

**BOOK REVIEW: NICHOLAS ARONEY ET AL –  
THE CONSTITUTION OF THE  
COMMONWEALTH OF AUSTRALIA: HISTORY,  
PRINCIPLE AND INTERPRETATION  
(CAMBRIDGE UNIVERSITY PRESS, 2015)**

BRUCE LINKERMANN\*

I first came across Professor Aroney's writing a few years ago, at my constitutional law professor's behest. I was instructed to peruse Professor Aroney's article, 'Constitutional Choices in the Work Choices Case, or What Exactly Is Wrong with the Reserved Powers Doctrine?'. Therein I found an insightful analysis of a seminal case. The outcome of the *Work Choices Case*, as Professor Aroney argued, was in a sense entirely predictable: the recapitulation of 'a series of interpretive choices that have been made by the High Court over the course of its history'.<sup>1</sup>

In *The Constitution of the Commonwealth of Australia: History, Principle and Interpretation* Professor Aroney and three outstanding constitutional law academics – Peter Gerangelos, Sarah Murray and James Stellios – discuss the historical context in which Federation took place and the subsequent judicial decisions that have given meaning to the Australian Constitution. For, although the Constitution is written, so 'fixed' in a sense, it is a document designed to endure, designed to remain relevant in an ever-changing society. To meet this need to make the document

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\* LLB Undergraduate Student, Murdoch University; Junior Clerk at Steenhof Brothers Barrister and Solicitors.

<sup>1</sup> Nicholas Aroney, 'Constitutional Choices in the Work Choices Case, or What Exactly Is Wrong with the Reserved Powers Doctrine?' (2008) 32(1) *Melbourne University Law Review* 1.

endure, the High Court has responded by applying interpretative methods that have indelibly shaped the institutions of government.

In the first chapter the authors describe the fundamental federal character of the Australian Constitution: a compact to unify six self-governing colonies while simultaneously creating a federal government and state governments with exclusively defined powers. This federal character is created and maintained through five interconnected constitutional principles: ‘the rule of law, parliamentary sovereignty, judicial review, the separation of powers, representative and responsible government, and federalism’.<sup>2</sup> Throughout this book, the High Court’s interpretation of the applicability and scope of these principles as they live in the structure and text of the Constitution is shown to be the driving force behind the development of constitutional law and the institutions of government.

In the first five chapter the authors examine the composition of the federal parliament and they explore the nature and limits of federal legislative power. In their discussion they also discuss the judicial expansion of legislative power. This expansion – arguably the most influential shift in Australian constitutional law – has seen the High Court’s interpretative methods move from one favouring the Constitution as giving efficacy to a federal compact to one favouring the Constitution as a statute of the British Imperial Parliament. The result has been that federal legislative powers are plenary and interpreted as widely as the words could literally mean.

In chapters six and seven the authors discuss the structure of the executive and the scope of executive power. The authors comment on the

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<sup>2</sup> Nicholas Aroney et al, *The Constitution of the Commonwealth of Australia: History, Principle and Interpretation*, (Cambridge University Press 2015) 32.

fusion of the executive and legislative branches, describing this constitutional feature as, on one hand, entirely compatible with the notion of ‘responsible government’ yet, on the other hand, at odds with the strict American separation of executive and legislative powers.

In chapters eight and nine the authors discuss the judiciary and the scope of judicial power. They comment on the separation of judicial power from the executive and legislative powers, noting that the High Court has held that it is essentially a power necessary to protect rights and to uphold the Constitution’s federal character. It is a power granted to an impartial adjudicator to determine disagreements between the different branches of government, between federal and state governments, and disputes that affect the rights of individuals.

Lastly, in chapter ten the authors discuss the States, the historical role they played in Federation, and the nature of their Constitutions.

As an undergraduate law student, I unequivocally recommend this book to any student intending to learn Australian constitutional law. This dynamic and complex body of law is not easy to comprehend for students new to the subject. But this book explains the history of federation, the theoretical principles that inform the constitutional system, and the judicial decisions that have shaped those principles and shaped the meaning of the Constitution. Simply put, it was a pleasure to read and will undoubtedly be an invaluable addition to any scholar of the Australian Constitution.