LEGAL SCHOLARSHIP NETWORK: LEGAL STUDIES RESEARCH PAPER SERIES
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Announcements

Collected Papers by the Right Honourable Sir Geoffrey Palmer QC
Part I Constitutional Law, Government and Reform

The Palmer Series collects the papers of the Right Honourable Sir Geoffrey Palmer QC, Distinguished Fellow of the Victoria University of Wellington Law Faculty. The series is sponsored by an anonymous donation, which the Faculty gratefully acknowledges.

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VICTORIA UNIVERSITY OF WELLINGTON LEGAL RESEARCH PAPERS

"Adam Clayton Powell and John Wilkes: An Analogue from England for the Men in the Marble Palace"
56 Iowa Law Review 725, 1971
Victoria University of Wellington Legal Research Paper Series Palmer Paper No. 1

SIR GEOFFREY PALMER QC, Victoria University of Wellington
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This paper considers the case of Powell v McCormack, regarding the unconstitutional exclusion of Adam Clayton Powell from the United States House of Representatives for misconduct. It considers arguments that can be made for supporting the action taken by the House, while acknowledging that there are powerful arguments militating against the wisdom of that action. Powell's constituents had elected him and obviously his exclusion left them without representation. The paper discusses the similarities between the situation of John Wilkes and the English constitutional experience. The Wilkes case was raised in argument during Powell, and the paper considers the United States Supreme Court's treatment of the English evidence.

"Unbridled Power? An Interpretation of New Zealand's Constitution and Government"
G. Palmer, Unbridled Power? An Interpretation of New Zealand's Constitution and Government, Oxford University Press, Wellington, 1979
Victoria University of Wellington Legal Research Paper Series Palmer Paper No. 2

SIR GEOFFREY PALMER QC, Victoria University of Wellington
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This book aims to give an overview of government in New Zealand.

"Another Way of Skinning the Rabbit"
Washington and Lee Law Review, Vol. 48, p. 447, 1991
Victoria University of Wellington Legal Research Paper Series Palmer Paper No. 3

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This paper was initially presented as a speech reviewing another paper, authored by Professor Soifer, which examined the Anglo American legal tradition in relation to minorities. The author is not convinced that such a tradition exists now. There is a tradition of English law and a tradition of American law; they are related in some respects, but in one of the features with which this paper is most vitally concerned they are fundamentally different. English law knows nothing of judicial review of acts of Parliament. There is no constitutional possibility in English law to have a statute declared unconstitutional. Such an absence of judicial review makes a very big difference. The English tradition depends for the protection of minorities very much more upon legislation which is passed by Parliament. Nevertheless, a powerful tradition of courts protecting minorities exists in the English common law. The tradition persists despite the fact that courts do not have judicial review power in the sense that courts enjoy that power in the United States. The record of protecting minorities in the English common law tradition is a solid achievement of the common law which deserves more credit than is given by the previous article.

The paper considers the Case of James Sommersett, a Negro, on a Habeas Corpus, decided in 1772 regarding slavery in England at that time. The decision of the Court of Kings Bench marks out what is still a very strong tradition in English law, that the court's role is to protect minorities and to ensure that justice is done to them, whatever the political and economic effects. It then turns to New Zealand to consider the treatment of Maori by New Zealand courts, particularly with regard to New Zealand Maori Council v Attorney-General. In discussing both cases, the author argues that perhaps Professor Soifer, in suggesting that the common law tradition in the Commonwealth is unable to deal effectively with the problems of minorities, has been too sweeping with his criticism.

The absence of judicial review has also meant that the political organs of government are forced to respond to the problems of minorities. They are held to account. Because they are forced to respond, they pass statutes in a general way which the courts interpret in a specific way. It is easier to decide upon progressive policies for minorities so long as it is in terms of general principles. The power of statutory interpretation in the common law tradition is a strong and powerful instrument in the hands of a determined court.

"The Hazards of Making Constitutions: Some Reflections on Comparative Constitutional Law"
Roles and Perspectives in New Zealand Law: Essays in Honour of Sir Ivor Richardson, David Carter and Matthew Palmer, eds., 2002

Victoria University of Wellington Legal Research Paper Series Palmer Paper No. 4

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The organisers of this Conference invited the author to contribute a paper on making constitutions, which drew on his perspectives as a lawyer, academic, and former politician. A number of the observations flow from his experience practicing exclusively in the field of public law, of dealing with governments on a variety of issues on behalf of clients and seeing, on a daily basis, the subtleties, complexities, and mutations that occur constantly within the New Zealand system of government. The second strand of the paper comes from teaching comparative constitutional law in the United States of America, concentrating upon a comparison of the Westminster system and congressional government, or in the more modern characterisation, presidential government as practised in the United States. The degree of suspicion of State power and the manner in which it is exercised is one of the eternal themes of constitutional law in all countries. There are some wonderful harmonies and dissonances between the United States system and the Westminster system. These two systems are the competing model for emerging nations to emulate, at least to some degree, when approaching the task of constitution building.

The paper considers matters such as superior law constitutions, constitutional protection of fundamental rights, constitutional design, and different constitutional examples in the South Pacific. Outcomes do not necessarily flow from constitutional structures, but what they do result from is frequently a mixture of so many variables of such complexity that they cannot be effectively calculated. Economic factors, resources, geography, demography, and history are all likely to be as influential in shaping outcomes as a constitution. Law is a subset of the social system. Social and political conditions determine the law, particularly constitutional law, rather than the other way around. But New Zealand could do with some self-reflective comparison. A comparative perspective may be one way of distancing ourselves from our own dominant legal consciousness. If comparative constitutional law does anything, it forces the analyst to think more deeply about his or her own domestic orthodoxies.

"Constitutional Reflections on Fifty Years of the Ombudsmen in New Zealand"
(2013) 25(4) NZULR 780
Victoria University of Wellington Legal Research Paper Series Palmer Paper No. 5

SIR GEOFFREY PALMER QC, Victoria University of Wellington
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This paper explores the Ombudsmen after 50 years in New Zealand within the context of New Zealand's rather odd Constitution. It is odd because there is no upper house, no entrenched written constitution, no judicial review of legislative action, and many of the arrangements flow from constitutional conventions not law. New Zealand has a strong tradition of parliamentary supremacy. The New Zealand Constitution is highly fluid and elastic. It is like a living, breathing organism that mutates. This may be thought of as a somewhat unstable foundation for the Ombudsmen but this has not proved to be the case. The institution of the Ombudsmen has become an established and settled part of the constitutional landscape in New Zealand. The paper discusses the original vision of the Ombudsman's Office and considers its performance against that original idea. It explains the institution's role and its relationship with both Parliament and the Executive. It covers the other functions that the Office has been given alongside its original Ombudsmen role, and contemplates the potential threat for the Office to be crowded out with a proliferation of complaint agencies. It also considers the potential for the Office itself to draw complaint resolution functions away from MPs, when such a function has been a traditional part of MP roles with regard to their constituents. The latter half of the paper turns to the Official Information Act and raises the question of whether this jurisdiction should have been added to the functions of the Office. It sets out an overview of the recommendations in that report, responds to and critiques the Government's response, and lays out an alternative potential option to modernise and streamline official information legislation while reducing the additional workload of the Ombudsman's Office and ensuring it can focus on its core constitutional and human functions.

"The Strong New Zealand Democratic Tradition and the 'Great Public Meeting' of 1850 in Nelson"
New Zealand Journal of Public and International Law, Forthcoming
Victoria University of Wellington Legal Research Paper Series Palmer Paper No. 6

SIR GEOFFREY PALMER QC, Victoria University of Wellington
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This paper delves into Nelson political developments in the nineteenth century, particularly at the time of Provincial Government. It examines how the robust nature of New Zealand's commitment to democracy was a tradition that developed early, and analyses the political views and philosophies of emerging democratic theory articulated at the 1850 Nelson meeting.

This paper was presented at the New Zealand Centre for Public Law conference 'Unearthing New Zealand's Constitutional Traditions' in August 2013.
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About this eJournal

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 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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