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Announcements

Victoria University of Wellington Student and Alumni Sub-Series Issue 13: Public Law

Please note that Issue 12 was incorrectly published on 24 June 2020 with the heading for Issue 13. This is the intended Issue 13 and should be retained by readers who like to archive their issues.

Public Law is the thirteenth in 2020 of several issues of the Student/Alumni Sub-Series of the Victoria University of Wellington Legal Research Paper Series.

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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LEGAL SCHOLARSHIP NETWORK: LEGAL STUDIES RESEARCH PAPER SERIES VICTORIA UNIVERSITY OF WELLINGTON LEGAL RESEARCH PAPERS

"A 'Speed Bump' Against Abusive Constitutionalism: Redesigning the Constitutional Replacement Doctrine"

Victoria University of Wellington Legal Research Paper No. 39/2020

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Constitutional endurance touches on a number of important aspects of constitutional theory and practice. The tension between constitutional stability and constitutional flexibility is one aspect of this

puzzle. Formal constitutional amendability seeks to balance these competing constitutional design qualities by providing a "roadmap" for the alteration of the constitution. However, amendability may also be used to the constitution's detriment. In the past, constitutional unamendability, including the constitutional replacement doctrine, has provided stability by preventing the abuse of amending powers. However, in recent years "abusive constitutionalism" has changed the nature of the constitutional endurance question. The growing global body of anecdotal evidence suggests that the traditional limits on amending powers are currently ineffective against this phenomenon and may even form part of an abusive constitutionalist strategy. The question arises: how should the balance be re-struck in response to abusive constitutionalism? This is a complicated question. Abusive constitutionalism is a multifaceted issue because would-be authoritarian leaders use a variety of techniques to further their anti-democratic goals. Despite these difficulties, this paper explores how the doctrine of implicit limits – also known as the constitutional replacement doctrine (CRD) – might be enhanced to operate more effectively against abusive constitutionalism. The paper explores possible internal and external solutions. The solutions build on the doctrine's strengths which make it particularly well-suited to an abusive constitutional context whilst mitigating the doctrine's weaknesses.

"Vetting the Vetting Service: The Case for a Statutory Framework for Police Vetting in New Zealand"

Victoria University of Wellington Legal Research Paper No. 40/2020

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The activities of the New Zealand Police Vetting Service are often little understood. However, the Vetting Service fulfil an important public function of protecting vulnerable members of society from the risk of harm. To do so, the Vetting Service have the power to disclose information which the Police and Ministry of Justice hold on record about an individual, including non-conviction information (that which has not been tested before a court of law), to a range of agencies, such as prospective employers of licensing bodies. This necessarily has serious consequences on the privacy rights of the individuals concerned. At present, police vetting is conducted in the absence of any guiding legislation. In 2016, the Independent Police Conduct Authority recommended consideration be given to the development of a legislative scheme for vetting. This paper renews this call to action, and seeks to understand why, from a legal perspective, a legislative scheme is necessary. Having done so, it then seeks to provide recommendations as to the form and substance of the statutory framework advocated for.

"It Will Only Hurt a Little Bit: Compulsory Vaccination and the Right to Refuse Medical Treatment under the New Zealand Bill of Rights Act 1990"

Victoria University of Wellington Legal Research Paper No. 41/2020

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New Zealand law prioritises the right of parents to refuse vaccination over the interests of the wider public in preventing infectious diseases. As a result, poor immunisation rates leave the population prone to outbreaks of vaccine preventable diseases. In contrast, Australia has obtained high levels of immunisation coverage by introducing vaccination requirements for receiving government benefits and enrolling in early childhood centres. This paper suggests that adopting the Australian vaccination model would be a viable method of improving New Zealand's immunisation rates and would likely be a demonstrably justifiable limit on the right of parents to refuse medical treatment under s 11 of the New Zealand Bill of Rights Act 1990.

"Glimpses of a New Theory of s 23(5): Mapping Orthodox and Emerging Lines of Jurisprudence"

Victoria University of Wellington Legal Research Paper No. 42/2020

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This article identifies and maps two streams of jurisprudence on s 23(5) of the New Zealand Bill of Rights Act 1990. Under this right, persons deprived of liberty must be treated with humanity and respect for their inherent dignity. The author distils the orthodox formulation of the right from the dominant arc of New Zealand law and evaluates how the structure of the right excludes broader notions of dignity. He suggests that this approach suffers from normative and legal deficiencies and ought to be reconsidered. The article then proceeds to map glimpses of a new and more promising theory of s 23(5) which can be found within a subsidiary strand of jurisprudence. Obiter remarks and judicial hints provide a window onto a more expansive way of thinking about the s 23(5) right. The author offers some tentative suggestions on the nature of the interests underlying this approach and concludes with some brief observations going forward.

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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 Massachussetts 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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