

PUBLIC LAW REVIEW

Volume 20, Number 3

September 2009

VALE

Mike Taggart – *Mark Aronson and Cheryl Saunders* 175

COMMENTS

Litigating the selection of political party candidates in New Zealand – *Andrew Geddis* 178

Calling a coup a coup: Judicial authority versus political reality in the Fiji Islands – *Nicola McGarrity* 182

The rule of law in Pakistan – *Niaz A Shah* 187

ARTICLES

A tale of two clerks: When are appropriations appropriate in the Senate?
– *Gabrielle J Appleby and John M Williams*

At the end of September 2008, a conflict arose between the Senate and the House of Representatives, fuelled by the opposing opinions of their respective clerks. The disagreement centred on the constitutionality of the introduction of a Bill in the Senate by a private member that increased expenditure under a standing appropriation. The debate unfolded in the Houses of Parliament, the newspapers and over the airwaves. This article discusses the background to the standoff before considering the historical context of the constitutional restrictions governing the parliamentary process for appropriations. The evolution of appropriations in the Australian federation informs this debate, and the nature of “standing appropriations” in the current budgetary system is investigated. Finally, the article assesses the divergent opinions held by the two Houses in the 2008 controversy before advancing the preferred constitutional view of the situation. Ultimately, it is believed the actions of the Senate were misguided and arguably unconstitutional. 194

The scope of judicial rights interpretation under bills of rights (and its political consequences) – *Dan Meagher*

The experience of comparable Commonwealth jurisdictions suggests that judicial rights interpretation under Australian bills of rights will generate controversy and have political consequences. This article argues that these consequences include the claim that judges have sometimes engaged in illegitimate judicial legislation (not interpretation), with the greater politicisation of the judicial appointments process being the likely end result. However, an analysis of the relevant bills of rights jurisprudence in New Zealand and the United Kingdom demonstrates that the capacity of the courts to deliver an interpretive remedy in rights cases through a legitimate process of construction is significant. The problem, then, for Australian judges in bill of rights jurisdictions is that even when they seek to honour the parliamentary directive to protect rights where possible, this action may generate a hostile political reaction. It is, therefore, argued that the operation (and possible future enactment) of bills of rights throughout Australia must be accompanied by reform

of the judicial appointments process. This is necessary to better secure the independence of those Australian courts with the difficult and politically sensitive task of applying a bill of rights.	214
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BOOK REVIEW

A Simple Common Lawyer: Essays in Honour of Michael Taggart – <i>Reviewer: Jason N E Varuhas</i>	233
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DEVELOPMENTS	241
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THOMSON REUTERS

© 2009 Thomson Reuters (Professional) Australia Limited
ABN 64 058 914 668

Lawbook Co.

Published in Sydney

ISSN 0816-956X

Typeset by Thomson Reuters (Professional) Australia Limited, Pyrmont, NSW

Printed by Ligare Pty Ltd, Riverwood, NSW