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Criminal Law: Papers by Dr. Nessa Lynch, Senior Lecturer of Law, Victoria University of Wellington

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"Manifest Injustice? The Judiciary as Moderator of Penal Excess in the Sentencing of Youth for Murder"

(2018) 57 The Howard Journal of Crime and Justice

Victoria University of Wellington Legal Research Paper No. 14/2018

NESSA LYNCH, Victoria University of Wellington - Faculty of Law
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This paper considers the principled approach to the sentencing of young people, requiring the recognition of the lesser capacity and culpability of the offender due to their personal characteristics. The author uses New Zealand as a case study to discuss whether, and how, judges would exercise this discretion for young people convicted of murder. This paper focuses on a jurisdiction which combines a highly punitive adult justice system and a tolerant, progressive youth justice system.

"Changes to Youth Justice"

NESSA LYNCH, Victoria University of Wellington - Faculty of Law
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This article is concerned with the Children, Young Persons and Their Families (Youth Court Jurisdiction and Orders) Amendment Act 2010. The author asserts that the amending Act represents a significant shift in the underlying theoretical principles of the youth justice system by introducing new powers and orders. This includes allowing 12 and 13 year old children to be persecuted for certain serious or persistent offending. The author observes this shift through comparison to the previous basis for the treatment of child offenders, specifically that offending stems from difficulties in the home life of the child, and thus should be resolved through alternative action. This article concludes that while New Zealand has been a world leader in youth justice policy since the inception of the innovative 1989 Act, the "contra-flow" of youth justice policy is now evident, with the locus of power gravitating back towards the state.

"Neurodisability in the Youth Justice System in New Zealand: How Vulnerability Intersects with Justice"

Dyslexia Foundation of New Zealand. Summarising the Contributions of Participants at the 2016 Neurodisabilities Forum, Hosted by DFNZ in Wellington, 12 May 2016
Victoria University of Wellington Legal Research Paper No. 16/2018

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On 12 May 2016, the 2016 Neurodisabilities Forum was held in Wellington to discuss the issue of neurodisabilities in the youth justice system. This report provides background and context to the issue of how the justice system interacts with young persons with neurodisabilities, summarises the discussion of the Forum, and makes key recommendations for action. These recommendations include raising the age of penal majority, and introducing a 'refer down' mechanism to allow case-by-case consideration, care and protection for people with neurodisabilities who are vulnerable in the justice system to be transferred to the Youth Court. The author concludes that where young persons with neurodisabilities commit criminal offences, they should be held accountable, but this must be done in a manner that they understand and reflects their disability.

"Clearing the Mist from Retrospectivity"

(2006) New Zealand Law Journal, 89-90
Victoria University of Wellington Legal Research Paper No. 17/2018

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In this article, the author considers the New Zealand Supreme Court case of *R v. Mist* [2005], which unanimously quashed a sentence of preventative detention after considering the interpretation of s 75 of the Criminal Justice Act 1985. The author subsequently examines the scope of relevant legislation, such as section 6 of the Sentencing Act 2002 and section 4 of the Criminal Justice Act, to further analyse retrospective increases in sentence. The article concludes that unlike s 4, s 6 does not distinguish between different types of penalty, thus indicating a reading of s 6, along with s 25(g) of the Bill of Rights Act, would extend the ambit of the old s 4.

"'Contrasts in Tolerance' in a Single Jurisdiction: The Case of New Zealand"

International Criminal Justice Review, 3, 217-232, 2013
Victoria University of Wellington Legal Research Paper No. 18/2018

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There is considerable literature on the causes of punitiveness in late modern society. Penal tolerance and its causes are less well studied. Both studies of punitiveness and tolerance have relied on analysis of single jurisdictions across time, or comparatively across jurisdictions. New Zealand offers a perhaps unique case study of a jurisdiction that hosted a tolerant and progressive youth justice and a punitive adult justice system in the same time period. This article considers three factors that have operated differently in each system to promote punitiveness or tolerance in the two decades from 1989. These are the mode of legislative and policy development, the participation of victims of crime in the criminal process, and how legislation and policy are implemented by professional decision makers.

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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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