



# LAW 491

## Politics and the Constitution

FY1 External 2014

*Dept of Law*

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#### **Disclaimer**

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## General Information

Unit convenor and teaching staff

Unit Convenor

Margaret Kelly

[margaret.kelly@mq.edu.au](mailto:margaret.kelly@mq.edu.au)

Contact via [margaret.kelly@mq.edu.au](mailto:margaret.kelly@mq.edu.au)

W3A 616

By email or phone

Credit points

3

Prerequisites

(6cp in LAW or LAWS units at 300 level) or (39cp including POL207)

Corequisites

Co-badged status

Unit description

This unit analyses the practical effects of the Constitution and its interpretation upon Australian political life. It places the case law as determined by judges in its historical context, and shows how this has affected the development of Australian politics. The unit examines the interaction of the Constitution, history and politics in Australia, in particular: ideas of constitutionalism and governance; the effect of ideology on drafting; Commonwealth-State relations; elections; the roles of Crown, the Senate and the House of Representatives; the Executive; the economy; and throughout the role of the High Court's interpretation for Australian political life and governance.

## Important Academic Dates

Information about important academic dates including deadlines for withdrawing from units are available at <https://www.mq.edu.au/study/calendar-of-dates>

## Learning Outcomes

On successful completion of this unit, you will be able to:

Identify issues that arise in interaction of the Constitution and constitutional law with Australian politics and history

Analyze specific instances of the effect of the Constitution on politics and of politics on the Constitution

Identify and analyze the effect of judicial interpretation of the Constitution on Australian politics.

Critique and analyze the contextual interaction of the Constitution and politics, with regard to Australia's history.

Model clear and concise communication of complex issues dealing with the intersection of constitutional law and politics

Apply Independent contextual critique and analysis, and independent research skills.

Critically analyze the role of the judiciary in relation to cases, history and politics in the context of Constitutional law.

## General Assessment Information

Indicate the Topic of the paper, and the number of words on page 1.

All written work must be written clearly, with good grammar, correct word usage, correct punctuation, and lack of spelling errors. Poor or bad expression will be penalised, as the study of law is one in which clear expression, and the meaning of words is of the highest importance. All written work must be properly referenced and conform to standard stylistic conventions. All cases have to be properly cited. Students must consult *The Australian Guide to Legal Citation (3rd end., 2010)* which may either be bought from or ordered through the Co-op Bookshop, or accessed for viewing through <http://www.law.unimelb.edu.au/files/dmfile/FinalOnlinePDF-2012Reprint.pdf>.

In addition to clear grammatical sentence structure, students are expected to structure the paper logically. Headings may be used to facilitate the progress of your argument in the essay. A very poorly referenced and expressed essay will likely fail.

Essays may include a bibliography of all sources consulted (though all bibliographical information of sources quoted or referred to in the essay *must* be included in footnotes.) **A bibliography is not mandatory.**

**Use an easily-readable font in 12 point, with one and a half or 2 line spacing; footnotes to be in 10 point with single spacing. Lengthy Quotations to be indented with single spacing.**

## Assessment Tasks

Name	Weighting	Due
<a href="#"><u>OCS attendance compulsory</u></a>	0%	8-11 December 2014
<a href="#"><u>Set Research Essay</u></a>	40%	12 midday 22 December 2014
<a href="#"><u>Critical Research Paper</u></a>	60%	3 pm Tuesday 22 January 2015

## OCS attendance compulsory

Due: **8-11 December 2014**

Weighting: **0%**

**All students** are required to attend both days of the On-Campus Session (OCS). Students who do not attend both days of the on-campus session will not be eligible to pass the unit unless they are prevented from attending by some unavoidable disruption *and* some alternative arrangement has been negotiated **in advance** of the OCS with the Unit Convener. In the case of an emergency on the dates on the OCS, the convener must be contacted immediately. Students must enrol in one of the 2x2 day OnCampus Sessions: 8-9, or 10-11 December 2014.

On successful completion you will be able to:

- Identify issues that arise in interaction of the Constitution and constitutional law with Australian politics and history
- Model clear and concise communication of complex issues dealing with the intersection of constitutional law and politics

## Set Research Essay

Due: **12 midday 22 December 2014**

Weighting: **40%**

*Overview:*

Choose ONE of the FOUR specified topics for your initial research essay arising from the topics specified in the Study Guide for Topics 1-6 (see the four questions below)

**Issue date:** as soon as iLearn is made available to students

**Due date:** 12 midday Monday 22 December 2014

**Word Length:** 2,000 words (Footnotes are NOT counted in the Word Limit).

**Value:** 40%

**Submission:** Turnitin *and* through COE e-Assignment ( Turnitin AND also electronically through COE [coeassign@mq.edu.au](mailto:coeassign@mq.edu.au)).

**Failure to submit by the due time will mean the paper will not be marked and the student will receive a mark of zero (0)**, unless special consideration has been granted in accordance with the Disruption to Study policy..

**General Guidance and Directions:**

**Students must choose to write on ONE of the FOUR following topics, which are drawn from the first 6 Lecture Topics and Recorded Lectures.**

1. *Quis custodiet ipsos custodes?* [Who will guard the guardians?] asked Juvenal in his *Satires*

(6.347-48). In the light of this observation, discuss critically the role of the High Court of Australia's impact on the political development of the Commonwealth of Australia.

2. The Senate has been called 'unrepresentative swill' (Paul Keating, Prime Minister, 1992). Critically analyze the role of the Senate in the 'federal compact' and its relevance today.

3. The Preamble to the *Commonwealth of Australia Constitution Act 1900* (UK) states: 'Whereas the people ... agreed to unite in one indissoluble Federal Commonwealth ...'. This could be said to encapsulate the conundrum that lies at the heart of Australian governance. Critically discuss.

4. What really is the constitutional and political relationship between 'the Commonwealth' and 'the States'?

## **Guidance for the Research Essay**

The research essay must investigate the question from the points of view of constitutional law, judicial interpretation, and political history and evolution. Students must draw upon the lectures, lecture notes and Course Materials, and any other scholarly journal or books, and answer the question having regard overall to the *Constitution*, its interpretation, and the impact of that interpretation. Students have considerable discretion as to how they answer the question—there are many possible ways of viewing and answering each question. Therefore the student must initially outline the understanding of the question and the methodology used in answering it: e.g. constitutional, political and historical, or constitutional political and economic for say either Q3 or Q4... However, at the heart of the paper there must be a good stringent constitutional analysis.

The assessment task will provide an opportunity for students to use research skills developed in earlier years of the degree through independent research and to apply analytical skills specifically tailored to constitutional law issues. It will test students' understanding of the law, as well as their understanding of the historical importance of particular Constitutional provisions and judicial decisions, and allow them an opportunity to demonstrate their analytical and critical capacities, and their writing skills. This task requires that students come to a reasoned analytical conclusion on the particular problem or issue associated with their chosen topic.

**The completed assessment task must be submitted by 12 midday 22 December 2014 through Turnitin AND COE [coeassign@mq.edu.au](mailto:coeassign@mq.edu.au). See also [http://mq.edu.au/about\\_us/offices\\_and\\_units/centre\\_for\\_open\\_education/submission\\_of\\_assignments/](http://mq.edu.au/about_us/offices_and_units/centre_for_open_education/submission_of_assignments/) .**

On successful completion you will be able to:

- Identify issues that arise in interaction of the Constitution and constitutional law with Australian politics and history
- Analyze specific instances of the effect of the Constitution on politics and of politics on the Constitution

- Identify and analyze the effect of judicial interpretation of the Constitution on Australian politics.
- Critique and analyze the contextual interaction of the Constitution and politics, with regard to Australia's history.
- Model clear and concise communication of complex issues dealing with the intersection of constitutional law and politics
- Apply Independent contextual critique and analysis, and independent research skills.
- Critically analyze the role of the judiciary in relation to cases, history and politics in the context of Constitutional law.

## Critical Research Paper

Due: **3 pm Tuesday 22 January 2015**

Weighting: **60%**

**Critical Research Paper** on a topic of the student's choice arising from any one of the 13 topics set in the Study Guide for the semester *other than* the topic chosen for Assessment 1.

**Issue date:** as soon as iLearn is made available to students. Students must notify the Convenor of the topic *at least* by the end of the OnCampus Session that he or she is attending.

**Due date:** 3 pm Tuesday 22 January 2015.

**Submission:** Turnitin **AND** also electronically through COE [coeassign@mq.edu.au](mailto:coeassign@mq.edu.au).

**Word Length:** 3,000 words (footnotes are not included in the word limit)

**Value:** 60%

### **Guidance on this Assessment:**

This assessment task enables students to choose a major research task, from the 13 topics set down for discussion and study, other than the topic chosen for the first assessment task.

**Students must notify the Convenor of their topic before the end of the OCS that they attend.**

**This research essay must focus on a difficulty or problem associated with the chosen topic**, and investigate the problem from the points of view of constitutional law, judicial interpretation, and political history and evolution. **Students must submit their topic in writing to the Convenor, and receive approval for the topic before beginning work. This must be done before the end of the OnCampus Session.**

The assessment task will provide an opportunity for students to use the skills already enumerated for the first assessment task. It is envisaged, however, that the level of sophistication of analysis will have improved in this second task. **Independent research is a necessity, as well as the student employing his or her own original analysis, bringing to**

**bear informed criticism of the judicial, political and historical developments concerning the chosen topic.**

The completed assessment task must be submitted by **midday, 3 pm Tuesday 22 January 2015**; length: 3,500-5,000 words; **Value 60%**; **Submission: Turnitin AND also electronically through COE [coeassign@mq.edu.au](mailto:coeassign@mq.edu.au).**

**Failure to submit by the due time will mean the paper will not be marked and the student will receive a mark of zero (0)**, unless special consideration has been granted in accordance with the Disruption to Study policy..

On successful completion you will be able to:

- Identify issues that arise in interaction of the Constitution and constitutional law with Australian politics and history
- Analyze specific instances of the effect of the Constitution on politics and of politics on the Constitution
- Identify and analyze the effect of judicial interpretation of the Constitution on Australian politics.
- Critique and analyze the contextual interaction of the Constitution and politics, with regard to Australia's history.
- Model clear and concise communication of complex issues dealing with the intersection of constitutional law and politics
- Apply Independent contextual critique and analysis, and independent research skills.
- Critically analyze the role of the judiciary in relation to cases, history and politics in the context of Constitutional law.

## Delivery and Resources

This Unit is taught through iLearn and an intensive OnCampus Session in session 3 2014 in the following fashion:

- Through intensive discussion at an intensive on-campus session (in accordance with the OnCampus programme)
  - There will be 2 such sessions, one on **8-9 December**, and one on **10-11 December 2014**.
  - These sessions will be recorded
- through pre-recorded lectures available on iLearn,
- Course Materials,
- Lecture Notes online,

- additional materials and highlighted cases online, and

the previous 2012 OnCampus Session classes have been recorded and are available under Echo. This Session 3 classes will also be recorded. The previous lectures were structured around the topics set out in the Unit Schedule. All students will be able to access the lectures online through iLearn. The On Campus Sessions will have a number of issues for discussion which will broadly cover the Lecture programme. The OnCampus Session programme will be distributed online.

In order to gain the maximum from the Intensive OnCampus sessions, students are advised to listen in advance to some of the previous Sessions or Lectures, and to skim the Course Materials.

## Unit Schedule

LECTURE (session in OCS)	TOPIC	TEXT  Chapter(s) from Course Materials
Topic 1	<b>Introduction to the Unit</b>  The Political Foundations of The <i>Constitution</i> ; labour, capital and industrial relations (the economy); defence	Chapter 1(and new notes on industrial relations and defence))
Topic 2	The Great Conflict : Responsible Government versus Federation	Chapter 2
Topic 3	The Battle Between the Houses : Power, Federalism and Double Dissolutions	Chapter 3
Topic 4	The Political Judiciary and the Judicialization of Politics	Chapter 4
Topic 5	Triumph of the Commonwealth over the States	Chapter 5
Topic 6	The <i>Constitution</i> as an Instrument of Economic Policy	Chapter 6
Topic 7	Indigenous Australians and The Constitution	Chapter 7
Topic 8	Making Democracy Work : Electoral Laws and Justice	Chapter 8
Topic 9	Unravelling the Mystique : The Crown and The <i>Constitution</i>	Chapter 9
Topic 10	Subjects, Citizens and Aliens : Defining an Australian	Chapter 10
Topic 11	Australian Independence: What was the Date?	Chapter 11



Topic 12	1975 : The Crisis of The <i>Constitution</i> .	Chapter 12
Topic 13	Is a Republican Constitution possible?	Chapter 13

## Policies and Procedures

Macquarie University policies and procedures are accessible from [Policy Central](#). Students should be aware of the following policies in particular with regard to Learning and Teaching:

Academic Honesty Policy [http://mq.edu.au/policy/docs/academic\\_honesty/policy.html](http://mq.edu.au/policy/docs/academic_honesty/policy.html)

Assessment Policy <http://mq.edu.au/policy/docs/assessment/policy.html>

Grading Policy <http://mq.edu.au/policy/docs/grading/policy.html>

Grade Appeal Policy <http://mq.edu.au/policy/docs/gradeappeal/policy.html>

Grievance Management Policy [http://mq.edu.au/policy/docs/grievance\\_management/policy.html](http://mq.edu.au/policy/docs/grievance_management/policy.html)

Disruption to Studies Policy [http://www.mq.edu.au/policy/docs/disruption\\_studies/policy.html](http://www.mq.edu.au/policy/docs/disruption_studies/policy.html) *The Disruption to Studies Policy is effective from March 3 2014 and replaces the Special Consideration Policy.*

In addition, a number of other policies can be found in the [Learning and Teaching Category](#) of Policy Central.

## Student Code of Conduct

Macquarie University students have a responsibility to be familiar with the Student Code of Conduct: [https://students.mq.edu.au/support/student\\_conduct/](https://students.mq.edu.au/support/student_conduct/)

## Student Support

Macquarie University provides a range of support services for students. For details, visit <http://students.mq.edu.au/support/>

## Learning Skills

Learning Skills ([mq.edu.au/learningskills](http://mq.edu.au/learningskills)) provides academic writing resources and study strategies to improve your marks and take control of your study.

- [Workshops](#)
- [StudyWise](#)
- [Academic Integrity Module for Students](#)
- [Ask a Learning Adviser](#)

## Student Services and Support

Students with a disability are encouraged to contact the [Disability Service](#) who can provide appropriate help with any issues that arise during their studies.

## Student Enquiries

For all student enquiries, visit Student Connect at [ask.mq.edu.au](http://ask.mq.edu.au)

## IT Help

For help with University computer systems and technology, visit <http://informatics.mq.edu.au/help/>.

When using the University's IT, you must adhere to the [Acceptable Use Policy](#). The policy applies to all who connect to the MQ network including students.

## Graduate Capabilities

### Capable of Professional and Personal Judgement and Initiative

We want our graduates to have emotional intelligence and sound interpersonal skills and to demonstrate discernment and common sense in their professional and personal judgement. They will exercise initiative as needed. They will be capable of risk assessment, and be able to handle ambiguity and complexity, enabling them to be adaptable in diverse and changing environments.

This graduate capability is supported by:

#### Learning outcomes

- Analyze specific instances of the effect of the Constitution on politics and of politics on the Constitution
- Critique and analyze the contextual interaction of the Constitution and politics, with regard to Australia's history.
- Apply Independent contextual critique and analysis, and independent research skills.
- Critically analyze the role of the judiciary in relation to cases, history and politics in the context of Constitutional law.

#### Assessment tasks

- Set Research Essay
- Critical Research Paper

### Commitment to Continuous Learning

Our graduates will have enquiring minds and a literate curiosity which will lead them to pursue knowledge for its own sake. They will continue to pursue learning in their careers and as they participate in the world. They will be capable of reflecting on their experiences and relationships

with others and the environment, learning from them, and growing - personally, professionally and socially.

This graduate capability is supported by:

### **Learning outcomes**

- Identify issues that arise in interaction of the Constitution and constitutional law with Australian politics and history
- Apply Independent contextual critique and analysis, and independent research skills.

### **Assessment tasks**

- OCS attendance compulsory
- Critical Research Paper

## **Discipline Specific Knowledge and Skills**

Our graduates will take with them the intellectual development, depth and breadth of knowledge, scholarly understanding, and specific subject content in their chosen fields to make them competent and confident in their subject or profession. They will be able to demonstrate, where relevant, professional technical competence and meet professional standards. They will be able to articulate the structure of knowledge of their discipline, be able to adapt discipline-specific knowledge to novel situations, and be able to contribute from their discipline to inter-disciplinary solutions to problems.

This graduate capability is supported by:

### **Learning outcomes**

- Identify issues that arise in interaction of the Constitution and constitutional law with Australian politics and history
- Analyze specific instances of the effect of the Constitution on politics and of politics on the Constitution
- Identify and analyze the effect of judicial interpretation of the Constitution on Australian politics.
- Critique and analyze the contextual interaction of the Constitution and politics, with regard to Australia's history.
- Model clear and concise communication of complex issues dealing with the intersection of constitutional law and politics
- Apply Independent contextual critique and analysis, and independent research skills.
- Critically analyze the role of the judiciary in relation to cases, history and politics in the context of Constitutional law.

## Assessment tasks

- OCS attendance compulsory
- Set Research Essay
- Critical Research Paper

## Critical, Analytical and Integrative Thinking

We want our graduates to be capable of reasoning, questioning and analysing, and to integrate and synthesise learning and knowledge from a range of sources and environments; to be able to critique constraints, assumptions and limitations; to be able to think independently and systemically in relation to scholarly activity, in the workplace, and in the world. We want them to have a level of scientific and information technology literacy.

This graduate capability is supported by:

## Learning outcomes

- Identify issues that arise in interaction of the Constitution and constitutional law with Australian politics and history
- Analyze specific instances of the effect of the Constitution on politics and of politics on the Constitution
- Identify and analyze the effect of judicial interpretation of the Constitution on Australian politics.
- Critique and analyze the contextual interaction of the Constitution and politics, with regard to Australia's history.
- Model clear and concise communication of complex issues dealing with the intersection of constitutional law and politics
- Apply Independent contextual critique and analysis, and independent research skills.
- Critically analyze the role of the judiciary in relation to cases, history and politics in the context of Constitutional law.

## Assessment tasks

- OCS attendance compulsory
- Set Research Essay
- Critical Research Paper

## Problem Solving and Research Capability

Our graduates should be capable of researching; of analysing, and interpreting and assessing data and information in various forms; of drawing connections across fields of knowledge; and they should be able to relate their knowledge to complex situations at work or in the world, in order to diagnose and solve problems. We want them to have the confidence to take the initiative

in doing so, within an awareness of their own limitations.

This graduate capability is supported by:

## **Learning outcomes**

- Analyze specific instances of the effect of the Constitution on politics and of politics on the Constitution
- Identify and analyze the effect of judicial interpretation of the Constitution on Australian politics.
- Critique and analyze the contextual interaction of the Constitution and politics, with regard to Australia's history.
- Model clear and concise communication of complex issues dealing with the intersection of constitutional law and politics
- Apply Independent contextual critique and analysis, and independent research skills.
- Critically analyze the role of the judiciary in relation to cases, history and politics in the context of Constitutional law.

## **Assessment tasks**

- Set Research Essay
- Critical Research Paper

## **Creative and Innovative**

Our graduates will also be capable of creative thinking and of creating knowledge. They will be imaginative and open to experience and capable of innovation at work and in the community. We want them to be engaged in applying their critical, creative thinking.

This graduate capability is supported by:

## **Learning outcomes**

- Analyze specific instances of the effect of the Constitution on politics and of politics on the Constitution
- Identify and analyze the effect of judicial interpretation of the Constitution on Australian politics.
- Apply Independent contextual critique and analysis, and independent research skills.

## **Assessment task**

- Critical Research Paper

## **Effective Communication**

We want to develop in our students the ability to communicate and convey their views in forms effective with different audiences. We want our graduates to take with them the capability to

read, listen, question, gather and evaluate information resources in a variety of formats, assess, write clearly, speak effectively, and to use visual communication and communication technologies as appropriate.

This graduate capability is supported by:

## **Learning outcomes**

- Analyze specific instances of the effect of the Constitution on politics and of politics on the Constitution
- Identify and analyze the effect of judicial interpretation of the Constitution on Australian politics.
- Critique and analyze the contextual interaction of the Constitution and politics, with regard to Australia's history.
- Model clear and concise communication of complex issues dealing with the intersection of constitutional law and politics
- Apply Independent contextual critique and analysis, and independent research skills.
- Critically analyze the role of the judiciary in relation to cases, history and politics in the context of Constitutional law.

## **Assessment tasks**

- OCS attendance compulsory
- Critical Research Paper

## **Engaged and Ethical Local and Global citizens**

As local citizens our graduates will be aware of indigenous perspectives and of the nation's historical context. They will be engaged with the challenges of contemporary society and with knowledge and ideas. We want our graduates to have respect for diversity, to be open-minded, sensitive to others and inclusive, and to be open to other cultures and perspectives: they should have a level of cultural literacy. Our graduates should be aware of disadvantage and social justice, and be willing to participate to help create a wiser and better society.

This graduate capability is supported by:

## **Learning outcomes**

- Identify issues that arise in interaction of the Constitution and constitutional law with Australian politics and history
- Identify and analyze the effect of judicial interpretation of the Constitution on Australian politics.

## **Assessment task**

- Set Research Essay

## Socially and Environmentally Active and Responsible

We want our graduates to be aware of and have respect for self and others; to be able to work with others as a leader and a team player; to have a sense of connectedness with others and country; and to have a sense of mutual obligation. Our graduates should be informed and active participants in moving society towards sustainability.

This graduate capability is supported by:

### Assessment task

- OCS attendance compulsory

## Changes from Previous Offering

This Unit last ran in Session 3 2012. This session 3, attendance at the OCS remains compulsory. Participation will be an ungraded Pass/Fail assessment item. You must pass the participation requirement in order to pass the unit.

## UniWise for Session 3

Dear students, Welcome to session 3 at Macquarie University!

UniWISE is here to help you get through the next session as smoothly as possible, with the aid of iLearn, Facebook, twitter, phone and emails.

Facebook page:

[www.facebook.com.au/uniwisemq](http://www.facebook.com.au/uniwisemq)

Twitter page:

@UniWISEMQ

→

here you will find up to date information about services around campus such as the wellbeing centre, Careers and campus life.

→

the wall is open to questions and discussion 24/7 and we will aim to answer or further direct your questions as soon as possible.

→

We will respond to all your posts as soon as possible.

Check out the uniWISE unit

on your ilearn homepage (under *other units*)

for helpful information on exam prep, getting through online units, writing skills and much more.

Email:

uniwise@mq.edu.au

→

Send through any questions you have regarding any aspect of university life and we will answer them as soon as possible.

Phone:

9850 4386 (9am to 5pm Monday to Friday)

→

Feel free to give our friendly staff a call with any questions or queries you may have.

Learning Help Desk:

(9 am to 5pm Monday to friday)

→

Location: Library level 2.

→

Feel free to give our friendly staff a visit with any questions or queries you may have.

Have a great summer.

The UniWISE Team