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Announcements

Victoria University of Wellington Student and Alumni Subseries Issue IV: Public Law: State, Power and Accountability
The General Topic Issue is the 4th in 2018 of several issues of 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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"Legislative Erosion of the Founding Principles of the Resource Management Act 1991: The 2017 Reforms and Their Impact on Public Participation, Devolved Decision Making and Environmental Bottom Lines"
Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 15/2018

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This paper describes the policy basis for three principles that have been critical to the Resource Management Act 1991's statutory scheme and to the achievement of its statutory purpose of sustainable management of natural and physical resources. They are: public participation in decision making, devolved decision making, and environmental bottom lines. It explains how the principles are expressed in the Act.

It analyses changes made in the Resource Legislation Amendment Act 2017 and describes how those changes have impacted on the three principles. Particular changes identified as contributing to the erosion of fundamental principles are new alternative planning processes, reductions in public participation opportunities at the submitter and appeal stage and the centralisation of decision making power in the Minister in an ad hoc way that encourages politicised decision making. This erosion has not been compensated for by the provision of an alternative suite of principles. The changes have reduced the coherence of the Act's legislative scheme, and the likelihood that decisions made under it will achieve sustainable management.

The paper proposes that the poor quality legislative reforms are primarily a result of the highly politicised setting in which the amendments were proposed, the co-existence of housing and environment portfolios in the hands of one Minister, the balance of numbers required to pass the reforms and the complex nature of the changes, which neutralised public opposition and scrutiny other than from a core group of participants. These factors were compounded by an unorthodox select committee process. The select committee's role in hearing from submitters and providing scrutiny of legislation on behalf of the legislature was undermined by undue executive interference and complicit officials and Government committee members. This points to a lack of accountability in the legislative process, particularly (but possibly not exclusively) in the circumstances within which these reforms occurred.

"Constitutional Red Tape: Assessing New Zealand's Legislative Response to the Kaikōura Earthquake"

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 16/2018

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This paper examines Parliament's recent legislative response to the 2016 Hurunui/Kaikōura earthquake. More specifically, it focuses on the delegated legislation making power granted to the executive in the Hurunui/Kaikōura Earthquakes Recovery Act 2016. It assesses the 2016 legislation against the background of the Canterbury earthquake legislation and the criticism that such legislation engendered. This paper addresses three key questions. Firstly, can the criticism directed at the Canterbury legislation be transferred to the Kaikōura legislation. In other words, is the Kaikōura legislation still constitutionally repugnant, and if so, to what degree. Secondly, is such constitutional repugnance able to be justified by the unique and disastrous circumstances. Finally, it asks what more can be done to bring the legislation more into line with fundamental principles, and enable it to be justified. This paper concludes the following. Firstly, the Kaikōura legislation proves to be a significant step forward, but there are aspects that are at odds with fundamental principles. Secondly, such inconsistencies cannot be justified. Finally, this paper makes suggestions for possible reform that still appreciates the Government's concern.

"Immigration Act 2009: Is the Use of 'Absolute Discretion' an Invitation for Arbitrary Decision Making?"

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 17/2018

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Immigration law is a direct product of the State's sovereign right to control its borders. One way this powerful right has manifested is in the use of "absolute discretion" in the Immigration Act 2009. "Absolute discretion" essentially allows the decision maker to make any decision they deem fit and they do not have to provide any reasons for that decision. This raises concerns in the deportation context, where the outcome of the decision may result in the person being forced to leave New Zealand. Given the human rights considerations and international obligations that are often relevant in the deportation context, such a broad use of power should be subject to sufficient accountability mechanisms to ensure arbitrary decisions are not being made.

This paper analyses the use of "absolute discretion" in ss 61 and 177 of the Immigration Act. Sections 61 and 177 are arguably the two most significant uses of "absolute discretion" in the Act, essentially allowing the Minister of Immigration or an immigration officer to stop the deportation process. Part II will introduce the concept of "absolute discretion" and how it arises in the deportation context. Part III will examine the accountability mechanisms that exist in this context, with a specific focus on the mechanisms that react to the use of "absolute discretion". Part IV concludes that the use of "absolute discretion" in s 61 appears to be adequately safeguarded against the making of arbitrary decisions. However, the same does not appear to be true for s 177. Possible solutions to ensure good s 177 decisions are being made are considered.

"The Role of Public Law Principles in Designing Tax Administration Law"

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 18/2018

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This paper explores how public law principles can influence the design of tax administration law. The IRD have proposed to provide the Commissioner of Inland Revenue with a power to remedy legislative issues (by extending her care and management power under s 6A of the Tax Administration Act 1994). As the power is discretionary and may have the ability to undermine Parliament's supremacy, public law concerns have been raised. Through a detailed analysis of the power, it is revealed that the proposal is not adequate in light of public law principles. Hence, I conclude my paper with the view that as tax law is public law, and the extension of the power will cause the Commissioner's relationship with Parliament and the taxpayer to evolve, that this dictates the necessity for an active consideration of public law values in the design of the power, and in the design of tax administration generally.

"The Legitimacy of Private Actors Wielding State Coercive Power in New Zealand"

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 19/2018

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States are increasingly conferring power upon private actors to perform traditionally public services. In New Zealand, this extends to private actors wielding state coercive power. This paper explores the accountability of private actors wielding coercive power, and therefore how legitimate devolution of power is to them. Transparency and effectiveness are also, more briefly, examined. Analysis reveals that if a private actor does not share key goals and values with its public sector counterpart, or with the instrument establishing the coercive power, moral hazard may develop as the actor seeks to pursue its own agenda at the expense of its obligations. Loss of legitimacy can result, particularly if actors appear to be morally culpable for ineffective use of state coercive power. Ultimately, interim, ongoing accountability mechanisms and robust transparency measures must be properly implemented, if legitimacy of the devolution of power to private actors is to be sustained.

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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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