

## 730-421 Rethinking Democracy and the Law

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| <b>Credit Points:</b>                    | 12.50   |
| <b>Level:</b>                            | 4 (Undergraduate)   |
| <b>Dates &amp; Locations:</b>            | 2009,<br>This subject commences in the following study period/s:<br>Semester 1, - Taught on campus.<br>Seminars   |
| <b>Time Commitment:</b>                  | Contact Hours: One 3-hour seminar per week Total Time Commitment: 108 hours.  |
| <b>Prerequisites:</b>                    | Legal Method and Reasoning, Principles of Public Law, or in each case equivalent subjects;<br>Constitutional Law.   |
| <b>Corequisites:</b>                     | None  |
| <b>Recommended Background Knowledge:</b> | None  |
| <b>Non Allowed Subjects:</b>             | None  |
| <b>Core Participation Requirements:</b>  | <p>&lt;p&gt;For the purposes of considering request for Reasonable Adjustments under the Disability Standards for Education (Cwth 2005), and Student Support and Engagement Policy, academic requirements for this subject are articulated in the Subject Overview, Learning Outcomes, Assessment and Generic Skills sections of this entry.&lt;/p&gt;         &lt;p&gt;It is University policy to take all reasonable steps to minimise the impact of disability upon academic study, and reasonable adjustments will be made to enhance a student's participation in the University's programs. Students who feel their disability may impact on meeting the requirements of this subject are encouraged to discuss this matter with a Faculty Student Adviser and Student Equity and Disability Support: &lt;a href="http://services.unimelb.edu.au/disability"&gt;http://services.unimelb.edu.au/disability&lt;/a&gt;&lt;/p&gt;</p>   |
| <b>Coordinator:</b>                      | Mr Glenn Patmore  |
| <b>Subject Overview:</b>                 | <p>Rethinking Australian democracy is in vogue. The republic is back on the political agenda. The government is reviewing the possibilities of a new federal charter of rights and responsibilities. There is a new spirit of reconciliation with indigenous people. The issues of gender, sexuality and perhaps a new democratic ethos for the 21st century are on the horizon. But what is the role of public law in rethinking these questions of democracy? And what is the role of law in establishing our system of democratic government?</p> <p>Much of the current discourse of public law conceives of Constitutional Law and Administrative Law as the regulation of <b>government</b>. It appropriately concentrates upon the power of government <b>institutions</b> and restraints upon the bureaucracy. This course will explore an alternative conception of public law as a representation of <b>political community</b>. It will focus upon <b>individuals and groups</b> as participants in the political process in the legal context. Thus, the focus of the course will be on public laws regulation of democracy. It will describe the legal rules governing our democratic system and raise broader questions of democratic and republican philosophies.</p> <p>Therefore, this subject will consider history and politics to examine legal theory relevant to Australia in relation to three broad topics:</p> <ol style="list-style-type: none"> <li>i. Republicanism (to explore proposals for constitutional change to the head of state)</li> <li>ii. Public Law as political community (to explore the evolution of political representation in Australia)</li> <li>iii. Constitutional Democracy (to critically evaluate institutions of federal government, such as parliamentary democracy, federalism, constitutional guarantees and human rights)</li> </ol> <p>Note: The essay in this subject is regarded a substantial piece of legal writing</p> |
| <b>Objectives:</b>                       | <p>On completion of this subject, students should:</p> <ul style="list-style-type: none"> <li># have developed an understanding of             <ul style="list-style-type: none"> <li>- the structure and operation of constitutional democracy in theory and practice</li> </ul> </li> </ul>   |

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|                          | <ul style="list-style-type: none"> <li>- democratic constitutional principles</li> <li>- the relevance of constitutional law to how governments address public policy issues</li> <li>- the impact of democratic constitutional principles on the individual and different groups within society</li> </ul> <p># be able to draw on this understanding to</p> <ul style="list-style-type: none"> <li>- describe and critically analyse the fundamental principles of republican constitutional change and constitutional amendment</li> <li>- identify relevant legislative provisions and judicial decisions and state and critically analyse the legal principles that emerge from them</li> <li>- critically analyse the relationship between these legal principles and the fundamental principles of constitutional democracy</li> </ul> <p># describe and analyse applications of principles in the form of written arguments that are appropriately structured, developed, supported and referenced</p> <p># have enhanced general cognitive skills in relation to reading and comprehending legal materials; logical analysis and reasoning; legal research and writing; application of legal principles to factual situations; identifying relevant factual information; identifying and considering options to resolve legal problems; drawing on the knowledge of other disciplines to understand and resolve legal issues.</p>  |
| <b>Assessment:</b>       | Final open book examination (100%) OR 5000 word research essay (due on the last day of semester) (100%)   |
| <b>Prescribed Texts:</b> | Blackshield & Williams. Australian Constitutional Law and Theory: Commentary and Materials (Federation Press, 4th edition 2006) (abridged edition). Other materials that students may access online:- Commonwealth Constitution, available at <a href="http://www.comlaw.gov.au">http://www.comlaw.gov.au</a> - Constitution Act 1975 (Vic), available at <a href="http://www.dms.dpc.vic.gov.au">http://www.dms.dpc.vic.gov.au</a>   |
| <b>Breadth Options:</b>  | This subject is not available as a breadth subject.   |
| <b>Fees Information:</b> | Subject EFTSL, Level, Discipline & Census Date, <a href="http://enrolment.unimelb.edu.au/fees">http://enrolment.unimelb.edu.au/fees</a>   |
| <b>Generic Skills:</b>   | <p>On completion of the subject, students should have developed the following generic skills:</p> <ul style="list-style-type: none"> <li># attitudes towards knowledge that includes openness to new ideas, valuing truth and ethics associated with the creation of knowledge</li> <li># close reading and analysis of a range of sources</li> <li># critical and independent thought and reflection</li> <li># problem solving</li> <li># to communicate in writing</li> <li># to plan and manage time</li> <li># to participate as a member of a team</li> <li># intercultural sensitivity and understanding</li> </ul> <p>In addition, on completion of the subject, students should have developed the following skills specific to the discipline of law:</p> <ul style="list-style-type: none"> <li># analysis of historical, philosophical and political sources for analysing the law</li> <li># statutory reading, interpretation and analysis, including an ability to: <ul style="list-style-type: none"> <li>- extract important features from statutes (and in particular constitutions)</li> </ul> </li> <li># legal research skills, including an ability to: <ul style="list-style-type: none"> <li>- find primary historical sources relevant to constitution-making and amendment</li> <li>- find case law</li> <li>- find statutes and constitutions</li> <li>- find secondary sources</li> <li>- identify the most relevant and up-to-date primary and secondary sources and justify the research process</li> </ul> </li> <li># legal writing skills, including an ability to: <ul style="list-style-type: none"> <li>- use case law as part of legal analysis</li> <li>- use statutes and constitutions as part of legal analysis</li> <li>- use secondary sources as part of legal analysis</li> <li>- analyse legal principles</li> <li>- use proper referencing and citation</li> <li>- present an appropriately structured and supported complex legal argument</li> </ul> </li> <li># oral communication skills in participating in classroom problem solving and discussion</li> </ul> |