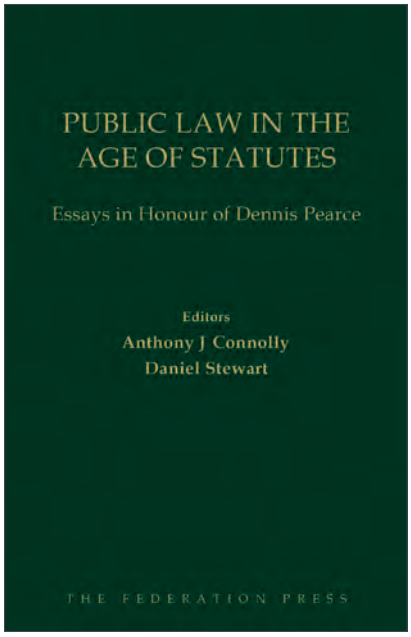
Public Law in the Age of Statutes: Essays in Honour of Dennis Pearce

By A J Connolly and D Stewart (eds) | The Federation Press | 2015



Professor Dennis Pearce AO is emeritus professor at the Australian National University. This book of essays came out of papers given at a conference held in his honour in October 2014.

Pearce is a preeminent Australian authority on statutory interpretation, as the co-author of *Statutory Interpretation in Australia* with Robert Geddes, the 8th edition of which was published in 2014, and which has been cited in over 2000 Australian judgments. Pearce was made professor at ANU in 1981, was dean of the ANU Law School from 1982 to 1984 and again from 1991 to 1993, and was acting deputy vice-chancellor in 1994. Upon retirement in 1996 he was appointed emeritus professor. His other appointments, which are too numerous to list fully, include the Commonwealth and Defence Force ombudsman from 1988 to 1990, chairman of the Australian Press Council from 1997 to 2000, and foundation adviser to the Senate Scrutiny of Bills Committee from 1981 to 1983.

The Hon Justice Gageler, an author of one of the essays in the book and one of Pearce's former students, describes Pearce as 'astute and controlled'.

Pearce became an officer of the Order of Australia in 2003 for, among other things, his service to law through work in statutory interpretation, delegated legislation, and administrative law. Much as it was, and is a continuing, feature of his life's work, the delegation of legislative functions to the executive is a continuing theme in this book.

In the first chapter, 'Public Law and a Public Lawyer in the Age of Statutes', the editors Anthony Connolly and Daniel Stewart note the growth over the last 30 years of the delegation of legislative functions. They quote Guido Calabresi, who used the term 'statutorification' to describe the shift from an American legal system dominated by the common law to one in which its primary source was statutes. White settlement of Australia, on the other hand, was 'born to statutes', although its veritable 'orgy of statute making', the authors point out, was built on a common law foundation that protected the Crown in its dealings with citizens.

His Honour Justice Gageler, in 'The Master of Words: Who Chooses Statutory Meaning', discusses when an administrative decision maker can give a meaning to statutory words in circumstances where the words permit of a range of potential meanings: that is, which is to have the authority to give them meaning – the decision maker or the court? Deftly his Honour weaves in reference to Lord Atkin's dissent in *Liversidge v Anderson* [1942] AC 206 and his invocation of a funny colloquy between Alice and 'the obtuse and erratic anthropomorphic egg', Humpty Dumpty, from Lewis Carroll's *Through the Looking Glass*.

In an insightful essay on the 'Constitutional Dimensions of Statutory Interpretation', Cheryl Saunders explores the ways in which the Commonwealth Constitution affects the principles and practices of statutory interpretation in Australia. Saunders provides a framework divided between three pillars: mandate, influence, and catalyst.

In a detailed chapter titled 'Executive Versus Judiciary Revisited' Margaret Allars looks back on an essay of Dennis Pearce's from 1991 titled 'Executive Versus Judiciary', in which Pearce alluded to the concerns of the executive regarding the burdensome impact of judicial review proceedings. Allars bases the first part of her article on *Attorney-General (NSW) v Quinn* (1990) 170 CLR 1 (which came down not long after Pearce's original article), finding both synergies and obscurities between it and *Marbury v Madison* (1803) 5 US 137, a US case involving similar facts but delivered almost 200 years earlier.

In 'Private Standards as Delegated Legislation', Daniel Stewart, one of the editors of the book and a senior lecturer at the ANU Law School and a former John M Olin Fellow in Law and Economics at the University of Virginia, discusses how private standards such as Australian Standards – over a thousand of which are now referenced in Australian legislation – become legally binding obligations.

And in a timely piece titled 'Enquiring Minds or Inquiring Minders? Towards Clearer Standards for the Appointment of Royal Commissioners and Inquiry Heads', AJ Brown discusses the place of royal commissions and ad hoc public inquiries in Australia's modern system of governance and public integrity. As a prologue Brown quotes part of a debate on the *Judiciary (Diplomatic Representation) Bill 1942* (Cth) in which

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ire was directed toward the appointment of Sir Owen Dixon as Australian Government minister to the US; moving forward half a century Brown suggests that the appointment of former High Court Justice Dyson Heydon AC to chair the Royal Commission into Trade Union Governance and Corruption in 2014 raises similar questions as to whether there should be limits on how former judges may accept government appointments to head major inquiries.

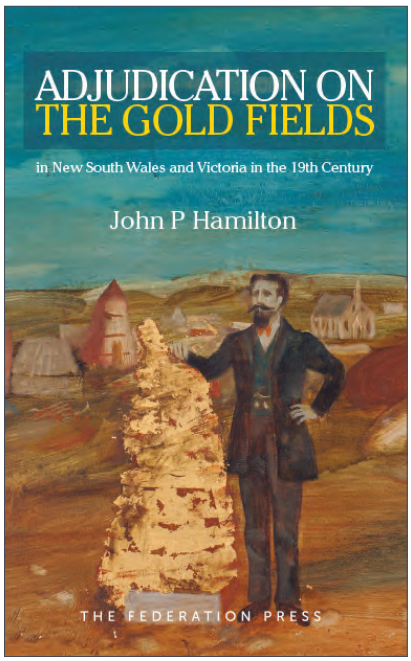
In a slight change of tack, the last three chapters look at the history and status of administrative review and governmental oversight bodies. Justice Susan Kenny in 'The Administrative Review Council and Transformative Reform' charts the history of the Administrative Review Council. Linda Pearson in 'The Vision Splendid: Australian Tribunals in the 21st Century' looks at the amalgamation of specialist tribunals into the Administrative Appeals Tribunal, and in doing so evokes Pearce's query in 1991 as to whether the 'vision splendid' of the consolidation of Commonwealth tribunals into the Administrative Review Tribunal had faded. And in the last chapter, John McMillan, a former Commonwealth and Australian information commissioner, reflects on the effectiveness of organisations such as the ombudsmen in effecting organisational cultural change.

This is a timely collection of essays, with a vibrant range of topics of immediate relevance. It is worthy of honouring the life work of Dennis Pearce.

Review by Charles Gregory

Adjudication on the Gold Fields in New South Wales and Victoria in the 19th Century

By John P Hamilton | The Federation Press | 2015



The mid nineteenth century gold rush period produced an unrivalled population explosion in Australia. Opportunists flocked from afar doubling the population in New South Wales and multiplying Victoria's sixfold. It was a golden period with Australia producing 39 per cent of the world's gold. A referenced extract captures the frenetic atmosphere, 'tents everywhere, an anthill swarming with frenzied activity… an earnestness you cannot imagine.'

An unexpected administrative crisis arose from the sudden onset of the fledging gold mining pursuits in the colony. Disputes frequently broke out on the gold fields. For example, disputes about the entitlement to ground, encroachment or stealing gold as well as co-ownership or partnership disputes. On busy fields, like Ballarat, there were hundreds of such disputes a year. There was a rush to establish a system of laws and processes to govern life on the gold fields and to promote order among a potentially revolutionary and demographically diverse community of mostly transient opportunists.

This book charts the development, between 1851and 1875, of the public administration of the gold fields in New South Wales and Victoria. In particular, it chronicles the origins, development and nature of the heyday of gold fields adjudication at that time in those two colonies. It gives a contained and carefully documented example of the development of government in colonial Australia which tended to be characterised by a blend of principle and pragmatism.