

PUBLIC LAW REVIEW

Volume 18, Number 3

September 2007

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Cycles of legality in emergency times – *David Dyzenhaus*

This article analyses the cycles of legality that follow the state's response to the threat of terrorism. It looks to trends in the apex courts of the United Kingdom, Canada and Australia, with a focus on the last two. In one cycle, all the main legal institutions cooperate in devising a response that is consistent with substantive principles of the rule of law. In the other, a thin veneer of legality or an empty proceduralism is adopted in order to cover what is in essence arbitrary power. One of these cycles is inevitable because of the general commitment by states to legality, as is the participation by judges in policing in some way the legal regimes constructed by Legislatures and Executives. The main question addressed is whether the second cycle is more likely, whether, that is, judges must end up giving the stamp of legality to arbitrary power. 165

Common law within three federations – *Mark Leeming*

This article is about the structure of common law in three federations: Australia, Canada and the United States of America. It addresses how and why the first two (but not the third) of those federations have national bodies of common law, and how and why the last two (but not the first) have bodies of federal common law. By reference to recent examples, it illustrates why these differences matter. 186

A Constitution for a new State: Dilemmas for the Northern Territory – *Anne Twomey*

The Northern Territory is once again considering the prospect of Statehood. It has issued a report that considers what might be included in a proposed Constitution for the new State. This article focuses on three aspects of that report. First, it analyses the constitutional means by which a new State can be admitted to the federation. Secondly, it addresses the question of whether the new Constitution could be completely entrenched, including the entrenchment of Aboriginal land rights. Finally, it considers the question of whether there needs to be a Governor for the new State and whether the Governor (however named) must be appointed by the Queen. 200

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100 Harris Street PYRMONT NSW 2009
Tel: (02) 8587 7000 Fax: (02) 8587 7100



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ISSN 1034-3024

Typeset by Lawbook Co., Pyrmont, NSW

Printed by Ligare Pty Ltd, Riverwood, NSW