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### SCEPTICISM AND JUDICIAL METHOD

**Susan M Crennan**

This article investigates the scepticism that has haunted the debate over the extent to which judges and judicial methods can or should accommodate contested values and policy considerations. In so doing, it considers briefly certain cultural theories associated with Jean-François Lyotard, Jacques Derrida and in particular, Michel Foucault. Being Postmodern thinkers, broadly speaking, they reject established values, opposing whatever they consider to be authoritarian and instead, encourage relativism and pluralism. The author then looks at the charge that our legal institutions reflect and implement arbitrary governance by examining what “sovereignty” really means in Australian constitutional history and, before that, English constitutional history. The author concludes by exploring factors which bear on judging and judicial method, grouped as institutional factors, principles and doctrines and procedural matters and proposes that if the discussed scepticism is to be directed to the exercise of reason in judicial method or to the public’s confidence in the rule of law, it would need to have a greater appreciation of our past and the balances developed in our system designed to counter arbitrary. .... 169

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