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Announcements

Victoria University of Wellington Student and Alumni Subseries Issue II: Issues in Sentencing and Penology

Issues in Sentencing and Penology is the second in 2018 of several issues of The the Student/Alumni sub-Series of the VUW Legal Research Papers.

The Student/Alumni sub-Series was launched in 2015. It distributes a selection of honours and postgraduate papers from Victoria University of Wellington Law School.

The sub-Series includes both general and thematic issues.

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VICTORIA UNIVERSITY OF WELLINGTON LEGAL RESEARCH PAPERS

"Payment of Reparation by Third Parties – Changing the Prosecution and Sentencing Landscape"

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 5/2018

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Under the Sentencing Act 2002, a court may impose a sentence of reparation if an offender has, "through or by means of an offence of which the offender is convicted, caused a victim to suffer loss of

or damage to property, emotional harm or loss or damage consequential on any emotional or physical harm or loss of, or damage to, property." When reparation was first introduced as a sentence in its own right in the 1983 Criminal Justice Bill, it was promoted as being "consistent with both reformatory and deterrent theories of the purpose of punishment", compensating victims and holding offenders to account. Reparation is determined by reference to the loss or harm suffered by the victim and the offender's financial means. Over time, this has developed to include the capacity for third parties (including insurers and family members) to pay. In such cases reparation is not dependent on the offender's personal financial circumstances, the offender does not personally pay, and the victim receives compensation where they may otherwise not do so. However, it is arguable that by shifting the cost of reparation from the offender to a third party, the original policy reasons for the sentence of reparation are undermined. The purpose of this paper is to consider the impact of third party payment of reparation on prosecution decisions and sentencing.

"Justice for New Zealand's Stolen Generation: The State's Criminal Responsibility for Historical Institutional Child Abuse"

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 6/2018

JOANNA JUDGE, Victoria University of Wellington, Faculty of Law, Student/Alumni
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The New Zealand Government has been increasingly pressured to establish an independent public inquiry into the abuse and neglect of children in social welfare residences between the 1950s to the 1990s. This paper seeks to determine a response to historical institutional child abuse in New Zealand that achieves justice for victims. The State should be held criminally responsible for historical institutional child abuse in New Zealand by responding to it in a way that recognises its criminal nature. Although New Zealand's criminal law does not provide for the criminal prosecution of the State for historical institutional child abuse, and legislating a retrospective offence would be inappropriate, a restorative justice process should be used to recognise the criminal responsibility of the State.

"A Fair Assessment of Risk: Examining New Zealand's Risk Assessment Practices"

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 7/2018

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Risk assessment is now a key feature of the New Zealand criminal justice system. Risk assessments are relevant to sentencing and parole decisions, and importantly, the imposition of post-sentence measures. The decisions that are informed by risk assessments have serious consequences for the deprivation of liberty of offenders. Despite its growing importance, risk assessment is not widely understood by the legal community.

This paper provides a broad overview of risk assessment practices in New Zealand. In doing so, it explores several shortfalls in the risk assessment process. It appears that the limitations of risk assessment evidence are not well understood. As this paper argues, it is only by truly engaging with risk assessment evidence that proper consideration can be given to the balance between the rights of individual offenders and the interests of the community. To assist with this, this paper argues for a number of changes in the way that risk assessments are carried out.

"Reviewing the Fault Line - Monoamine Oxidase-A Genotype Evidence and the Criminal Law."

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 8/2018

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Recent advances in behavioural genetics suggest that there is a significant genetic component associated with the risk of criminality. This paper focusses on the MAOA gene, a gene which has been linked to aggressive and antisocial behaviour, and analyses what role such genetic evidence should play in the criminal law. In particular, this paper will explore the role of genetic predisposition evidence during sentencing, and will reflect on some associated ethical concerns, and the dangers of misinterpretation. This research highlights that genetic predisposition evidence may be relevant in sentencing. However, there is a potential for the evidence to be construed as both an aggravating and mitigating factor.

This is a field in which we must proceed with care. Science has a huge potential to assist decision makers, improve the criminal process and allow justice to be done. However, the other side of the coin

About this eJournal

Victoria University of Wellington Legal Research Papers Series primarily contains scholarly papers by members of the **Faculty of Law at Victoria University of Wellington**. Some issues collect a number of papers on a similar theme to form a suite of papers on a single topic. Others issues are general or distribute mainly recent work.

The Student/Alumni Series is a subseries of the Victoria University of Wellington Legal Research Paper Series. The subseries started in 2015 and publishes papers by students and alumni of Victoria University of Wellington, comprising primarily work for honours and postgraduate courses. Papers are collected into thematic or general issues.

The Victoria University of Wellington was founded in 1899 to mark the Diamond Jubilee of the reign of Queen Victoria of Great Britain and of the then British Empire. Law teaching started in 1900. The Law Faculty was formally constituted in 1907. The first dean was Richard Maclaurin (1870-1920), an eminent scholar of both law and mathematics. Maclaurin went on to lead the Massachusetts Institute of Technology as President in its formative years. Early professors included Sir John Salmond (1862-1924), still one of the Common Law's leading scholars. His texts on jurisprudence and torts have gone through many editions and remain in print.

Alumni include Sir Robin Cooke (1926-2006), one of the leading judges of the British Commonwealth. As Baron Cooke of Thorndon, he sat on over 100 appeals to the Appellate Committee of the House of Lords, one of very few Commonwealth judges ever appointed to do so.

Since 1996 the Law School has occupied the Old Government Building in central Wellington. Designed by William Clayton and opened in 1876 to house New Zealand's then civil service, the building is a particularly fine example of Italianate neo-Renaissance style. Unusually among large colonial official buildings of the time it is constructed of wood, apart from chimneys and vaults.

The School is close to New Zealand's Parliament, courts, and the headquarters of government departments. Throughout Victoria's history, our law teachers have contributed actively to policy formation and to law reform. As a result, in addition to many scholarly articles and books, the Victoria SSRN pages include a number of official reports.

Victoria graduates approximately 230 LLB and LLB(Hons) students each year, and about 60 LLM students. The faculty has an increasing number of doctoral students. Ordinarily there are ten to twelve students engaged in PhD research.

Victoria University observes the British system of academic ranks. In North American terms, lecturers and senior lecturers are tenured doctrinal scholars, not legal writing teachers. A senior lecturer corresponds approximately to a North American associate professor in rank.

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