

From: **Briscoe/Prebble/Stephens** LSN@publish.ssrn.com
Subject: LSN: Victoria University of Wellington Legal Studies Research Paper Series, Vol. 10 No. 21, 10/14/2020
Date: 15 October 2020 at 8:21 AM
To: alexandra.b.484@gmail.com

B

if this message does not display correctly, click [here](#)



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

Vol. 10, No. 21: Oct 14, 2020

ALEXANDRA BRISCOE, ASSISTANT EDITOR

Victoria University of Wellington, Faculty of Law, Student/Alumni
alexandra.b.484@gmail.com

JOHN PREBBLE QC, EDITOR

Professor of Law, Victoria University of Wellington - Faculty of Law, Gastprofessor, Institut für Österreichisches und Internationales Steuerrecht, Wirtschaftsuniversität Wien, Adjunct Professor of Law, University of Notre Dame Australia - School of Law

MĀMARI STEPHENS, EDITOR

Reader, Victoria University of Wellington - Faculty of Law

[Browse ALL abstracts for this journal](#)

Links: [Subscribe ~ Unsubscribe](#) | [Distribution](#) | [Network Directors](#)

Announcements

Victoria University of Wellington Archival Collection Issue 6: Human Rights

The Archival Collection is an addition to the Victoria University of Wellington Legal Research Paper Series that has been under consideration for some time. Covid-19 has caused a slow-down in many areas of human activity. For scholarly publishing, the virus has meant that VUW's Legal Research Paper series has space for older work. We have brought forward the distribution of papers written by Victoria University of Wellington staff from earlier years. To maintain momentum, however, the collection will include recent papers where their topic matches the topic of an issue in the Archival Collection. All papers will remain fully searchable on the VUW pages of SSRN, by both [papers](#) and [authors](#).

Table of Contents

Human Rights and Parliamentary Sovereignty in New Zealand

[Petra Butler](#), Victoria University of Wellington - Faculty of Law, University of Navarra - School of Law , Institute of Small and Micro States

Margin of Appreciation – A Note Towards a Solution for the Pacific?

[Petra Butler](#), Victoria University of Wellington - Faculty of Law, University of Navarra - School of Law , Institute of Small and Micro States

Review Essay: Human Rights in the 'War on Terror'

[Alberto Costi](#), Victoria University of Wellington - Faculty of Law

Human Rights Before the US Supreme Court: Lessons from Guantanamo Bay

[Alberto Costi](#), Victoria University of Wellington - Faculty of Law

Mass Migration: An Ordeal by Fire for Universal Human Rights

[Mario Patrono](#), University of Rome I - Department of Law, Sometime Visiting Professor of Law, Victoria University of Wellington

[Rebecca McMenamin](#), Victoria University of Wellington, Faculty of Law, Student/Alumni

[^top](#)

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

"Human Rights and Parliamentary Sovereignty in New Zealand"

35 VUWLR, 341, 2004

Victoria University of Wellington Legal Research Paper No. 80/2020

PETRA BUTLER, Victoria University of Wellington - Faculty of Law, University of Navarra - School of Law , Institute of Small and Micro States

Email: Petra.Butler@vuw.ac.nz

This paper examines whether there was any basis for Parliament to enact section 3(2) of the Supreme

Court Act 2003 in regard to human rights decisions of the Court of Appeal. The paper asks whether the Court of Appeal has indeed been "activist" in its human rights decisions. The discussion focuses on the areas where judicial activism might be suspected, firstly the filling of legislative gaps, and secondly statutory interpretation, with a special focus on implied repeal. Relevant decisions of the House of Lords under the Human Rights Act 1998 (UK) are used as a contrast to the decisions of the New Zealand Court of Appeal. The paper comes to the conclusion that the New Zealand Court of Appeal has not been activist in the area of human rights.

"Margin of Appreciation – A Note Towards a Solution for the Pacific?"

(2008) 39 VUWLR

Victoria University of Wellington Legal Research Paper No. 81/2020

PETRA BUTLER, Victoria University of Wellington - Faculty of Law, University of Navarra - School of Law, Institute of Small and Micro States

Email: Petra.Butler@vuw.ac.nz

This "think piece," which is aimed at contributing to the debate over a Pacific human rights mechanism, firstly identifies and exemplifies some of the challenges between tradition and culture and human rights embodied in the main human rights conventions. Part III gives a brief overview of the doctrine of margin of appreciation as used by the European Court of Human Rights. The last Part analyses whether the doctrine of margin of appreciation will be able to withstand and adequately balance any "challenges" from the unique traditions and culture of the Pacific. This essay is intended as the beginning of a dialogue over the value of a margin of appreciation approach in the Pacific, as opposed to a contribution as such to the enormous literature on the margin of appreciation approach in Europe. It argues that there is much use in framing some of the Pacific debates over the application of human rights through the European approach.

"Review Essay: Human Rights in the 'War on Terror'"

Richard Ashby Wilson (ed) *Human Rights in the 'War on Terror'* (Cambridge University Press, Cambridge, 2005) (347 pages).

Victoria University of Wellington Legal Research Paper No. 82/2020

ALBERTO COSTI, Victoria University of Wellington - Faculty of Law

Email: Alberto.Costi@vuw.ac.nz

In this paper, the author considers how recent global efforts to combat the war on terror threaten long-established concepts of civil liberties and human rights.

"Human Rights Before the US Supreme Court: Lessons from Guantanamo Bay"

In Paul Morris and Helen Greatrex (eds) *Human Rights Research* (2nd ed, Victoria University, Wellington, 2004) 1-27

Victoria University of Wellington Legal Research Paper No. 83/2020

ALBERTO COSTI, Victoria University of Wellington - Faculty of Law

Email: Alberto.Costi@vuw.ac.nz

This paper examines legal issues concerning the detention of Taliban and Al-Qaeda fighters at Guantanamo in the light of existing international law and recent US Supreme Court decisions.

"Mass Migration: An Ordeal by Fire for Universal Human Rights"

'Scritti in onore di Sara Volterra' (Papers in Honour of S.V.), Giappichelli Editore, 2017

Victoria University of Wellington Legal Research Paper No. 84/2020

MARIO PATRONO, University of Rome I - Department of Law, Sometime Visiting Professor of Law, Victoria University of Wellington

Email: mario.patrono@uniroma1.it

REBECCA MCMENAMIN, Victoria University of Wellington, Faculty of Law, Student/Alumni

Email: bex.mcm@gmail.com

The authors focus on the crisis of mass migration faced by the European Union as a lens through which to consider the universality of human rights. The authors seek to answer two questions: first, whether universal human rights are indeed "universal"; and second, whether universal human rights truly constitute "rights". In relation to the first question, the authors reject the narrow Rawlsian conception of universal human rights, preferring an approach that says cultural values may be exported by one culture and assimilated by another, and universality may be progressively achieved. As such, the rights contained, for instance, in the International Bill of Human Rights are indeed universal. The second question presents difficulties. The authors note a conflict between Kant's moral imperative – as reflected in international human rights instruments – and Bentham's utilitarianism – reflected in the politics of states. Consequently, the human rights of those in the waves of mass migration run up against the politics of states, and it remains for advocates of universal human rights to see that these boundaries are broken such that universal rights truly become rights.

[^ top](#)

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.

Submissions

To submit your research to SSRN, sign in to the [SSRN User Headquarters](#), click the My Papers link on left menu and then the Start New Submission button at top of page.

Distribution Services

If your organization is interested in increasing readership for its research by starting a Research Paper Series, or sponsoring a Subject Matter eJournal, please email: sales@ssrn.com

Distributed by

Legal Scholarship Network (LSN), a division of Social Science Electronic Publishing (SSEP) and Social Science Research Network (SSRN)

Directors

LAW SCHOOL RESEARCH PAPERS - LEGAL STUDIES

BERNARD S. BLACK

Northwestern University - Pritzker School of Law, Northwestern University - Kellogg School of Management, European Corporate Governance Institute (ECGI)

Email: bblack@northwestern.edu

RONALD J. GILSON

Stanford Law School, Columbia Law School, European Corporate Governance Institute (ECGI)

Email: rgilson@leland.stanford.edu

Please contact us at the above addresses with your comments, questions or suggestions for LSN-LEG.



Links: [Subscribe to Journal](#) | [Unsubscribe from Journal](#) | [Join Site Subscription](#) | [Financial Hardship](#)

Subscription Management

You can change your journal subscriptions by logging into **SSRN User HQ**. If you have questions or problems with this process, please email Support@SSRN.com or call 877-SSRNHelp (877.777.6435 or 212.448.2500). Outside of the United States, call 00+1+212+4482500.

Site Subscription Membership

Many university departments and other institutions have purchased site subscriptions covering all of the eJournals in a particular network. If you want to subscribe to any of the SSRN eJournals, you may be able to do so without charge by first checking to see if your institution currently has a site subscription.

To do this please click on any of the following URLs. Instructions for joining the site are included on these pages.

- [Accounting Research Network](#)**
- [Cognitive Science Network](#)**
- [Corporate Governance Network](#)**
- [Economics Research Network](#)**
- [Entrepreneurship Research & Policy Network](#)**
- [Financial Economics Network](#)**
- [Health Economics Network](#)**
- [Information Systems & eBusiness Network](#)**
- [Legal Scholarship Network](#)**
- [Management Research Network](#)**
- [Political Science Network](#)**
- [Social Insurance Research Network](#)**
- [Classics Research Network](#)**
- [English & American Literature Research Network](#)**
- [Philosophy Research Network](#)**

If your institution or department is not listed as a site, we would be happy to work with you to set one up. Please contact site@ssrn.com for more information.

Individual Membership (for those not covered by a site subscription)

Join a site subscription, request a trial subscription, or purchase a subscription within the SSRN User Headquarters: <https://hq.ssrn.com/Subscriptions.cfm>

Financial Hardship

If you are undergoing financial hardship and believe you cannot pay for an eJournal, please send a detailed explanation to Subscribe@SSRN.com

[^top](#)

To ensure delivery of this eJournal, please add **LSN@publish.ssrn.com (Briscoe/Prebble/Stephens)** to your email contact list. If you are missing an issue or are having any problems with your subscription, please Email Support@ssrn.com or call 877-SSRNHELP (877.777.6435 or 585.442.8170).

FORWARDING & REDISTRIBUTION

Subscriptions to the journal are for single users. You may forward a particular eJournal issue, or an excerpt from an issue, to an individual or individuals who might be interested in it. It is a violation of copyright to redistribute this eJournal on a recurring basis to another person or persons, without the permission of SSRN. For information about individual subscriptions and site subscriptions, please contact us at Site@SSRN.com

[^top](#)