

In this book, we have chosen to draw on organising ideas that represent the many dimensions of public law. In this first Part, we introduce foundational narratives and concepts of Australian public law. Chapter 2 uses a historical analysis to discuss the development of Australian public law that gives the context to understand the modern public law institutions, rules and issues. Chapter 3 addresses the foundational fact of Australia's colonial establishment, and the various dimensions of the ongoing relationship between Australia's first peoples—Aboriginal and Torres Strait Islander peoples—and the Australian state. Chapter 4 introduces the core organising principle and value of federalism. Parts II to IV (Chapters 5 to 11) are organised according to the functions and powers of the core Australian public law institutions of government. Chapters 5 and 6 explain the principles of democracy and representative government, and the processes of parliament, their powers and their limitations; Chapters 7 and 8 outline the actors that constitute the executive and the different forms of executive power and how this is brought to account; Chapters 9 and 10 turn to judicial power and its separation from the other government powers, and how this separation has operated in practice to protect fundamental rights. Chapter 11 addresses the judiciary's important role in interpreting statutes, and the principles and public law doctrines that influence this. Part V concludes the book with a consideration of the external influences on Australian public law. Chapter 12 explains how the expectations of the community shape public law in the form of government protection and promotion of human rights, while Chapter 13 considers the influence on Australian public law of international law and institutions.

DISCUSSION QUESTIONS

- 1 Does public law now reach into all aspects of our life, or is there still a private sphere untouched by public law?
- 2 What is the purported distinction between public law in civil law countries and public law in the common law tradition? Is the distinction convincing today?
- 3 Is the idea of public law dependent on the existence of nation-states, or could there be a global public law?
- 4 Explain the core distinction between the theories of political constitutionalism and legal constitutionalism. Where are the strengths and weaknesses of each theory and how might any weaknesses be addressed?
- 5 How different are the procedural and substantive approaches to the rule of law? Which is more useful for protecting human rights?

FURTHER READING

David Feldman (ed), *English Public Law* (Oxford University Press, 2004)

Michael Hardt and Antonio Negri, *Commonwealth* (Harvard University Press, 2009)

Martin Loughlin, *The Idea of Public Law* (Oxford University Press, 2004)

John Rawls, *A Theory of Justice* (Harvard University Press, 1971)

Martin Smith, *Power and the State* (Palgrave Macmillan, 2009)

Adam Tomkins, *Public Law* (Oxford University Press, 2003)

Elisabeth Zoller, *Introduction to Public Law: A Comparative Study* (Martinus Nijhoff, 2008)