

GERALD ALLOWAY, ASSISTANT EDITOR
Victoria University of Wellington - Faculty of Law
gerald.r.alloway@gmail.com

EDDIE CLARK, EDITOR
Lecturer in Law, Victoria University of Wellington - Faculty of Law
eddie.clark@vuw.ac.nz

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
john.prebble@vuw.ac.nz

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Announcements

Victoria University of Wellington Student and Alumni Subseries Issue XXVII: International Law and Politics

Current Issues in International Law and Politics is the eleventh in 2017 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 publishes a selection of honours and postgraduate papers from Victoria University of Wellington Law School.

The sub-Series includes both general and thematic issues.

Table of Contents

- **Blocking the Future? The Regulation of Distributed Ledgers**
Dion Blummont, Victoria University of Wellington, Faculty of Law, Student/Alumni
- **Central Clearing and Credit Default Swaps**
Trang Cao, Victoria University of Wellington, Faculty of Law, Student/Alumni
- **The Shortfall in Financial Markets Regulation: Why New Zealand Should Revisit Its Insider Trading Laws**
Anna Fraser, Victoria University of Wellington, Faculty of Law, Student/Alumni
- **Deposit Insurance: Friend or Foe?**
Crosby Radburn, Victoria University of Wellington, Faculty of Law, Student/Alumni
- **The Dodd-Frank Act: Immortalising Bailouts**
Claudia Smith, 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**

■ **"Blocking the Future? The Regulation of Distributed Ledgers"** 
Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 37/2017

DION BLUMMONT, Victoria University of Wellington, Faculty of Law, Student/Alumni

Distributed ledgers, and in particular blockchain technologies, promise to be revolutionary to financial markets, and the uptake of Bitcoin shows that it can also influence wider society. This paper examines the suggested uses of the technology, as well as the possible regulatory concerns that the technology raises. It looks at various regulatory measures that have been developed by jurisdictions to combat it, as well as possible applications of current regulatory frameworks. The paper then frames the issues in a regulatory lens, and looks at what lessons can be learned for regulation going forward.

"Central Clearing and Credit Default Swaps"

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No.38/2017

TRANG CAO, Victoria University of Wellington, Faculty of Law, Student/Alumni

Email: trang.cao@saigonam.com

My interest in this research topic was inspired by the apparently global consensus on the mandate for central clearing in the credit default swaps market. At the first glance, the central clearing mechanism with its central counterparties is the hero who saved many market participants from substantial losses following Lehman Brother's collapse. It was heralded for debunking the complex interconnection among financial counterparties and resolving Lehman Brother's positions in a timely and orderly manner.

Nonetheless, after coming into the spotlight, central counterparties raise significant concern about their potential to concentrate systemic risk and grown into 'too important to fail' institutions. Any collapse of a 'too important to fail' institution is undoubtedly disastrous and likely results in a cascade of defaults by other market participants. Therefore, it is highly questionable whether central clearing can ultimately maintain and protect the market robustness and sustainability. It is even criticised as the Maginot Line of the financial market for being a costly but inefficient bulwark and creating a "false sense of security".¹

Therefore, this research paper aims to address the aforementioned concern, whether the central clearing regime should be promoted to mitigate the counterparty risk even when it simultaneously propagates another type of systemic risk to the financial market.

As the legal framework and the risk management practices of CCP have not been battle test, it is impossible to reach any final and ex post conclusion on the ultimate efficiency of CCP. Nevertheless, historically CCP managed to withstand severe market distress whereas currently policymakers and regulators are spending increasing efforts on addressing and mitigating the systemic risk concentrated through CCP. Compared to other alternative clearing infrastructures, it is evident that central clearing is the optimal approach to address the counterparty risk and to enhance the market stability. Further, the research demonstrates that despite central counterparties' potential to concentrate and re-distribute systemic risk, their shortcomings and contagious fallouts are not insurmountable. They can be efficiently controlled and mitigated through the implementation of adequate regulations and supervision.

"The Shortfall in Financial Markets Regulation: Why New Zealand Should Revisit Its Insider Trading Laws"

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 39/2017

ANNA FRASER, Victoria University of Wellington, Faculty of Law, Student/Alumni

Email: anna.c.fraser@gmail.com

Insider trading is an exceptionally challenging offence to define, prove, and enforce. New Zealand is a country especially vulnerable to this challenge, with no insider trading convictions since first regulating the offence in 1988. This paper investigates the reasons behind this, by comparing the structure of New Zealand's legislation and enforcement to the United States and the European Union. A reform of the Financial Markets Conduct Act is suggested, with four main areas identified to enhance the strictness of New Zealand's legislation. A novel approach to enforcement is also recommended, through the introduction of a rewards scheme for whistle-blowers to reduce the inherent difficulty of meeting the criminal standard of proof.

"Deposit Insurance: Friend or Foe?"

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 40/2017

CROSBY RADBURN, Victoria University of Wellington, Faculty of Law, Student/Alumni

Email: crosby.radburn@gmail.com

Following the Global Financial Crisis many governments have undergone reform to ensure stability in financial markets. One mechanism adopted throughout many jurisdictions is deposit insurance. The Reserve Bank of New Zealand has chosen not to adopt such regulation. This essay criticises this decision. The current regulatory framework leaves depositors vulnerable to losses upon bank failure. Upon bank failure recovery is largely subject to the discretion of the Minister. This provides uncertainty in the markets, and consequently aggravates the risk of banks runs and a contagion risk. Adopting a suitably designed deposit insurance scheme will remove this uncertainty, create confidence, and increase the stability of the banking sector.

"The Dodd-Frank Act: Immortalising Bailouts"

Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 41/2017

CLAUDIA SMITH, Victoria University of Wellington, Faculty of Law, Student/Alumni
Email: csmith08@maxwell.syr.edu

The Global Financial Crisis saw an unprecedented level of government intervention to save failing financial institutions. Bailouts became synonymous with the Crisis. Despite promises of "no more bailout", international efforts to implement resolution regimes to resolve systemically important financial institutions have failed to solve the bailout issue. This paper examines the Dodd-Frank Act and concludes that instead of providing a pathway for large financial institutions to fail, it has enshrined too-big-to-fail and ensured bailouts will be there when needed. If regulators truly want to eliminate bailouts, too-big-to-fail institutions must be broken up. Until financial institutions become less systemically important, governments will have little choice other than to bail them out. In this light, Dodd-Frank's Orderly Liquidation Fund is an inevitable but necessary bailout procedure that provides a more organised approach than emergency measures in the face of a severe crisis.

[^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.

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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.

[^top](#)

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