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New Zealand Constitutional Issues: Papers by Students and Alumni of Victoria University of Wellington Law Faculty

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LEGAL SCHOLARSHIP NETWORK: LEGAL STUDIES RESEARCH PAPER SERIES

VICTORIA UNIVERSITY OF WELLINGTON LEGAL RESEARCH PAPERS

"We the People? – Theorising Constitutional Democratic Legitimacy to Reflect on and Enrich New Zealand's Constitution"

Victoria University of Wellington Legal Research Paper Series Student/Alumni Paper No. 6

GEORGIA LOCKIE, Victoria University of Wellington, Faculty of Law, Students/Alumni
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This paper explores the concept of constitutional democratic legitimacy and the democratic legitimacy of New Zealand's constitution in particular. In so doing, it considers Bruce Ackerman's constitutional theory in *We the People*, Volume 1: Foundations and the criticisms it has provoked to develop a theoretical framework of three constitutional models (monism, dualism and rights foundationalism) that can be used to assess constitutional democratic legitimacy. It then utilises this framework as a tool

for analysing New Zealand's constitutional arrangements, observing that New Zealand has a particularly sophisticated monist constitution, noting s 268 of the Electoral Act 1993 and the adoption of MMP voting as particular institutional examples. Nevertheless, it is recognised that New Zealand's constitution may still be critiqued in terms of its claim to democratic legitimacy through the alternative perspectives of monism (focusing on remaining flaws in New Zealand's electoral system), dualism (focusing on the absence of avenues for binding public constitutional participation) and rights foundationalism (focusing on the constitutional place of the Treaty of Waitangi). Alternative suggestions for reform are offered.

"Joining the Aotearoa New Zealand Constitutional Debate: Constitutional Environmental Rights in Our Future 'Constitution'"

Victoria University of Wellington Legal Research Paper Series Student/Alumni Paper No. 7

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In 2013, the Constitutional Advisory Panel invited New Zealanders to think about our vision of what New Zealand should look like in the future and to consider how our constitutional arrangements would support that vision. In response, New Zealanders have suggested the inclusion of an environmental protection regime in our future constitutional landscape. The author supports this prevailing opinion. This paper will use the experiences gained from international and regional human rights and environmental law treaties and other countries' constitutions to explore the best model to achieve that goal. This comparative law analysis will identify the key theoretical and legal issues that must be addressed by Parliament to ensure the successful implementation and enforcement of an environmental protection regime through the courts. While international developments are important, any environmental constitutional framework must reflect New Zealand's unique and distinctive history, environment, people, and cultural values. With this in mind, this paper will tentatively canvass a new environmental constitutional framework and lay foundations for further legal research and public debate.

"Parliamentary Sovereignty as a Barrier to a Treaty-Based Partnership"

Victoria University of Wellington Legal Research Paper Series Student/Alumni Paper No. 8

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The Treaty of Waitangi has repeatedly been affirmed as New Zealand's founding document, yet our constitutional arrangements rest on the untrammelled principle of parliamentary sovereignty. This paper argues that the doctrine of parliamentary sovereignty is contrary to the sharing of powers provided for in the Treaty, as it concentrates ultimate law-making authority in one body. New Zealand's constitutional history is canvassed briefly, with a specific focus on the Treaty and the basis of British Crown's acquisition of sovereignty over New Zealand. It is noted that the current place of the Treaty within New Zealand's constitution is within the vast powers of parliament - the Treaty can only have legal effect to the extent that Parliament provides for. After looking at examples from statute and common law it is concluded that, rather than limiting parliamentary sovereignty, the current approach ultimately reinforces the absolute and indivisible power of parliament. As such, it is a barrier to a Treaty partnership between the Crown and Maori. To truly give effect to the Treaty a change in the way in which public power in New Zealand is configured and exercised is necessary. Three models for Treaty-based constitutional reform are therefore discussed. The current constitutional review provides Iwi and the Crown with an opportunity to look beyond the confines of the doctrine of parliamentary sovereignty and forge a unique constitutional system that gives effect to the Treaty as New Zealand's founding document.

"Rethinking Electoral Reform Processes after the Report of the Electoral Commission on the Review of the MMP Voting System"

Victoria University of Wellington Legal Research Paper Series Student/Alumni Paper No. 9

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The 2012 Report of the Electoral Commission on the Review of the MMP system recommended that several changes be made to the way in which future parliaments are elected in New Zealand. The lack of legislative response to the recommendations highlighted an issue inherent in New Zealand's constitutional arrangements - that changes to electoral rules are designed and enacted by politicians, and there is no mechanism through which citizens can initiate or meaningfully engage with electoral reform processes. This paper looks at whether there is a better way that such proposals for electoral

rule changes could be managed, proposing the use of 'citizen initiated' Citizens' Assemblies on Electoral Reform.

"Regulating Lobbyists in New Zealand"

Victoria University of Wellington Legal Research Paper Series Student/Alumni Paper No. 10

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Lobbying is a vital aspect of democratic governance and is for the most part beneficial to society. However, recent high-profile instances of lobbying activity in New Zealand have damaged governmental integrity and appear to have diminished public confidence in government decision-making processes. The Lobbying Disclosure Bill was introduced to the New Zealand Parliament in 2012 in the hope that transparency mechanisms could dissuade harmful lobbying without impeding ordinary activity.

The Bill was rejected at the select committee stage due to a number of drafting deficiencies. These shortcomings made the Bill difficult to implement, and imposed a disproportionate limit on a number of human rights. Despite these failings, it is both possible and desirable to regulate lobbying activity in New Zealand. Drawing from overseas experiences, this paper suggests modifications to the Lobbying Disclosure Bill which would discourage harmful lobbying while also mitigating the concerns raised by critics of the Bill.

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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 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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