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**The Separation of Federal Judicial Power**  
**A Purposive Analysis**

by

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A thesis submitted for the Degree of Doctor of Philosophy of The Australian National  
University

This thesis is my own work and all  
sources have been acknowledged.  
It has not been submitted for another degree.



.....

Fiona Dowling Wheeler

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## ABSTRACT

This thesis examines the separation of federal judicial power from legislative and executive power, arguably the most resilient of the fundamental implications drawn by the High Court from the text and structure of the Australian Constitution. The separation of federal judicial power is primarily manifested in two rules of constitutional law: first, that federal judicial power can only be exercised by Chapter III courts and, secondly, that Chapter III courts cannot validly be invested by the Commonwealth Parliament with non-judicial power unless incidental to the discharge of their judicial functions.

The independent and impartial exercise of judicial power is deeply imbued in our legal culture. It is perhaps not surprising then that the design of the first three Chapters of our federal Constitution, coupled with the words of ss.1, 61 and 71 should be interpreted as incorporating a legally enforceable doctrine of the separation of powers, even if the framers were largely silent on this point. Critically, the separation of federal judicial power is not an end in itself. As leading commentators have pointed out, the separation of powers is a normative or purposive doctrine chiefly directed towards the creation of an institutional and structural environment in which the supremacy of law over arbitrary power will be fostered. The central argument of this thesis is a simple one: that the rule of law rationale of the separation of federal judicial power should consistently and explicitly inform the High Court's separation of powers jurisprudence. In other words, we need a consciously purposive approach to the separation of federal judicial power in Australia in order to navigate this aspect of our constitutional law in a principled, as opposed to a purely formalistic, fashion.

This thesis then tells the story of the separation of federal judicial power in Australia in purposive or "functional" terms, relating the recognition and operation of the separation doctrine to changing patterns of governance in twentieth century Australia. It revisits

existing doctrine in light of the purposive approach and explores the burgeoning area of implications derived from Chapter III of the Constitution protective of individual rights.



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- Adelaide Steamship Co. Ltd v. R. and Attorney-General (Cth)* (1912) 15 C.L.R. 65
- Aldridge v. Booth* (1988) 80 A.L.R. 1
- Amalgamated Society of Engineers v. Adelaide Steamship Co. Ltd (Engineers' Case)*  
(1920) 28 C.L.R. 129
- American Communications Association v. Douds* 339 U.S. 382 (1950)
- Attorney-General (Cth) v. R. (Boilermaker's Case)* (1957) 95 C.L.R. 529 (P.C.)
- Attorney-General for N.S.W. v. Brewery Employes Union of N.S.W. (Union Label Case)*  
(1908) 6 C.L.R. 469
- Attorney-General for Ontario v. Attorney-General for Canada (Reference Appeal)*  
[1912] A.C. 571
- Australian Boot Trade Employes' Federation v. Whybrow & Co.* (1910) 11 C.L.R. 311
- Australian Building Construction Employes' and Builders Labourers' Federation v. Commonwealth* (1986) 161 C.L.R. 88
- Australian Capital Television Pty Ltd v. Commonwealth* (1992) 177 C.L.R. 106
- Australian Communist Party v. Commonwealth (Communist Party Case)* (1951) 83  
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- Australian National Airways Pty Ltd v. Commonwealth* (1945) 71 C.L.R. 29

### B

- Barton v. R.* (1980) 147 C.L.R. 75
- Baxter v. Ah Way* (1909) 8 C.L.R. 626
- Benton v. Maryland* 395 U.S. 784 (1969)

*Brandy v. Human Rights and Equal Opportunity Commission* (1995) 183 C.L.R. 245

*British Imperial Oil Co. Ltd v. Federal Commissioner of Taxation [No.1]* (B.I.O. No.1)  
(1925) 35 C.L.R. 422

*British Imperial Oil Co. Ltd v. Federal Commissioner of Taxation [No.2]* (B.I.O. No.2)  
(1926) 38 C.L.R. 153.

*Building Construction Employees and Builders' Labourers Federation of New South  
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*Capital Duplicators Pty Ltd v. Australian Capital Territory [No.1]* (1992) 177 C.L.R.  
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*Capital Duplicators Pty Ltd v. Australian Capital Territory [No.2]* (1993) 178 C.L.R.  
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*Castlemaine Tooheys Ltd v. South Australia* (1990) 169 C.L.R. 436

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*Chu Kheng Lim v. Minister for Immigration* (1992) 176 C.L.R. 1

*Coco v. R.* (1994) 179 C.L.R. 427

*Cole v. Whitfield* (1988) 165 C.L.R. 360

*Cominos v. Cominos* (1972) 127 C.L.R. 588

*Commodity Futures Trading Commission v. Schor* 478 U.S. 833 (1986)

*Commonweath v. Hospital Contribution Fund* (1982) 150 C.L.R. 49

*Commonwealth v. Queensland* (1975) 134 C.L.R. 298

*Connelly v. D.P.P.* [1964] A.C. 1254

*Cummings v. Missouri* 71 U.S. 277 (1867)

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*Davern v. Messell* (1984) 155 C.L.R. 21

*D'Emden v. Pedder* (1904) 1 C.L.R. 91

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*Deputy Commissioner of Taxation v. Richard Walter Pty Ltd* (1995) 183 C.L.R. 168

*Dietrich v. R.* (1992) 177 C.L.R. 292

*Director of Public Prosecutions v. B.* (1998) 155 A.L.R. 539

*D.P.P. (Cth) v. Bayly* (1994) 63 S.A.S.R. 97

*Drake v. Minister for Immigration and Ethnic Affairs* (1979) 24 A.L.R. 577

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*Ebatarinja v. Deland* (1998) 157 A.L.R. 385

*Egan v. Willis* (1998) 158 A.L.R. 527

*Environment Protection Authority v. Caltex Refining Co. Pty Ltd* (1993) 178 C.L.R. 477

*Ex parte Garland* 71 U.S. 333 (1867)

*Ex parte Walsh* [1942] Argus L.R.

**F**

*Farbenfabriken Bayer Aktiengesellschaft v. Bayer Pharma Pty Ltd* (1959) 101 C.L.R.

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*Farey v. Burvett* (1916) 21 C.L.R. 433

*Federal Commissioner of Taxation v. Munro* (1926) 38 C.L.R. 153

*Federal Trade Commission v. Ruberoid Co.* 343 U.S. 470 (1952)

*Field v. Clarke* 143 U.S. 649 (1892)

*Fourmile v. Selpam Pty Ltd* (1998) 152 A.L.R. 294

*Frugtniet v. Victoria* (1997) 148 A.L.R. 320

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*Georgiadis v. Australian and Overseas Telecommunications Corporation* (1994) 179

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*Gideon v. Wainwright* 372 U.S. 335 (1963)

*Gould v. Brown* (1998) 151 A.L.R. 395

*Grollo v. Palmer* (1995) 184 C.L.R. 348

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*H.A. Bachrach Pty Ltd v. Queensland* (1998) 156 A.L.R. 563

*Hammond v. Commonwealth* (1982) 152 C.L.R. 188

*Harris v. Caladine* (1991) 172 C.L.R. 84

*Hayburn's Case* 2 Dall. 409; 1 L.Ed. 436 (1792)

*Health Insurance Commission v. Peverill* (1994) 179 C.L.R. 226

*Hilton v. Wells* (1985) 157 C.L.R. 57

*Hodge v. R* (1883) 9 App.Cas. 117

*Huddart, Parker and Co. Proprietary Ltd v. Moorehead* (1909) 8 C.L.R. 330

## I

*In Re Judiciary and Navigation Acts* (1921) 29 C.L.R. 257

*In Re Pinochet* (unreported, House of Lords, 17 December 1998 (oral judgment) 15

January 1999 (reasons)) <http://www.parliament.the-stationery->



[office.co.uk/pa/ld199899/ldjudgmt/jd990115/pino01.htm](http://office.co.uk/pa/ld199899/ldjudgmt/jd990115/pino01.htm) at 20 January 1999 (copy on file with author)

*In Re Winship* 397 U.S. 358 (1970)

*In the Marriage of B and R* (1995) 19 Fam.L.R. 594

*In the Marriage of Collins* (1990) 14 Fam.L.R. 162

## J

*Jago v. District Court (N.S.W.)* (1989) 168 C.L.R. 23

*Jones v. Commonwealth* (1987) 71 A.L.R. 497

*J.W. Hampton, Jr & Co. v. United States* 276 U.S. 394 (1928)

## K

*Kable v. Director of Public Prosecutions (N.S.W.)* (1996) 189 C.L.R. 51

*Kariapper v. Wijesinha* [1968] A.C. 717

*Kennedy v. Mendoza-Martinez* 372 U.S. 144 (1963)

*Kioa v. West* (1985) 159 C.L.R. 550

*Klopfert v. North Carolina* 386 U.S. 213 (1967)

*Knight v. Knight* (1971) 122 C.L.R. 114

*Kotsis v. Kotsis* (1970) 122 C.L.R. 69

*Kruger v. Commonwealth* (1997) 190 C.L.R. 1

## L

*Lange v. Australian Broadcasting Corporation* (1997) 189 C.L.R. 520

*Le Mesurier v. Connor* (1929) 42 C.L.R. 481

*Leask v. Commonwealth* (1996) 187 C.L.R. 579

*Leeth v. Commonwealth* (1992) 174 C.L.R. 455

*Levy v. Victoria* (1997) 189 C.L.R. 579

*Little v. Commonwealth* (1947) 75 C.L.R. 94

*Liyanage v. R.* [1967] A.C. 259

*Lloyd v. Wallach* (1915) 20 C.L.R. 299

## M

*Mabo v. Queensland [No.1]* (1988) 166 C.L.R. 186

*Mabo v. Queensland [No.2]* (1992) 175 C.L.R. 1

*MacCormick v. Federal Commissioner of Taxation* (1984) 158 C.L.R. 622

*Malloy v. Hogan* 378 U.S. 1 (1964)

*Marcus Clark & Co. Ltd v. Commonwealth* (1952) 87 C.L.R. 177

*McGinty v. Western Australia* (1996) 186 C.L.R. 140

*McInnes v. R.* (1979) 143 C.L.R. 575

*McKinney v. R.* (1991) 171 C.L.R. 468

*Melbourne Corporation v. Commonwealth* (1947) 74 C.L.R. 31

*Melbourne Steamship Co. Ltd v. Moorehead* (1912) 15 C.L.R. 333

*Mikasa (N.S.W.) Pty Ltd v. Festival Stores* (1972) 127 C.L.R. 617

*Milicevic v. Campbell* (1975) 132 C.L.R. 307

*Millner v. Raith* (1942) 66 C.L.R. 1

*Mistretta v. United States* 488 U.S. 361 (1989)

*Municipal Council of Sydney v. Commonwealth* (1904) 1 C.L.R. 208

*Murphy v. Waterfront Commission of New York Harbor* 378 U.S. 52 (1964)

*Mutual Pools & Staff Pty Ltd v. Commonwealth* (1994) 179 C.L.R. 155

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*Nationwide News Pty Ltd v. Wills* (1992) 177 C.L.R. 1

*New South Wales v. Canellis* (1994) 181 C.L.R. 309

*New South Wales v. Commonwealth (Inter-State Commission Case)* (1915) 20 C.L.R.

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*Ngoc Tri Chau v. Director of Public Prosecutions (Cth)* (1995) 132 A.L.R. 430

*Nicholas v. R.* (1998) 151 A.L.R. 312

*Nixon v. Administrator of General Services* 433 U.S. 425 (1977)

*North Ganalanja Aboriginal Corporation v. Queensland* (1996) 185 C.L.R. 595

**O**

*Ousley v. R.* (1997) 148 A.L.R. 510

**P**

*Peacock v. Newtown Marrickville and General Co-operative Building Society No.4 Ltd*  
(1943) 67 C.L.R. 25

*Petty v. R.* (1991) 173 C.L.R. 95

*Plaut v. Spendthrift Farm Inc* 514 U.S. 211 (1995)

*Polyukhovich v. Commonwealth* (1991) 172 C.L.R. 501

*Port MacDonnell Professional Fishermen's Assn Inc v. South Australia* (1989) 168  
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*Porter v. R.; Ex parte Yee* (1926) 37 C.L.R. 432

*Powell v. Alabama* 287 U.S. 45 (1932)

*Precision Data Holdings Ltd v. Wills* (1991) 173 C.L.R. 167

*Prentis v. Atlantic Coast Line Co.* 211 U.S. 210 (1908)

*Prohibitions Del Roy* (1607) 12 Co.Rep. 63; 77 E.R. 1342

## Q

*Queen Victoria Memorial Hospital v. Thornton* (1953) 87 C.L.R. 144

## R

*R. and Attorney-General (Cth) v. Associated Northern Collieries (Vend Case)* (1911) 14

C.L.R. 387

*R. v. Bernasconi* (1915) 19 C.L.R. 629

*R. v. Bevan; Ex parte Elias and Gordon* (1942) 66 C.L.R. 452

*R. v. Brislan; Ex parte Williams* (1935) 54 C.L.R. 262

*R v. Burah* (1878) 3 App.Cas. 889

*R. v. Commonwealth Court of Conciliation and Arbitration; Ex parte Brisbane*

*Tramways Company Ltd (Tramways Case [No.1])* (1914) 18 C.L.R. 54

*R. v. Commonwealth Court of Conciliation and Arbitration; Ex parte G.P. Jones*

*(Builders' Labourers' Case)* (1914) 18 C.L.R. 224

*R. v. Commonwealth Industrial Court; Ex parte the Amalgamated Engineering Union,*

*Australian Section* (1960) 103 C.L.R. 368

*R. v. Cox; Ex parte Smith* (1945) 71 C.L.R. 1

*R. v. Davison* (1954) 90 C.L.R. 353

*R. v. Director of Serious Fraud Office; Ex parte Smith* [1993] A.C. 1

*R. v. Federal Court of Bankruptcy; Ex parte Lowenstein* (1938) 59 C.L.R. 556

*R. v. Glennon* (1992) 173 C.L.R. 592

*R. v. Hegarty; Ex parte City of Salisbury* (1981) 147 C.L.R. 617

- R. v. Humby; Ex parte Rooney* (1973) 129 C.L.R. 231
- R. v. Hush; Ex parte Devanny* (1932) 48 C.L.R. 487
- R. v. Joske; Ex parte Australian Building Construction Employees and Builders' Labourers' Federation* (1974) 130 C.L.R. 87
- R. v. Joske; Ex parte Shop Distributive and Allied Employees' Association* (1976) 135 C.L.R. 194
- R. v. Kidman* (1915) 20 C.L.R. 425
- R. v. Kirby; Ex parte Boilermakers' Society of Australia (Boilermakers' Case)* (1956) 94 C.L.R. 254 (H.C.A.)
- R. v. L. (Rape in Marriage Case)* (1991) 174 C.L.R. 379
- R. v. Local Government Board* (1902) 2 I.R. 349
- R. v. Macfarlane; Ex parte O'Flanagan and O'Kelly* (1923) 32 C.L.R. 518
- R. v. Oakes* (1986) 50 C.R. (3d) 1
- R. v. Quinn; Ex parte Consolidated Food Corporation* (1977) 138 C.L.R. 1
- R. v. Richards; Ex parte Fitzpatrick and Browne* (1955) 92 C.L.R. 157
- R. v. Spicer; Ex parte Australian Builders' Labourers' Federation* (1957) 100 C.L.R. 277
- R. v. Trade Practices Tribunal; Ex parte Tasmanian Breweries Pty Ltd* (1970) 123 C.L.R. 361
- Re Cram; Ex parte Newcastle Wallsend Coal Co. Pty Ltd* (1987) 163 C.L.R. 140
- Re Dingjan; Ex parte Wagner* (1995) 183 C.L.R. 323
- Re Nolan; Ex parte Young* (1991) 172 C.L.R. 460
- Re Ranger Uranium Mines Pty Ltd; Ex parte Federated Miscellaneous Workers' Union of Australia* (1987) 163 C.L.R. 656
- Re Tracey; Ex parte Ryan* (1989) 166 C.L.R. 518

*Re Tyler; Ex parte Foley* (1994) 181 C.L.R. 18

*Reference re Remuneration of Judges of the Provincial Court (P.E.I.)* [1997] 3 S.C.R. 3

*Reference re Secession of Quebec* [1998] S.C.J. No.61 (Q.L.), File No.25506, Supreme Court of Canada, decided 20 August 1998

*Reid v. Howard* (1995) 184 C.L.R. 1

*Riverina Transport Pty Ltd v. Victoria* (1937) 57 C.L.R. 327

*Roche v. Kronheimer* (1921) 29 C.L.R. 329

*Rola Co. (Australia) Pty Ltd v. Commonwealth* (1944) 69 C.L.R. 185

## S

*Sachter v. Attorney-General (Cth)* (1954) 94 C.L.R. 86

*Selective Service System v. Minnesota Public Interest Research Group* 468 U.S. 841  
(1984)

*Shell Co. of Australia Ltd v. Federal Commissioner of Taxation* (1930) 44 C.L.R. 530  
(P.C.)

*Shillitani v. United States* 384 U.S. 364 (1966)

*Silk Bros Pty Ltd v. State Electricity Commission of Victoria* (1943) 67 C.L.R. 1

*Sorby v. Commonwealth* (1983) 152 C.L.R. 281

*Steele v. Defence Forces Retirement Benefits Board* (1955) 92 C.L.R. 177

*Street v. Queensland Bar Association* (1989) 168 C.L.R. 461

## T

*Tasmania v. Commonwealth (Tasmanian Dam Case)* (1983) 158 C.L.R. 1

## U

*United States v. Brown* 381 U.S. 437 (1965)

*United States v. Ferreira* 13 How. 40; 14 L.Ed. 42 (1852)

*United States v. Lovett* 328 U.S. 303 (1946)

## V

*Victoria v. Australian Building Construction Employees' and Builders Labourers' Federation* (1982) 152 C.L.R. 25

*Victoria v. Commonwealth (Payroll Tax Case)* (1971) 122 C.L.R. 353

*Victorian Chamber of Manufacturers v. Commonwealth (Industrial Lighting Case)*  
(1943) 67 C.L.R. 413

*Victorian Stevedoring and General Contracting Co. Pty Ltd and Meakes v. Dignan*  
(1931) 46 C.L.R. 73

## W

*Walton v. Gardiner* (1993) 177 C.L.R. 378

*Waterside Workers' Federation of Australia v. J.W. Alexander Ltd* (1918) 25 C.L.R.  
434

*Webb v. Outrim* [1907] A.C. 81

*Weissensteiner v. R.* (1993) 178 C.L.R. 217

*Williamson v. Ah On* (1926) 39 C.L.R. 95

*Wilson v. Minister for Aboriginal and Torres Strait Islander Affairs* (1996) 189 C.L.R. 1

## ABBREVIATIONS

A.C.	Appeal Cases
Adel.L.R.	Adelaide Law Review
A.H.J.R.	Australian Journal of Human Rights
A.I.A.L. Forum	Australian Institute of Administrative Law Forum
A.L.J.	Australian Law Journal
A.L.R.	Australian Law Reports
Amer.Univ.Law Rev.	American University Law Review
Am.J.Jurisprud	American Journal of Jurisprudence
App.Cas.	Appeal Cases
Argus L.R.	Argus Law Reports
Aus.Bar Rev.	Australian Bar Review
Aus.J.Labour Law	Australian Journal of Labour Law
Aus.J.Pol.Hist.	Australian Journal of Politics and History
Aus.Quarterly	Australian Quarterly
C.B.P.A.	Canberra Bulletin of Public Administration
C.L.R.	Commonwealth Law Reports
Co.Rep.	Coke's Reports
Cornell L.R.	Cornell Law Review
C.R.	Criminal Reports
Crim.L.J.	Criminal Law Journal
Crim.L.R.	Criminal Law Review
Cth	Commonwealth
Deakin L.R.	Deakin Law Review



Depaul L.R.	Depaul Law Review
Duke L.J.	Duke Law Journal
Fam.L.R.	Family Law Reports
F.C.A.	Federal Court of Australia
F.L.Rev.	Federal Law Review
E.R.	English Reports
Geo.Wash.L.Rev.	George Washington Law Review
Harv.L.Rev	Harvard Law Review
Hastings Const.L.Q.	Hastings Constitutional Law Quarterly
H.C.A.	High Court of Australia
Indiana L.J.	Indiana Law Journal
I.R.	Irish Reports
J.Ind.Rel	Journal of Industrial Relations
J.J.A.	Journal of Judicial Administration
J.Soc.Pub.T.L.	Journal of the Society of Public Teachers of Law
L.Q.R.	Law Quarterly Review
Minnesota L.R	Minnesota Law Review
Mon.L.R.	Monash University Law Review
M.U.L.R.	Melbourne University Law Review
N.S.W.	New South Wales
N.S.W.L.R.	New South Wales Law Reports
N.T.	Northern Territory
P.C.	Privy Council
Pepperdine L.R.	Pepperdine Law Review
P.L.R.	Public Law Review

S.A.S.R.	South Australian State Reports
S.C.R.	Supreme Court Reports
Syd.L.R.	Sydney Law Review
T.J.R.	The Judicial Review
U. of Chi.L.Rev.	University of Chicago Law Review
U.N.S.W.L.J	University of New South Wales Law Journal
U of Pa L.Rev.	University of Pennsylvania Law Review
U.Q.L.J.	University of Queensland Law Journal
U.S.	United States Supreme Court Reports
U.Tas.L.R.	University of Tasmania Law Review
U.W.A.L.R.	University of Western Australia Law Review
Vic.	Victoria
Yale L.J.	Yale Law Journal