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Abstracts from the Law and Social Justice Interest Group

Access to the Civil Justice System: Can a Bill of Rights meet the challenge?

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Abstract
This paper explores whether a Bill of Rights can protect or enhance meaningful access to the civil justice system in Australia. The relevance of the topic is highlighted by recent examples of attempts to block access to the civil justice system. It explores the normative provisions included in human rights instruments that are aimed at protecting and promoting access to the civil justice system. The focus is on the *International Covenant on Civil and Political Rights* 1966 (given that it is a modern human rights document and that Australia has ratified it), with brief consideration being given to the *European Convention on Human Rights* and relevant constitutional law of the United States. The paper then contemplates remedial provisions of particular Bills of Rights. The *Human Rights Act* 1998 of the United Kingdom is discussed to highlight the futility of guarantees of rights if courts are not given concomitant powers to award remedies. The New Zealand *Bill of Rights* is compared, emphasizing the need for flexible interpretation of human rights instrument, ensuring their effectiveness. The paper concludes by way of warning. Attention is drawn to the manner in which corporations can exercise their "human rights" as against individuals. The fact that certain politically powerful actors in the modern state (i.e. corporations) have rights but no obligations is also evaluated. Reference is made to Canadian jurisprudence under the *Charter of Rights and Freedoms* 1982 (the "*Charter*"). The thrust of the paper is supportive of the beneficial role rights can play in a constitutional set up, but stresses the potential anomalies that may arise.

The Role of Learning Theory in the Promotion of Social Justice

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Abstract
An understanding of learning theory can increase the sensitivity of teachers and students to the relationship between law and social justice. This is because learning can change the way in which we understand and experience the world. But not all learning produces this result. Surface approaches to learning which focus on lower order outcomes such as memorisation preclude that level of understanding which allows knowledge to be transferred to unfamiliar settings. In contrast, students who adopt a deep approach to learning focus on meaning and relationship: they are more likely to understand the connections between ideas, to go beyond immediate problems, to theorise about, and to reflect upon, their own experience. This kind of learning, which allows students to

'negotiate with the world and to see it differently, involves understanding of a high order. It is the kind of understanding that is referred to in the rhetoric of university teaching, yet it seems to be discouraged in practice' (Biggs 1999: 34).

This lack of encouragement is unlikely to change given the demands of economic rationalism and corporate managerialism from which universities have by no means been immune. Yet the global changes of the last two decades only emphasise the need for understanding of a higher order if students are to achieve learning outcomes which increase their openness to, and capacity to deal with, social justice concerns. As a core LLB subject which embodies notions of governance and accountability, Public Law is central to the relationship between law and social justice. By exploring how learning theory might be applied to Public Law to encourage reflective practice by both students and teachers, this paper seeks to highlight the potential of educational innovation to the promotion of social justice in times of rapid social and economic change.

Are Australian family law solicitors fleeing legal aid?

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Abstract

In September 1999 National Legal Aid conducted a selective national survey of solicitors' firms. Its purpose was to identify trends over 1994-99 in legal work performed by private solicitors in family law matters funded by legal aid. Over 250 firms participated. Respondents were asked to report on:

- The no. of family lawyers in firms
- The no. of family lawyers in firms undertaking legal aid work
- Changes in the type of legal aid work undertaken
- Comparative changes in the amount of legal aid work performed
- Commercial hourly rates for family law work

This paper presents the quantitative evidence elicited in the survey. It discusses what the survey tells us about the years of experience of family law solicitors in respondent firms, and the changes evident over 1994-99. The paper also examines respondents perceptions of comparative changes in amount of legal aid work performed, and considers the reliability of those perceptions. Presentation of the survey evidence concludes with a description of the rates charged by respondent firms for family law work over 1994-99. The paper proceeds to critically review the significance of the survey evidence. It considers the implications of the survey for the arguments that there has been a flight from legally aided family law work by experienced family law solicitors. The paper also seeks to place the arguments that legal aid work is unprofitable in the context of the organisation and incomes within the legal services industry. Generally it suggests that the reality is more complex that the anecdotal evidence of the behaviour of lawyers and firms would have us believe. In reviewing the significance of the survey the paper also incorporates information from preliminary inquiries as to the relevant experience of some

comparable jurisdictions. In particular, England, The Netherlands, New Zealand, the United States and Canada. The paper concludes by identifying some possible policy approaches to dealing with the problem of providing quality family law services in legal aid, and more broadly in developing arguments in relation to legal aid funding.

'The New Right Colonising Education: A New Zealand Experiment'

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Abstract
Since 1989 there has been a dramatic new policy initiative in New Zealand to reconfigure the education system, particularly in its pre-tertiary institutional structures. Its themes centre around notions of economic rationalism (the pursuit of an 'efficient' use of educational resources inputs through the creation of a quasi-competitive 'market'), managerialism (in imposing measurable and auditable 'outputs') and a skepticism of the old model arising out of public choice theory (the suspicion that teachers and bureaucrats are motivated by self-interest rather than the public good). The ability of Economics to 'colonise' education appears to echo similar moves by the Law and Economics school in legal theory. This paper describes in broad terms the new institutional forms of 'Tomorrow's Schools' and looks to some of the confused / confusing ideological roots of the new model in terms of various versions of liberalism.

Private Policing and Security: Contemporary Realities, Strengths and Concerns for Justice Policy

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Abstract
A theme that constantly recurs in contemporary public and private sector policy-making having regard to privatisation is governance, especially where coercive police powers are concerned. Private forms of policing and security have become pervasive in Australian societies. Typically one thinks that private provision of security and policing spells doom for social justice and democratic principles. This paper argues that one cannot forestall the inevitable synergies that are currently brewing in the private/public interstice. Nor, says the author, is there any reason for despair on social justice grounds, although there are some areas of policy formulation that require attention.

Corporate Regulation and Environmental Harm:
Socio-Legal Issues and Perspectives

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Abstract
The aim of this presentation is to discuss current developments in corporate regulation theory, particularly the notion that 'smart regulation' is best achieved through a synthesis of 'command and control' (state intervention) and 'market-oriented' (self-regulation) approaches. Specifically, the concern is: (1) to examine the eco-philosophical assumptions implicit in this model of corporate regulation; (2) to consider recent commentary on why the type of state regulation known as corporate crime has disappeared, to be replaced in some instances by alternative or 'third way' regulatory approaches; and (3) to explore strategic sites and preferred modes of legal intervention in regards to environmental harm, from an ecocentric perspective.