

Australian Constitutional Law and Theory Commentary and Materials

Tony Blackshield, George Williams and Brian Fitzgerald; *The Federation Press, 1995; 1070 pp; \$85.00 softcover.*

In late 1995, my colleague Isabel Karpin and I were given the demanding but welcome task of designing a pilot constitutional law course at the University of Sydney. Our aims were to put together and deliver in Semester 1, 1996, a constitutional law course which was critical and contextual, which employed interactive, student-centred learning principles, which integrated skills training with the teaching of a substantive law subject, and which used 'best practice' continuous assessment models. It was a daunting brief; Federation's announcement of the impending publication of Blackshield et al's book looked like a godsend.

How was the promise of this text borne out?

Australian constitutional Law & Theory: Commentary & Materials is a version of the classic law school 'Cases and Materials' format — a teaching text. While its politics are cutely telegraphed in the Preface in the following sentence:

**The law is stated as at
11 November 1995,**

and in subheadings like 'The Murphy Catalyst', it nowhere matches this implicit criticism of its competition for the hearts and minds of Australia's constitutional law teachers (and the pockets of their students) with a critical reflection on its generic model.

Post-*The Quiet Revolution* it seems disappointing that a student text which so clearly seeks to break new ground and which often succeeds in doing so is not equally thoughtful and challenging about the pedagogic contexts in which it might be deployed. And of the kinds of legal subjects it will play a part in forming. It is even more disappointing given that in Graycar and Morgan's *The Hidden Gender of Law*, Federation had published a variation on the cases and materials format which performed precisely this kind of critical collapsing of the crude substance-form dichotomy which still bedevils Australian legal education like the ghost of legalism past.

This is a text which explicitly challenges the High Court's coy *Realpolitik* in *Mabo* by calling the issue of sovereignty in this country what it is — a constitutional issue of critical significance. That it can do this and still extract the 'rationes' of constitutional cases in digestible chunks and paraphrase 'material facts' of cases, and so fail squarely to address the ways in which the law that constitutes our nation is constructed in its reading and writing is a crucial blindspot particularly visible in a critical project. That the work includes sections on 'Feminism and Constitutionalism' and 'Postmodernity and Postmodernism' in its chapter on 'Theoretical Approaches to constitutional Understanding' makes this lack of self-referentiality by Blackshield and his co-authors verge on the ironic.

This is a major criticism. I have other, less significant and more traditional ones. For example, its list of exceptions to the *Boilermakers*' principle is thin and oversimplified. Despite quite a useful chapter on 'Characterisation and the Trade and Commerce Power', it does not take up Arthur Glass's lead in *Federal constitutional Law: An Introduction*, and make the question of constitutional interpretation an Australian as well as a US constitutional law commonplace.

However, there are many things which this text does that are new and useful. It is well and thoughtfully structured. Its range of extracted materials is much wider and more thought-provoking than that of most casebooks. It historicises both its approach to the question of constitutionality and its account of shifts in constitutional interpretation by the High Court. It does a very good job indeed of rationalising 'manner and form', so often a nightmare of incomprehension for students of Australian federal constitutional law. The authors' decision to combine their account of the appropriation and nationhood powers is intelligent, and its juxtaposing of this chapter with that on the taxation and grants powers thought-provoking. The

chapter on the High Court is welcome, if more circumspect than it might have been on issues such as the method of appointment of federal judges and on judicial sociology and judicial discourse in Australian constitutional cases. And I suspect that despite its length it is more accessible to student readers than its principal competition.

Reader, we set Blackshield et al. as our casebook. But we supplemented it with a tome of our own.

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The Dark Room

by Minette Walters; Allen & Unwin 1995; 398 pp; \$18.95.

For a crime fiction junkie a punchy beginning is always a good sign. And punchy is what the reader encounters in the prologue of *The Dark Room*. Minette Walters provides a disconcerting start to the book in order to set up the discovery of the body. She then launches into the telling of the twisted story revolving around Jinx Kingsley who wakes from a coma to find that she has apparently tried to commit suicide twice within a week and that her fiancé has abandoned her for her best friend within weeks of their wedding. The fact that the bodies of her fiancé and best friend are soon discovered and that her previous husband had been murdered after an affair with the same best friend means that all roads point to Jinx. Or do they? A raft of other characters also appear to have motive, means and opportunity and the appearance of more bodies along the way leaves the reader to untwist a number of tangled leads and subplots.

Jinx is portrayed as financially successful but with little control over her emotional well being. Despite this character flaw, or perhaps because of it, this reader found her high fashion, high class English ways eminently irritating. Not that any of Jinx's relatives or friends are any more redeemable. Greedy, spoilt, selfish, and plain stupid are merely some of the terms that could be applied to the other characters in this book. Indeed, as you progress through the plot