

# Principles of Public Law

## Lecture 1A – 3<sup>rd</sup> March 2015 – Intro and Overview

### What is Public Law?

- Public law is law that affects society as a whole ie. Criminal Law, Administrative law
- Power or power sharing in order to protect people's rights
- not health policy or education policy
- Constitutional recognition of Indigenous people
- Constitutional change
- Bikey legislation
- Voting, right to vote
- Gay marriage – laws overriding state laws
- Terrorism laws

### Legal Definition:

Separate treatment of constitutional law, administrative law and statutory interpretation law remains useful in many respects. However, the integrative terminology of "public law" merges constitutional law, administrative law and the law of statutory interpretation, thereby treating the activity of governing as a distinct subject matter. In Australian jurisprudence, these three subjects' areas are closely interrelated.

"The primary concern of public law is how the institutions of states operate to govern the people residing in their territory. States govern through institutions, so an important aspect of public law is to describe the origin and function of these institutions, and the relationship between them" – Reilly et al, Australian Public Law (OUP, 21001), 4

'Attorney-General George Brandis censured over Gillian Triggs affair':

- Senate have power
- Role of Attorney General
- Power sharing

### Aims of Course:

- How legislation is made and interpreted
- Possible avenues of review where legislation is unconstitutional or the use of legislation is erroneous or unlawful
- The different arms and institutions of government in Australia and the relationship between them
- The acquisition of sovereignty from Australia's Indigenous peoples
- Australians legal an political independence from Britain

### (Readings B&W) Constitutionalism and Rule of Law:

#### Australia: A Constitutional Hybrid:

- The constitution is a hybrid of ideas and models
- From the UK it took the essence of the Westminster system of representative government and responsible government within the framework of a constitutional monarchy
- The US, it adopted the concepts of federalism, the separation of powers and judicial review
- The symbolic façade of the Australian system can mask its substance. The façade is that of monarchical government
- The queen, as represented in Australia by the GG, is Australia's head of state
- Representative government means government by the people through their elected representatives
- Responsible government means that the executive arm of government is responsible to Parliament for its actions
- The Parliament is the central institution through which all the disparate elements of the system of government, from the people through to the Crown, are welded into one consolidated chain of command

# Principles On Public Law

**D Keegan**



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