

# ADVANCING BETTER GOVERNMENT, SUSTAINABLE ECONOMIES, VIBRANT COMMUNITIES: LAW'S ROLE? A FOREWORD TO THE 2016 ALTA CONFERENCE SPECIAL ISSUE

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This special issue of the Victoria University of Wellington Law Review arises from the annual conference of the Australasian Law Teachers Association (ALTA) hosted by the Faculty of Law of Victoria University of Wellington on 7–9 July 2016.

ALTA is a thousand member strong professional body representing the interests of law teachers, academics and scholars in Australia, New Zealand and the South Pacific.<sup>1</sup> Its purposes are to further legal education in the region, encourage legal research and the publication of contributions to legal knowledge, and foster cooperation with professional legal associations and other bodies in the work of law reform, professional development opportunities and practice programmes. The annual conference is its flagship event.

Close to 150 participants from Australasia and further afield and from the four sectors – academia, the public sector, non-governmental organisations (NGOs) and the private sector – convened to explore the role of law, lawyers, law teachers and advocates in advancing better government, sustainable economies and vibrant communities. Participants examined inter alia the role of law in promoting good governance and the rule of law, building strong and resilient economies mindful of the environment and respectful of social development, as well as nurturing multicultural, diverse and

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1 Australasian Law Teachers Association <[www.alta.edu.au](http://www.alta.edu.au)>.

thriving societies. They also discussed the role law teachers and scholars should play in forming the next generation of graduates, practitioners, government officials and civil society advisers.

By challenging openly the role of law, we are invited to question ourselves, our place in the community, and our profession: what represents a modern and diverse society, a strong and sustainable economy, a better government? What is the role of lawyers and legal scholars in moulding the future? Law teachers and scholars have a critical role in developing and empowering new graduates to play a responsible, meaningful and influential part in improving the fabric of society. So do practitioners and legal advisers when mentoring new lawyers. It is also important for lawyers, scholars and advocates, whatever their area of interest and specialisation, to ensure their research and work are purposeful and forward-looking and that they understand how their activities fit within the wider picture. The theme of the conference was addressed from various viewpoints, in a number of plenaries and parallel sessions. The event was facilitated by the generous support of the New Zealand Law Foundation.

This special issue comprises first of all a number of addresses delivered by some of the distinguished invited keynote speakers. We are particularly honoured that they kindly agreed to publish here revised versions of their oral presentations. During an engaging plenary devoted to inspirational voices held on the first day of the conference, two eminent speakers shared their highly valuable and complementary views on the conference theme drawing on their vast and diverse experience. In his published speech, the Rt Hon Sir Geoffrey Palmer (Distinguished Fellow, Victoria University of Wellington) presents captivating thoughts on, and critiques of, legal education and the teaching of law,<sup>2</sup> holding the view that legal education must adapt to changing circumstances and that law teachers "have to know how to practice law if they are to be effective teachers".<sup>3</sup> In response, the Rt Hon Dame Sian Elias (Chief Justice, Supreme Court of New Zealand) offers her own personal and deep reflections on law and the special responsibilities its teachers hold in keeping the "learning of the law" within its wider context.<sup>4</sup> The commitment of Dame Sian Elias and Sir Geoffrey Palmer to ALTA was recognised with Honorary Life Memberships bestowed upon them at the close of their session by the Honorary Secretary of ALTA, Professor David Barker (Emeritus Professor, University of Technology Sydney).

The plenary that followed on the second day reflected on the setting of educational priorities and scholarly endeavours and helped us identify trends in legal education. Thought-provoking presentations engaged the audience by examining the varied facets of legal education and academia in their evolutionary context. With his keynote address, Dean and Professor Lorne Sossin (Osgoode Hall Law School, York University) challenges us by offering a series of reflections on the idea of law

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2 Geoffrey Palmer "Some Thoughts on Legal Education" (2017) 48 VUWLR 209.

3 At 214.

4 Sian Elias "Teaching Law Today" (2017) 48 VUWLR 217.

schools not only as instruments of social innovation, but also as social innovation themselves, based on insights from a North American perspective.<sup>5</sup> He proposes a future framing model for part of the mandate of law schools and legal education with an aim to serve the public interest while addressing some shared issues law schools are facing in Common Law jurisdictions. He then surveys a number of law school-based projects and initiatives that hone academic skills into tools that promote social improvement. For him, social innovation "builds on academic skills, but importantly, and in ways distinct from conventional classroom oriented legal education, deploys them for a social purpose".<sup>6</sup> Dame Susan Glazebrook (Justice, Supreme Court of New Zealand) discusses in-depth the relationship between the judiciary and academia in the New Zealand context, reflecting in particular on the enriching links between academics and the Supreme Court.<sup>7</sup> She welcomes the diversity in opinions and concludes that the dialogue between judges and academics "enriches both our judgments and your academic work".<sup>8</sup> With a New Zealand and international outlook in mind, the Rt Hon Sir Kenneth Keith (Professor Emeritus, Victoria University of Wellington) comments on the evolution of legal education, highlighting significant changes in the teaching and practice of law as well as in the law itself over the past six decades.<sup>9</sup> He invites scholars to consider current and future challenges in an evolutionary context, to question "received wisdom, to put forward new ideas and to state controversial or unpopular opinions",<sup>10</sup> and to play their role as "critic and conscience of society",<sup>11</sup> thereby rounding up the speakers' discussion on the academic endeavour very well indeed.

Then follows a number of scholarly articles, which illustrate the quality and wide array of submissions the call for papers attracted ahead of the conference. The authors were amongst the more than 90 conference speakers contributing to a rich programme comprising of no less than 30 panels. These articles underwent the Victoria University of Wellington Law Review's usual rigorous refereed process. We take this opportunity to thank the reviewers for the thoughtful comments they kindly provided on submitted drafts in their blind peer review reports, and the team of students who meticulously checked references in the footnotes and ensured compliance with the *New Zealand Law Style Guide* under the stewardship of the Student Editor-in-Chief, Ms Alice Coppard, whose editing skills are gratefully acknowledged.

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5 Lorne Sossin "Law Schools as Social Innovation" (2017) 48 VUWLR 225.

6 At 235.

7 Susan Glazebrook "Academics and the Supreme Court" (2017) 48 VUWLR 237.

8 At 249.

9 KJ Keith "The Academic Endeavour: 1956–2016–?????" (2017) 48 VUWLR 251.

10 At 257.

11 Education Act 1989, s 162(4)(a)(v).

Two articles test the boundaries of specific concepts and highlight the need to find suitable equilibria in today's complex environment. In the intellectual property field, Dr Jonathan Barrett examines the treatment afforded to "freedom of panorama", that is the exploitation of certain works of art on permanent public display, as an exception from copyright provisions in New Zealand.<sup>12</sup> Noting the Waitangi Tribunal's consideration of protection of Māori cultural treasures in its report Wai 262,<sup>13</sup> and comparing the New Zealand approach with that of other jurisdictions, he queries whether the current exclusion balances appropriately the various rights and interests at stake. He favours instead a solution that would restrict the reproduction of artistic works in public view to non-commercial use, thus bringing "freedom of panorama within the scope of fair dealing" and eliminating "anomalies between different types of artistic works, and between permanent and temporary exhibitions".<sup>14</sup> As an experienced planning law expert, Ms Amy McInerney examines Queensland's performance-based planning system and related law reforms and highlights the issue of "complexity in the context of planning schemes".<sup>15</sup> She analyses risk concepts applicable to planning, and suggests that a risk-based approach in the preparation of planning schemes might "strike the right balance between flexibility and certainty", exhorting the planning law community to explore the model more exhaustively.<sup>16</sup>

Two other contributions point to the diversity and changing nature of legal systems and governance practices, whether due to local customs or overseas influence. Professor Jennifer Corrin sets out to consider how legal pluralism is manifested in South Pacific jurisdictions, by analysing the extent to which "non-state" systems of law permeate the legal systems of countries in the region.<sup>17</sup> Although the domestic statutes she discusses fail to show the coexistence of legal orders with different sources of authority (what she refers to as "deep" legal pluralism), she concludes that "all the Acts discussed constitute valiant attempts to make Pacific legal systems more responsive to the cultural climate" and hint towards some implicit recognition "of the law-making powers" of non-state institutions.<sup>18</sup> In their joint contribution, Professor Roman Tomasic and Dr Ping Xiong seek to improve our understanding of how Chinese state-owned enterprises (SOEs), through their investments

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12 Jonathan Barrett "Time to Look Again? Copyright and Freedom of Panorama" (2017) 48 VUWLR 261.

13 Waitangi Tribunal *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity Te Taumata Tuatahi* (Wai 262, 2011).

14 Barrett, above n 12, at 282.

15 Amy McInerney "Planning – A Risky Business?" (2017) 48 VUWLR 283 at 283.

16 At 303.

17 Jennifer Corrin "Exploring the Deep: Looking for Deep Legal Pluralism in the South Pacific" (2017) 48 VUWLR 305.

18 At 322.

in Australia, may impact on the latter's corporate governance landscape.<sup>19</sup> They believe that it is important to assess the patterns of corporate governance in Chinese SOEs and "how the Australian legal system, and Australian corporate governance practices, may change as a result of the entry of these powerful new economic actors into the Australian landscape".<sup>20</sup>

The two final articles aim respectively at improving the effectiveness of the teaching curriculum and at enhancing students' research skills. Mr Nathan Jon Ross examines the teaching of legal skills and doctrine in undergraduate law programmes.<sup>21</sup> He recommends incorporating in these programmes increased elements of policy skills and deeper knowledge to enable law graduates to go out, confident in their ability to "identify and answer policy questions, ... to criticise productively, to assess ... what really matters for individuals and society, and to think creatively and constructively to help solve people's and communities' problems".<sup>22</sup> Associate Professor Chris Dent provides a structured taxonomy for the range of legal research work generally undertaken.<sup>23</sup> This is to enable students to reflect on how their choices impact their research, and through this enhanced awareness, to facilitate more effective research. With some illustrative examples at hand, he identifies three main research "methods" (doctrinal, socio-legal, and critical), three distinctive "approaches" (historical, comparative, and empirical), and two "purposes" (descriptive and normative). The author modestly argues that the separation of the research process under those three labels shall "assist law Honours students to scope, and establish, their research projects and [may] be used for Masters students without prior research experience".<sup>24</sup> His proposed taxonomy, however, can be useful to any researcher insofar as it deconstructs explicitly an all too often implicit process. In particular, it helps flesh out the researcher's analytical process and input while clarifying the relationship between the research materials and their specific use.

The rich variety of thoughtful addresses and articles in this special issue attests to the healthy dynamism of the teaching and development of law in the region and lawyers' and scholars' openness to constructive criticism. This is crucial for fostering better government, sustainable economies and vibrant societies and in preparing successfully future generations of law graduates for a constantly evolving and increasingly complex world. In shaping law's role, it is suggested, practitioners, NGO advocates, government lawyers, law teachers and scholars must be guided at all times by integrity and

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19 Roman Tomasic and Ping Xiong "Mapping the Legal Landscape: Chinese State-Owned Companies in Australia" (2017) 48 VUWLR 323.

20 At 351.

21 Nathan Jon Ross "Beyond Skills and Doctrine: The Need for Policy Skills and Interdisciplinarity" (2017) 48 VUWLR 353.

22 At 369.

23 Chris Dent "A Law Student-Oriented Taxonomy for Research in Law" (2017) 48 VUWLR 371.

24 At 388.

adaptability. Integrity is critical in teaching and research as well as in the profession, in government, and in any environment reliant on trusting relationships. Equally important for lawyers and scholars is the capacity to adapt to, and embrace, our evolving environment, the reality of multicultural and multidisciplinary settings, and career changes. This special issue also highlights these values.