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VICTORIA UNIVERSITY OF WELLINGTON LEGAL RESEARCH PAPERS

["New Zealand's Commitment to Combat Disability Discrimination"](#)

CRITICAL PERSPECTIVES ON HUMAN RIGHTS AND DISABILITY LAW, Marcia H. Rioux, Lee Ann Bassar, Melinda Jones, eds., Brill Publishers, 2011

[Victoria University of Wellington Legal Research Paper No. 13/2011](#)

PETRA BUTLER, Victoria University of Wellington - Faculty of Law

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Paper is a chapter in the forthcoming book "Critical Perspectives on Human Rights and Disability Law" edited by Marcia H. Rioux, Lee Ann Bassar and Melinda Jones (Brill Publishers, July 2010) and explores New Zealand's commitment to combat disability discrimination, especially in regard to the Convention on the Rights of Persons with Disabilities. It explores not only the constitutional framework but also policy developments, and practical measures.

["'The Rule of Law' Means Literally What it Says: The Rule of the Law': Fuller and Raz on Formal Legality and the Concept of Law"](#)

Australian Journal of Legal Philosophy, Vol. 32, pp. 90-113, 2007

[Victoria University of Wellington Legal Research Paper No. 14/2011](#)

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This article considers the conceptual relationship between the formal legality conception of the ideal of the rule of law and the concept of law. It describes two key approaches to the relationship, namely 'monism' and 'dualism'. Monism sees the formal legality as part of the concept of law, whereas dualism does not. The paper raises some issues in relation to conceptualising law, and points out some apparent inconsistencies in the legal theory of Joseph Raz.

["Mapping the Rainbow of Review: Recognising Variable Intensity"](#)

New Zealand Law Review, pp. 393-431, 2010

[Victoria University of Wellington Legal Research Paper No. 15/2011](#)

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This article explores Professor Taggart's "rainbow of review", a metaphor which seeks to capture the different intensity applied by courts when reviewing the administrative decisions of public bodies, office-holders and officials. The primary purpose of this article is to demonstrate the widespread application of variable intensity in New Zealand administrative law, both in its overt and covert forms. This article also builds on the contextualism-deference couplet mentioned by Professor Taggart - the idea that a commitment to the importance of context must also involve the application of deference (or variability) in judicial supervision. The secondary purpose of the article is to examine the attitudes of local jurists, scholars and practitioners to the contextualism-variability couplet. A strong commitment to the first arm of the couplet is evident, but there are greatly varying attitudes to the latter

arm. The article aims to build a foundation for the future examination of the ideal mechanism to capture and calibrate variable intensity.

"Democracy and Constitutional Change"

Theoria: A Journal of Social and Political Theory, No. 127, 2011

Osgoode CLPE Research Paper No. 48/2010

Victoria University of Wellington Legal Research Paper No. 16/2011

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The relationship between democracy and constitutions is a long and fractitious one. Those who lean towards the constitutionalist side have tended to perceive democracy as a threat to political order and the preservation of important values, whereas those who take a more democratist stance tend to treat constitutions as elite hindrances to popular rule as much as anything else. In this paper, we will give the constitutionalist thesis a broader theoretical and political scrutiny. By way of explanation, we will address and recommend the possibilities and problems for putting into practical operation such an anti-constitutionalist stance; the recent experience of the U.S. State of California offers itself as a good forcing-ground for these ideas. In short, from a democratic standpoint, the challenge for the citizenry is not so much about defining the values of constitutions, but constitutions whose change is outside the scope of popular decision making, supposed to exclusively take place through judicial interpretation or through an amendment formula designed precisely to make change difficult and unlikely. Too often, constitutions place checks and limits on democratic participation in the name of some other set of vaunted truths or elite-favouring values. For the strong democrat, it is formal constitutions and their institutional paraphernalia that do more to inhibit and dull democracy's emancipatory potential than to nurture and fulfil it.

"The Fabricated Unwind Doctrine: The True Meaning of Penn v. Robertson"

Hastings Business Law Journal, Vol. 7, No. 1, 2011

Victoria University of Wellington Legal Research Paper No. 17/2011

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When taxpayers discover that their transactions have unwanted tax consequences, they routinely rely on the unwind doctrine found in Internal Revenue Service Revenue Rulings 80-58. Nowadays, "unwinding" has become a "common if not ubiquitous feature of tax practice." This article finds that the unwind doctrine has no firm basis in case law. Instead, the unwind doctrine is an Internal Revenue Service (IRS) fabrication based on the IRS's misinterpretation of the case *Penn v. Robertson* 115 F2d 167 (4th Cir 1940). If the authors are correct one result may be that recipients of TARP-funded bonuses who gave the money back in the face of public opprobrium may (a) be taxable on the bonuses and (b) be unable to set the repayment off against taxable receipts in calculating their taxable income.

"The Changing Role of the State: Regulating Work Arrangements in Australia and New Zealand 1788-2007"

Labour History, No. 95, November 2008

Victoria University of Wellington Legal Research Paper No. 18/2011

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The state has played a conspicuous role in the history of labour in Australia and New Zealand both as a focus for struggles and where the labour movement achieved a degree of influence that garnered the interest of progressives in other countries. The state is a complex institution and its relationship to labour has been equally complex especially when the differential impacts on different groups such as women are considered. The principal aim of this paper is to trace state regulation of work arrangements (not only those pertaining to industrial relations) in both countries over the period of European presence. Although there are significant similarities, a number of differences are identified and we also try to indicate how recent research and debate on the historiography of the state can provide new insights.

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Solicitation of Abstracts

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 Judicial 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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