# TOPIC A: PRINCIPLES OF CONSTITUTIONAL INTERPRETATION

- ⇒ section 51 the Heads of Power gives power to the Cth Parliament to make laws with respect to 39 subject matters
  - These are concurrent powers: States can still legislate in these areas, but in the event of an inconsistency, the Cth law prevails (s 109)
    - Moreover, Cth has these powers whilst States have the residue

#### METHODS OF CONSTITUTIONAL INTERPRETATION

Engineers (1920)

Dominant interpretational approach: strict legalism, textualism, and reference to context only when there is any degree of ambiguity

- "read it naturally in light of the circumstances in which it was made, with knowledge of the combined fabric of the common law and the statue law which precedes it"
  - · Focus attention on the actual words used, understood in their ordinary or natural meaning

Doctrines rejected:

- (1) doctrine of reserved state powers: that constitutional provisions must be interpreted in a way that does not take away the powers of the state
- (2) doctrine of implied immunity of government instrumentalities: that constitutional provisions must be interpreted in a way such that no Cth (state) laws can bind state (Cth) governments and their public servants
- → Examine the full import of the powers conferred on Parliament without recourse to such doctrines, or other extraneous considerations (e.g. reference to views of the framers/philosophies or political considerations not permitted)
- Whilst there is no required interpretational approach, the dominant approach is still legalism and textualism (focusing attention on the actual words used, understood in their ordinary or natural meaning)
  - However, from 1988 onwards, the court will revert to a degree of originalism if what the Constitution is trying to achieve is not clear
    - Originalism determining the meaning of the Constitution's words by looking to their meaning in 1900 and to discussions amongst the framers of the Constitution

#### PRECISE TECHNIQUES OF CONSTITUTIONAL INTERPRETATION

In examining the constitutional validity of an Act, two fundamental steps must be taken:

#### CHARACTERISATION & INTERPRETATION

- (1) Interpret the relevant constitutional provisions
  - Process: define the relevant head of power: what is its "core" meaning, and what matters "incidental" to that core can also be regulated?
    - To do so, give heed to the Engineers principles and the principle that the constitutional text
      is to be construed with all the generality which the words used admit Cirain Pool of
      Western Australia v City
    - Consider whether the head of power is a <u>purposive or non-purposive power</u>
      - Purposite: the relevant law must not only relate to the subject matter, but must also be exercised pursuant to the specific purpose provided for in the head of power 
         E.g. s 51(vi) defence power: law must not only regulate armed forces but be for the purpose 
         of defending the Cth and maintaining the Constitution and its laws

# **Constitutional Interpretation Fourth Ed**

**Emlin McClain** 

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Constitutional Law: Cases in Context, Fourth Edition; ..., 1987 Supplement to Constitutional Interpretation
Craig R. Ducat, 1988 Supplement to Constitutional Interpretation, Fourth Edition Craig R. Ducat, 1989

The Limits of Constitutional Democracy Jeffrey K. Tulis, 2010-11-14 Constitutional democracy is at once a flourishing idea filled with optimism and promise and an enterprise fraught with limitations Uncovering the reasons for this ambivalence this book looks at the difficulties of constitutional democracy and reexamines fundamental questions What is constitutional democracy When does it succeed or fail Can constitutional democracies conduct war Can they preserve their values and institutions while addressing new forms of global interdependence The authors gathered here interrogate constitutional democracy s meaning in order to illuminate its future The book examines key themes the issues of constitutional failure the problem of emergency power and whether constitutions should be suspended when emergencies arise the dilemmas faced when constitutions provide and restrict executive power during wartime and whether constitutions can adapt to such globalization challenges as immigration religious resurgence and nuclear arms proliferation. In addition to the editors the contributors are Sotirios Barber Joseph Bessette Mark Brandon Daniel Deudney Christopher Eisgruber James Fleming William Harris II Ran Hirschl Gary Jacobsohn Benjamin Kleinerman Jan Werner M ller Kim Scheppele Rogers Smith Adrian Vermeule and Mariah Zeisberg The U.S. Constitution: A Very Short Introduction David J. Bodenhamer, 2018-03-15 Though the U S Constitution was ratified in 1788 its impact on our lives is as recent as today s news Claims and counterclaims about the constitutionality of governmental actions are a habit of American politics This document which its framers designed to limit power often has made political conflict inevitable It also has accommodated and legitimized the political and social changes of a vibrant powerful democratic nation A product of history s first modern revolution the Constitution embraced a new formula for government it restrained power on behalf of liberty but it also granted power to promote and protect liberty The U S Constitution A Very Short Introduction explores the major themes that have shaped American constitutional history federalism the balance of powers property representation equality rights and security Informed by the latest scholarship this book places constitutional history within the context of American political and social history As our nation's circumstances have changed so has our Constitution Today we face serious challenges to the nation's constitutional legacy Endless wars a sharply divided electorate economic inequality and immigration along with a host of other issues have placed demands on government and on society that test our constitutional values Understanding how the Constitution has evolved will help us adapt its principles to the challenges of our age ABOUT THE SERIES The Very Short Introductions series from Oxford University Press contains hundreds of titles in almost every subject area These pocket sized books are the perfect way to get ahead in a new subject quickly Our expert authors combine facts analysis perspective new ideas and enthusiasm to make interesting and challenging topics highly readable Congress, the Court, and the

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