

PUBLIC LAW REVIEW

Volume 35, Number 1

2024

COMMENT – *Editor(s): Dan Meagher*

Declarations of Inconsistency in the New Zealand Bill of Rights Act 1990: The New Zealand Bill of Rights (Declarations of Inconsistency) Amendment Act 2022
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Continuity and Consistency in the Application of Fundamental Constitutional Principle: NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs (2023) 97 ALJR 1005; [2023] HCA 37 – *Emily Hammond* 8

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ARTICLES

“Necessary” Interferences with the Implied Freedom of Political Communication in the Australian Constitution: How Proportionality Is Reducing Judicial Review – *Anthony Gray*

This article discusses the use of the concept of structured proportionality in the context of the implied freedom of political communication. The author supports the use of such an approach to constitutional law. However, the article argues that, by virtue of the way in which members of the High Court apply structured proportionality, the effect has been an impoverished level of judicial review. Continuation of these practices create a real risk that the implied freedom will have very limited scope. The promise of the benefits of relatively free political communication is at risk of being neutered by an overly narrow approach to structured proportionality. 24

The Freedom of Interstate Intercourse: A Critical Appraisal of *Palmer v Western Australia* through a Return to *Cole v Whitfield* – *Triston Qian*

This article notes the tension between the firm rejection in *Cole v Whitfield* (Cole) of a strict correspondence between the two limbs under s 92, and the reunification attempts in *Palmer v Western Australia* (Palmer). This article reviews the post-Cole developments of both limbs and critiques the reasons given in Palmer for reunifying them, of which the most significant one is to ensure consistency and avoid the two limbs subsuming each other where they overlap in operation. This article distinguishes two types of overlap and argues that the trade/commerce limb should apply exclusively where interstate trade/commerce also involve intercourse. Having removed the imperative for a strict correspondence, this article provides a justification for the Cole position: given the non-economic nature of interstate intercourse, the impermissible purpose of impeding interstate intercourse is manifested not by a discriminatory burden, but by a burden that would not have been imposed absent state borders. 49

The Prudential Approach to Constitutional Adjudication – Jonathan Tjandra

The “prudential approach to resolving constitutional questions” is a settled practice of the High Court of Australia. As a principle of judicial restraint, it enables the High Court to refrain from adjudicating on questions of constitutional law. Although it is a longstanding practice, there are many outstanding questions as to the appropriate scope and application of the prudential approach. For example, different Justices have expressed conflicting views as to the application of the prudential approach in a number of recent cases. This article analyses the jurisprudence of the High Court to clarify these ambiguities, with comparison to equivalent doctrines in the United States, and to answer three issues: whether the prudential approach is truly prudential or constitutional in nature; its relationship to constitutional doctrines of standing and jurisdiction; and its relationship with the duty of the High Court to judicially review the constitutionality of the acts of the other branches of government. 69

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