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COMMENTS – *Editor: Dan Meagher*

Determining Membership: Aboriginality and Alienage in the Australian High Court – *Michelle Foster and Kirsty Gover* 105

Rebuilt on Sand: Canadian Administrative Law after Vavilov – *Léonid Sirota* 117

The Constitution and Outer Space – *Matthew Stubbs and Joel Lisk* 123

BOOK SYMPOSIUM: THE POLITICO-LEGAL DYNAMICS OF JUDICIAL REVIEW

The Dynamics of Judicial Review – *Cheryl Saunders AO* 132

Comparing Judicial Review Regimes: A Review Essay on the Politico-legal Dynamics of Judicial Review, by Theunis Roux – *Dr Zim Nwokora* 133

Ideal Types and the Dynamics of Ideational Change – *Mark Tushnet* 142

Response to Zim Nwokora and Mark Tushnet – *Theunis Roux* 145

ARTICLES

The "Threshold Question" in Clubb v Edwards: Political Communication, Severance and Practice – *Thomas Wood*

Clubb v Edwards presented the High Court with the opportunity to determine whether it should resolve a challenge based on the implied freedom of political communication on the basis of the "threshold question". Resolving a case on that basis enables the Court to dismiss a challenge to validity without deciding the merits of a particular challenge, so long as it finds: (1) the challenging party was not engaged in political communication; and (2) the impugned law is severable. If those conditions are met, then (3) the Court may choose, as a matter of practice, to decline to resolve the case on the merits. This article analyses each of these three issues in turn by reference to the various judgments in *Clubb*. 155

The Japan–Australia Investment Relationship: Treaties Then and Now – *Tania Voon*

Australia continues to seek closer economic relationships with its Asian neighbours and other countries around the globe, particularly through the conclusion of treaties governing trade and investment matters. Australia's investment relationship with Japan is underpinned by several such agreements, from the 1957 Agreement on Commerce to the 2018 Comprehensive and Progressive Agreement for Trans-Pacific Partnership. As increasing material becomes publicly available regarding the negotiation of earlier economic treaties, lessons can be learned for ongoing negotiations and economic policies. This article considers the negotiation of the 1976 Basic Treaty of Friendship and Co-operation between

Australia and Japan as a way of reflecting on the development of international investment law and its implications for Australia's trade and investment strategy. Even at that time, negotiators were aware of the potential for overly expansive interpretations of investment obligations to hinder Australian regulatory autonomy – something of much greater concern now that Japanese investors may bring claims directly against Australia as host state. 175

Forty Years of Freedom of Information (FOI): Accountability, Policymaking and the National Innovation and Science Agenda – *AJ George, Julie-Anne Tarr and Susan Bird*

Executive power in policymaking has been the subject of longstanding jurisprudential and political debate. Innovation policies aimed at driving collaborative government and industry outcomes sit very much at the intersection of this tension. In the 1990s Christopher Arup highlighted legitimacy concerns around "corporatist" innovation policy involving greater government–corporate alliancing and selective policy measures, nominating procedural reform and audits to check policymaking power. However, the development of the National Innovation and Science Agenda shows these mechanisms to be less than effective. More than four decades after the *Freedom of Information Bill 1978* (Cth) was considered by a Senate Committee, it is timely to reconsider the role of public scrutiny in policymaking. While increased scrutiny is at least part of the answer to better policy, the Freedom of Information regime faces significant obstacles in achieving its objectives in the innovation policy space, if not at broader levels within government policy development. Against the backdrop of recent calls for greater confidentiality in the policymaking process, it is argued that increased secrecy is not the answer. 189

BOOK REVIEW – *Editor: Edward Willis*

The Coherence of Statutory Interpretation, by Jeffrey Barnes (ed) – *Reviewed by Jeffrey Goldsworthy AM* 212

DEVELOPMENTS 219