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LEGAL SCHOLARSHIP NETWORK: LEGAL STUDIES RESEARCH PAPER SERIES

VICTORIA UNIVERSITY OF WELLINGTON LEGAL RESEARCH PAPERS

"Foreword: New Thinking on Sustainability"

(2015) 13 NZJPIL

Victoria University of Wellington Legal Research Paper No. 4/2016

CATHERINE J. IORNS MAGALLANES, Victoria University of Wellington - Faculty of Law

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It is clear that the natural environment is essential to human survival. However, today's societies exhibit a clear disconnect with this fact, the creation of modern technologies helping us take for granted the services provided by the natural world. This has caused our way of living to become ecologically unsustainable, generating the need for new legal thinking on how to define, require and enforce ecological sustainability. In February 2014, Catherine Iorns and Petra Butler held a conference

at the Victoria University of Wellington Law School addressing such new legal thinking on sustainability. This Journal issue addresses the background to the issues discussed, articles from several of the key presentations, and the conference itself.

"Setting the Scene for the 'New Thinking on Sustainability' Conference"

(2015) 13 NZJPIL

Victoria University of Wellington Legal Research Paper No. 5/2016

SIR GEOFFREY PALMER QC, Victoria University of Wellington - Faculty of Law

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This is the Opening Address to the "New Thinking on Sustainability" conference held at Victoria University of Wellington in February 2014. In his address Sir Geoffrey Palmer QC traces the history of the sustainability issue. Since the 1970s there has been increased global concern about the long list of environmental problems that our planet is facing. Sir Geoffrey considers the international developments in environmental protection commencing with the Stockholm Declaration of the United Nations Conference on the Human Environment in 1972. Finally, policy approaches to achieving sustainable development are discussed with particular reference to the Resource Management Act 1991. Unfortunately, current policy initiatives undertaken by the New Zealand government are not consistent with sustainable development as the touchstone for environmental law in New Zealand.

"Maori Cultural Rights in Aotearoa New Zealand: Protecting the Cosmology that Protects the Environment"

21:2 *Widener Law Review* 273-327, 2015

Victoria University of Wellington Legal Research Paper No. 6/2016

CATHERINE J. IORNS MAGALLANES, Victoria University of Wellington - Faculty of Law

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This paper first addresses indigenous beliefs about humans' relationship with nature and thus their place in the world, and how the indigenous cosmology contrasts with the dominant and prevailing Western and liberal ideas.

The paper next addresses the New Zealand examples of the recognition of the right of Maori to have their cosmology upheld in NZ law. In order to understand the current position and how it arose, the history of the Treaty of Waitangi is explained, as is the mechanism adopted to address the Maori grievances arising from its many breaches by the New Zealand government.

Next, different aspects of NZ law are addressed, from recognition of Maori interests and thus cosmology in mainstream resource management decisionmaking, to special arrangements designed specifically to implement Maori cosmology in the management of NZ's natural resources. It is these special arrangements in particular which environmentalists have focused on because some recent examples have recognised in law the Maori view that the natural environment should be treated more as a person — indeed, as a relative — rather than simply as a resource. These examples from New Zealand illustrate ways in which the law can be used to implement and incorporate indigenous cosmologies with a Western society and legal system and better protect the natural environment in the process.

"Tino Rangatiratanga and Sustainable Development: Principles for Developing a Just and Effective System of Environmental Law in Aotearoa"

(2010) 3 *Journal of Māori Legal Writing (Te Tai Haruru)* 59.

Victoria University of Wellington Legal Research Paper No. 7/2016

CARWYN JONES, Victoria University of Wellington - Faculty of Law

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This paper concerns the development of a just and effective environmental legal system in New Zealand, one that is justly based on the Treaty relationship, and that effectively creates good environmental outcomes. The author first lists the basic requirements of a just and effective environmental legal system in regards to the Treaty of Waitangi, Māori environmental law, and sustainable development. The article then goes into detail as to what principles can guide environmental law to achieve these requirements.

"New Zealand's Defective Law on Climate Change"

(2015) 13 NZJPIL

Victoria University of Wellington Legal Research Paper No. 8/2016

The article describes the world-wide efforts or the lack thereof to combat climate change in the last 25 years. The article asks whether the world has to wait until the adversity actually sets in before effective action is taken; whether the failure to act is caused because people have not yet felt the adversity of climate change and will not sanction serious action until the consequences are evident to them. If that is so, will it then be too late to mitigate global warming? The article explores those questions and makes some hopeful suggestions as to what can be done to achieve zero greenhouse gas emissions. The article examines the state of New Zealand law on climate change and the approach New Zealand is taking to international negotiations.

"Diving in the Deep End: Precaution and Seabed Mining in New Zealand's Exclusive Economic Zone"

(2015) 13 NZJPIIL

Victoria University of Wellington Legal Research Paper No. 9/2016

CATHERINE J. IORNS MAGALLANES, Victoria University of Wellington - Faculty of Law

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Environmental precaution has developed as one of the cornerstones of modern law concerning sustainability. The idea is that where there is uncertainty as to the effects of a proposed activity, such uncertainty should not be used as an excuse for taking no action to address effects. While New Zealand's key environmental statute, the Resource Management Act 1991 (RMA), does not specifically refer to precaution in its consenting context, the courts have seen a precautionary approach as inherent in its provisions in a variety of ways. The Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act), in contrast, specifically requires decision makers to favour caution and environmental protection in s 61(2) when information is uncertain. However, the exact ways in which this is to occur are unclear. The EEZ Act closely mirrors the structures of the Resource Management Act, and the ways in which precaution has been recognised in the latter might also be recognised in the former without the need to refer to s 61(2). It is therefore helpful to consider what that section will add to a regime into which precaution can already be read. This article explores the merits of various ways in which precaution could be implemented under s 61(2). It also investigates the way in which precaution has been treated by the Environmental Protection Authority in the context of deep seabed mining in the first two consenting decisions made under the Act. It concludes that, despite some comments that s 61(2) is vague and weak, the most persuasive interpretation is one that has at least the potential to be relatively liberal and strongly precautionary.

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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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