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ARTICLES

The Carltona doctrine – *Mark Campbell*

The Carltona doctrine allows executive government to act through the civil service as an alternative to using delegations; and it has been suggested that statutes providing general powers of delegation exclude the doctrine. However, in the first case to address the matter, the High Court of New Zealand has held that general powers of delegation are not inconsistent with the Carltona principle. This article discusses that decision as a springboard to re-examine the doctrine. Carltona is relied on in a wide range of situations that call its fundamental justification (the constitutional relationship of Ministers and the civil service) into question, and yet at the same time is restricted by ad hoc assessments of case-specific administrative necessity not intended by the original decision. Its rationale must therefore be reconsidered. The courts must recognise that the constitutional foundation no longer applies, and I suggest that “necessity” should be interpreted in its original, broad, sense.

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Situating the core and the structure of experience in constitutional interpretation: Judicial reasoning under the Indian Constitution – *Shubhankar Dam*

Can a person convicted of a criminal offence be sworn in and continue to function as a Chief Minister of a State under the Indian Constitution? The Supreme Court of India was confronted with the question in *BR Kapur v State of Tamil Nadu*. The court decided in the negative. This article articulates four lines of reasoning that expose the normative choices inherent in the text of the decision; choices essential for developing the coherence of the judgment. But more importantly, this article argues that such a critique exemplifies the need to move towards a poststructural account of Indian constitutional law. The (near) infinite malleability of the text necessarily calls for normative choices and to understand a judgment is to understand the choices that form the underlying basis for “reasons” in a judgment. The article briefly outlines the core of the poststructural moments in constitutional law and argues that BR Kapur exemplifies one of the two moments that is at the heart of this account.

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BOOK REVIEW – *Janet McLean*

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