forge and the Divide between the Approaches of Members of the Gleeson
 Court*..... 390
VIII CONCLUSION TO PART II..... 390

THESIS CONCLUSION 397

BIBLIOGRAPHY..... 405
