

# Contemporary Constitutional Law in a Co-learning Classroom

Gabrielle Appleby, Sean Brennan and Andrew Lynch  
(UNSW)

In each class, the more detailed case analysis was preceded by a brainstorm of 'issues' or 'themes' that students wanted to discuss. This was prompted by a list of critical questions that they could ask about any particular case, which was prepared and given to the students at the start of semester.

These questions included:

Who was the plaintiff/applicant/appellant and *why* were they bringing the challenge?

What is the political background behind the legislation under challenge?

Did the judges choose to set aside and not determine any issue that was argued by the parties? If so, was that a well-justified choice?

Consider the different judgments – what are the major points of difference between them?

How would you describe the interpretative methodology used in the different judgments? Why do you think particular judges adopted a particular methodology? Do they explicitly acknowledge or justify the method or approach taken? Was there an alternative approach? Why wasn't this adopted?

Are the judgments informed by constitutional principles (such as federalism, responsible government, democracy)? What do the judgments reveal about the judges' conceptions about these principles?

To what extent is the majority approach consistent with the previous authority in the area?

Did the practical consequences of the outcome inform the judgment? If so, how?

Does the judgment reveal anything about the judges' conceptions of the role of the Court? What about their values and politics?

How will the decision affect government and the community? Will there be groups who benefit from the decision, and groups who will be disadvantaged?

The elective, Contemporary Constitutional Law, was developed to provide students with an opportunity to study current and topical constitutional issues arising in cases recently decided or currently before the High Court of Australia. It was designed to deepen students' understanding of core themes in contemporary constitutional law, while pushing their skills in case analysis and critical engagement with legal argument and judicial reasoning, as well as developing an appreciation of the political and legal context in which cases reach the High Court and the consequences of its decisions.

What emerged was a genuine co-learning classroom environment between the three co-teachers of the course and the students. There were a number of the design aspects of the course that we believe contributed to this dynamic.

We included in the course a panel discussion with practitioners who had been involved in constitutional litigation. These practitioners were asked about the broader context behind the Court's decisions – namely the strategic choices in mounting a constitutional challenge and the practical issues of conducting such a case. This was very well-received by students.

Teachers also learned a lot.

The decision to co-teach the course between three academics in each class: the investment of academic time to co-teach allowed students to observe critical discussion, and sometimes very frank disagreement, between academics in a robust but respectful manner.

The readings, either a recent High Court judgment, or submissions in a case currently before the Court, facilitated in-depth critical engagement with these texts by students and teachers alike. Students noticed the difference in dealing with full texts rather than extracts. Teachers were sometimes reading cases for the first time, bringing genuine questions of their own to the classroom.

Each week, a different group of students was pre-allocated to prepare and circulate to the entire class a short 'preliminary case analysis' identifying the legal issues and arguments of the parties in the decision or submissions to be discussed. Additionally, the students flagged specific points for possible discussion by the class, which they led off on when we convened. This gave the allocated students particular 'buy-in' for their class, but other students and teachers would also add to the list of points to discuss.