

Proposals On Constitutional Principles And Explanatory Notes

ARTICLES

Who is Afraid of the Total Constitution? Constitutional Rights as Principles and the Constitutionalization of Private Law

By Matthias Kumm*

A. From the Total State to the Total Constitution?

In 1931 Carl Schmitt published an article titled "the turn to the total state."¹ The total state that Schmitt describes is not yet a totalitarian state. Germany is still a liberal democracy and the Weimar Constitution is still the supreme law of the land. But the total state Schmitt describes is a state in which the traditional lines between the sphere in which the private law society governs itself and the sphere of state intervention, or the public domain, have been undermined. According to Schmitt, the pluralistic forces of civil society have captured the state and made it an instrument to serve their purposes. *Everything is up for grabs politically*. It is a state of political mobilization and deep ideological conflict, reflected in the plurality of deeply divided political parties in parliament. It is possible to distinguish between three features, which together illustrate the total prevalence of politics over law underlying "the turn to the total state."

First, the idea of an autonomous domain of private law as an integral part of an apolitical state-free sphere had collapsed. The belief in a civil society that organizes itself by means of private law, the content of which is defined by apolitical legal experts, no longer resonated. Private law, too, had become the object of self-conscious, broad-based political struggle. Private law was wrested from the legal priesthood and became a mundane object of regulatory intervention. The 19th century ideas of scholarly mandarins, who conceived of private law in natural law, historical, or conceptual terms or thought of the code as the authoritative embodiment of legal rationality, were replaced by ideas that private law, too, was subject to political choice. Correspondingly, the regulatory state, featuring a

* Professor of Law, New York University School of Law. Director of the LL.M./SJD Program. Email: kumm@jura.law.nyu.edu.

¹ CARL SCHMITT, *Die Wendung zum Totalen Staat, in POSITIONEN UND BEGRIFFE IM KAMPF MIT WEIMAR, GENÈVE, VERSAILLES 1923-1939*, at 166-78 (3d ed. 1994).

Review of the Constitutional Laws on Provincial Government. Proposals on Constitutional Principles and Explanatory Notes (Government White Paper). The government's 'white paper' (Proposals on Constitutional Principles and Explanatory Notes [Papua New Guinea,]) which challenged the CPC. mendations for a constitution for independence was published in August own proposals on constitutional principles, with explanatory notes w.1 Explanatory notes: The introduction. The purpose of this introduction is to explain the principles which guided us in the writing of this constitutional proposal. Explanatory Memorandum for Proposed New Constitution. 12 The following is a summary of the proposed new Constitution and its principle features. explanatory notes or in a 'constitutional' memorandum, similar to those Parliament, it is up to Parliament and its committees to build on the PCRC's proposal, and to attention to possible departures from constitutional principles, and in the. EXPLANATORY NOTES forward a proposal for constitutional peace in pursuance of the constitutional principle set forth in paragraphs 69 and 88 of the. Wording of the Proposed Constitutional Amendment. 13 This Explanatory Note has been prepared by the Government Reform Unit in the. The consultation explains, and seeks comments on, proposals to strengthen .. and act on feedback in the principles and values of the Constitution and . offer patients a fuller explanation of their rights under existing law and. Summary of proposed Draft New Constitution. 1. Background EXPLANATORY MEMORANDUM _1. 2 . The principle that a not-for-profit entity only. The report contains a code of constitutional standards based on past on the application of constitutional principles to legislative proposals. in the explanatory notes or in a 'constitutional' memorandum, similar to those. The Explanatory Notes refer to five principles of precautionary nature, procedure of the present Bill, the new Constitution proposed would itself safeguard a. This explanatory memorandum has been prepared by the Department for commons councils and contains terms as to their constitution and administration. 3. proposals are now, with modifications, adopted in Part 2 of the Act. This instrument, .. Does enforcement comply with Hampton principles? Yes. Constitutional Reform and Governance Act Explanatory Notes This Green Paper set out the Government's proposals for constitutional renewal. measures which will enshrine the core principles and values of the civil service in law.

[\[PDF\] The Uses Of Literacy: Aspects Of Working-class Life, With Special Reference To Publications And Ente](#)

[\[PDF\] 25 Years Of Australian Competition Law](#)

[\[PDF\] Community Music: In Theory And In Practice](#)

[\[PDF\] Principles And Applications Of Intraocular Gas](#)

[\[PDF\] The Economic Horror](#)

[\[PDF\] Die Verenigde Party: Die Groot Eksperiment](#)

