



**LEGAL SCHOLARSHIP NETWORK: LEGAL STUDIES RESEARCH PAPER SERIES
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[TASNEEM HARADASA, ASSISTANT EDITOR](#)

Victoria University of Wellington, Faculty of Law, Student/Alumni
tazharadasa@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

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Victoria University of Wellington Student and Alumni Sub-Series Part 10: Public Law and Armed Conflict

Public Law and Armed Conflict is the tenth in 2019 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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["Achieving Long-Term Commitments to Complex Policy Issues: Should we be Legislating Policy Targets?"](#) 
[Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 37/2019](#)

[EMMA RICKETTS](#), Victoria University of Wellington, Faculty of Law, Student/Alumni
Email: em.ricketts@yahoo.co.nz

Many challenges facing society cannot be overcome within a single government's term in office, so effective solutions need to be long-term. Legislation may be a way to achieve this. Policy targets that are enshrined in law will continue to be binding until a future government repeals or amends them. In this paper I seek to determine whether the practice of incorporating policy targets in legislation is the best way to address complex and long-term challenges and, if it is, to what extent they should be incorporated. I refer to the Child Poverty Reduction Bill 2018 to assess the best way to implement durable child poverty reduction targets.


It is ultimately argued that some form of law is integral to achieving durable solutions, notwithstanding concerns that

arise when policy targets are legislated. The best approach is to enact a requirement to set targets but refrain from legislating the substantive targets themselves. Procedural restrictions should be legislated to protect the targets against amendment or revision by future governments without adequate consultation. Inspiration for these may be taken from the national policy statement framework under the Resource Management Act 1991, with the addition of reporting requirements to ensure compliance is monitored. I recognise that the Child Poverty Reduction Bill complies with this recommended approach, although the current proposal does not include sufficient safeguards to ensure the targets are durable.

["Cop or Comrade? Accountability Deficits in Police Covert Operations Targeting Activist Groups"](#) 
[Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 38/2019](#)

[ANNA ROZNAWSKA](#), Victoria University of Wellington, Faculty of Law, Student/Alumni
Email: ania.roznawska@hotmail.co.nz


There is growing evidence that covert police operations involving surveillance and infiltration are expanding beyond a traditional undercover criminal investigation to target activist groups. Due to the nature of such activity and the legal uncertainty around police powers of this kind it is difficult to know when democratic rights are being undermined. This paper argues that if such police practice is occurring, the potential legal, political and administrative accountability mechanisms are inadequate in both their availability and effectiveness. While the current climate of security inhibits public disapproval of police spying, it is apparent that more robust legal standards are needed to prevent abuses of public power.

["Operation Burnham and the Diminishing Role of Democratic Accountability in the Modern Security State"](#) 
[Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 39/2019](#)

[KHOTI WALKER-CLEMENTS](#), Victoria University of Wellington, Faculty of Law, Student/Alumni
Email: khoti.rose@yahoo.co.nz

On 22 August 2010, six Afghan citizens were killed and numerous others wounded during Operation Burnham, an operation spearheaded by the New Zealand Special Air Service. The New Zealand government subsequently kept details of the Operation secret from the New Zealand public in order to protect state security. However, the 2017 release of the book *Hit and Run* provoked public interest in allegations of military impropriety in the initiation and execution of Operation Burnham. In response to this significant public interest, an independent inquiry has been established to consider the allegations of wrongdoing. Yet, the inquiry may be conducted - in whole or in part - in private, and public access to inquiry information may be restricted to protect the security interests and international relations of New Zealand.

In this paper, I consider whether democratic accountability is satisfied in regards to Operation Burnham and other situations in which state security purportedly requires public access to information to be limited. After concluding that democratic accountability cannot be satisfied in situations characterized by an absence of transparency, such as has been the case so far with Operation Burnham, I move to consider the way that different states have struggled with the tension between national defence and democratic requirements, particularly in the context of the ongoing "War on Terror". While I demonstrate that the international trend is increasingly to sacrifice the transparency required by democratic accountability in favour of state security, I argue that this approach threatens the very foundations of the democratic state.

["A Kimberley Process for Conflict Antiquities: Determining the Viability of a Cultural Property Certification Scheme"](#) 
[Victoria University of Wellington Legal Research Paper, Student/Alumni Paper No. 40/2019](#)

[RUBY MEAGHER](#), Victoria University of Wellington, Faculty of Law, Student/Alumni
Email: rubymeagher@clear.net.nz

The trade in conflict antiquities — excavated and looted artefacts from conflict zones — is increasing due to the rising number of conflicts between states and rebel groups. Rebel groups loot conflict antiquities sell them for profit to fund their movements. Current legal and non-legal regulations fail to deter participants in the conflict antiquities market, namely looters, smugglers, dealers and auction houses. This is because regulations are reactive, localised to single states and unable to be easily applied during a conflict. The Kimberley Process Certification Scheme has been successfully used to regulate a similar illicit market — conflict diamonds. It does through a system of warranties certifying that each parcel of diamonds is free from conflict. To date, legal scholarship has recognised the similarities between conflict diamonds and conflict antiquities but has stopped short of analysing whether a certification scheme could similarly reduce the conflict antiquities market. This paper seeks to extend existing literature by undertaking this often absent analysis. It finds that a certification scheme is likely a workable solution for reducing the conflict antiquities market. Dealers and consumers may find such a database easy to use, incentivising participation. It may be an inexpensive solution for states and may help eliminate a form of rebel income. Finally, a certification scheme may better regulate the conflict antiquities market than alternative solutions.

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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 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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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)

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