Public Interest Law Journal of New Zealand

(2019) 6 PILJNZ 1

EDITORS' NOTE

Public Interest Law and Legal Education

JAYDEN HOUGHTON*
MICHELLE CHEN†

The Journal has already issued a challenge to New Zealand universities to take action to sustain the idealism of law students so they might use their legal studies to champion a cause greater than themselves.[1] In this Editors' Note, we survey initiatives that top universities around the world have taken to nurture students' enthusiasm for public interest law, promote it as a viable career option and support students to pursue it as a career.[2] We hope that the survey gives New Zealand's law schools some food for thought.

An initiative at most of the world's leading law schools—and, indeed, taken up by most New Zealand law schools—is a programme in which law students assist practitioners and external organisations with pro bono legal work, particularly research and advocacy.[3] Broadly, the programmes exist in one of two arrangements: either an arrangement in which the law school formally offers a course or clinic for which students receive credit;[4]

* Rereahu Maniapoto. Lecturer, Faculty of Law, University of Auckland.

† Faculty of Law, University of Auckland.

Jayden and Michelle have written the Editors' Note for this issue on behalf of all members of the editorial team.

1 See Jayden Houghton "The Public Interest Flame" (2018) 5 PILJNZ 1 at 1–3.

2 The universities we survey in this Editors' Note include the top five law schools in the world, as well as a selection from the rest of the top 10, according to "Top Law Schools in 2019" (27 February 2019) QS World University Rankings <www.topuniversities.com>. The initiatives we survey are a selection of those offered by each law school only.

3 On programmes in New Zealand universities, see, for example, "Clinical Legal Studies" University of Canterbury <www.canterbury.ac.nz>; and "Our Mission" Equal Justice Project <www.equaljusticeproject.co.nz>.

4 Yale Law School, for example, offers a successful clinical programme as part of its curriculum. Yale Law School reports that around 90 per cent of its students take part in its clinical programme. The high uptake could be partly due to the fact that, "unlike most other law schools, [Yale Law School] students can begin taking clinics … and appearing in court … during … their first year". "Clinical and Experiential Learning" Yale Law School <www.law.yale.edu>. Interestingly, senior students at New York University (NYU) who commit their last semester at law school to work full time on pro bono legal work through the faculty's Pro Bono Scholars Program are eligible to take their state bar exam early. "Pro Bono Scholars Program Externship" NYU Law <www.law.nyu.edu>.

or an arrangement in which students themselves run the programme as an extracurricular activity supported by the faculty.[5]

Some law schools offer careers counselling and development services specifically to advise students on public interest career opportunities.[6] A few go further by actively connecting students with public interest positions. The John and Terry Levin Center for Public Service and Public Interest Law, for example, offers an "externship" programme for students to work in public interest placements, with placement options ranging from the White House to the International Criminal Court.[7] New York University (NYU) goes as far as organising the Public Interest Career Fair: "the largest event of its kind in the [United States]", attended by more than 230 public interest employers and 1,600 students from 21 law schools.[8] The legal community in New Zealand is much smaller than that in the United States, and so an event like this would probably not be viable in New Zealand if it was confined to *legal* public interest career opportunities. However, prospective organisers of a similar event in New Zealand could consider broadening the scope to encompass students, organisations and employers from non-legal disciplines, such as business, science and the humanities, while maintaining the public interest focus.

Various law schools provide financial support for students pursuing public interest opportunities. Such initiatives recognise that many public interest opportunities are unpaid, or poorly paid compared with opportunities in private legal practice. A common form of financial support is a fellowship programme, which provides a "gateway" for students to "jumpstart" their careers in public interest law.[9] Yale Law School covers some job search expenses, such as travel expenses and careers fair registration fees, and offers a loan for purchasing interview-appropriate attire. Similarly, Oxford Pro Bono Publico administers a fund to "[assist] … students to undertake unpaid or poorly paid internships in public interest law".[10] Encouragingly, the Bernard Koteen Office of Public Interest Advising (OPIA) notes that the fund's work since its inception in 1990 has "made a dramatic difference in realizing the *idealism* … of incoming students"[11]—a much-needed antidote to the trend of declining idealism among law students.[12]

A programme that is relatively simple to set up is a mentoring programme that pairs alumni with current students, or senior students with junior students, with the intention of opening students' minds to career options other than private legal practice.

5 Some examples include the Cambridge Pro Bono Project at the University of Cambridge, the Oxford Pro Bono Publico at the University of Oxford, and the Pro Bono Program at Stanford Law School's John and Terry Levin Center for Public Service and Public Interest Law. See respectively "The Cambridge Pro Bono Project" University of Cambridge Faculty of Law <www.law.cam.ac.uk>; "Oxford Pro Bono Publico" University of Oxford Faculty of Law <www.law.ox.ac.uk>; and "Pro Bono Program" Stanford Law School <www.law.stanford.edu>. The faculty's support often includes administrative support, such as sending communications to students via official faculty channels and assisting with printing costs, and providing physical space, such as a permanent office and the ability to book rooms for lectures and other events.

6 Some examples include the Bernard Koteen Office of Public Interest Advising (OPIA) at Harvard Law School, and the Public Interest Law Center at NYU. See respectively "What Is Public Interest Law?" Harvard Law School <www.hls.harvard.edu>; and "Public Interest Law Center" NYU Law <www.law.nyu.edu>.

7 "Externship Program" Stanford Law School <www.law.stanford.edu>.

8 "Public Interest Events and Programs" NYU Law <www.law.nyu.edu>.

9 "Public Interest Fellowships" Yale Law School <www.law.yale.edu>.

10 "Oxford Pro Bono Publico", above n 5. Stanford Law School's Levin Center administers a similar fund. See "Public Interest Funding Programs" Stanford Law School <www.law.stanford.edu>.

11 "Oxford Pro Bono Publico", above n 5 (emphasis added).

12 See Houghton, above n 1.

There are several such programmes in the United States that focus specifically on opening students' minds to potential employers working on social justice issues and contributing to social justice causes. Whilst not usually focused on opportunities outside private legal practice, New Zealand law schools do often facilitate mentoring programmes, and programmes like the University of Auckland's Law School Women's Mentoring Programme are designed to be sufficiently flexible so that mentees can receive mentoring according to their own career interests and professional development goals.[13]

This brief survey shows that one hallmark of the world's leading law schools is their strong commitment to supporting students' passion for social justice issues. Indeed, the services offered by these universities are extremely popular: Yale Law School, for example, estimates that an average of 60 per cent of its students participate in public interest activities offered or facilitated by the law school every year.[14] Looking forward, the challenge for each of New Zealand's law schools will be to ensure that public interest law initiatives are not merely 'tacked on', but rather integrated into the operations and culture of the law school. By adopting services and initiatives offered by the world's leading law schools, New Zealand law schools could not only support students into public interest career pathways but genuinely endorse careers in public interest law as just as valued and viable as careers in private law practice.

It is one of the purposes of this journal to do just that. In committing to publishing student and graduate work on public interest law issues, the Journal shows students that social justice causes matter and that students can contribute meaningfully to them.

In this Issue, we are proud to present articles authored by ten brilliant students at law schools around Aotearoa New Zealand. Ana Kathrin Maquiso explores the racist inequities of Pasifika students' experiences in education through school disciplinary removals. Maquiso applies critical race theory to argue that school disciplinary removals subjugate Pasifika minority students, uphold Western worldviews and maintain racial hierarchies. Maquiso advocates for new developments like education hubs, stronger Pasifika representation in governance and further research to understand the behavioural reasons why Pasifika students are subject to disciplinary removals.

The post-settlement era is a space for hapū and iwi to exercise self-determination in using their settlement assets to benefit their communities. Whilst this is also a space where Māori and Western corporate governance models can collide, Jade Newton argues that it is important for post-settlement governance entities to utilise principles from both paradigms. In particular, grounding corporate governance principles in tikanga Māori allows the people whom these entities serve to be actively engaged in working towards transformative economic, social and political development goals.

Mental illness and addiction are prolific in Aotearoa, yet people with mental health conditions remain susceptible to discrimination from the state, the criminal justice system and society in general. To address such issues, Roxanne Pope argues for the reform of mental health laws to promote therapy and recovery-based treatment, and uphold the rights of citizens that undergo those treatments. Pope sets out specific recommendations for what those reform measures should include — measures which, she contends, strike an appropriate balance between efficiency and protecting rights.

In 2018, the United Kingdom Court of Appeal in *Barclays Bank plc v Various Claimants* held that the doctrine of vicarious liability, whereby an employer is held liable for its

13 See "Join the Law School Women's Mentoring Programme" University of Auckland <www.auckland.ac.nz>.

14 "Public Interest Law" Yale Law School <www.law.yale.edu>.

employee's tort, extends to independent contractors.[15] **Yiqiang Shao** argues that whilst the decision has not substantively extended the law on vicarious liability, it was nonetheless a significant decision for its practical implications. The decision creates space for a new label characterising a type of relationship that businesses could rely on to protect themselves from enterprise risk.

In 2015, prisoners challenged the validity of s 80(1)(d) of the Electoral Act 1993, which prohibited certain prisoners from voting. Whilst the courts were unwilling to declare the provision discriminatory on racial grounds, **Rosa Gavey** argues that the provision indirectly discriminates against Māori, and Māori women in particular. Gavey applies an intersectional lens to examine the continuing impacts of colonisation and structural racism on Māori women, and provides a nuanced critique of the current legal framework for assessing discrimination which fails to capture this distinct form of disadvantage.

Currently, the Governor-General has a reserve power to appoint or dismiss a Prime Minister. This power, **Aaron Kirkpatrick** argues, is incompatible with the rule of law and the political accountability underpinning New Zealand's constitutional arrangement. Kirkpatrick argues that the reserve power should be codified, such that it is exercised by the democratically-elected Parliament rather than at the Governor-General's discretion.

The evolution of artificial intelligence raises the question of whether non-humans can have property rights over a work they have created where those rights have traditionally been reserved for humans. **Phuoc Nguyen** argues that such rights would *not* be incompatible with certain commonly-accepted jurisprudential traditions. Using monkey selfies as a case study, Nguyen prompts a reassessment of the concept of authorship so that the law can keep pace with the rapid rate at which technology is developing.

Whilst the concept of privacy is implicitly recognised in New Zealand law, there is currently no express, general right to privacy. **Jae Kim** argues that a narrow version of such a right should be introduced into the New Zealand Bill of Rights Act 1990. Kim contends that a right to privacy is necessary to provide accountability, protection and vindication for citizens, particularly against the state.

Indigenous and Western legal traditions regarding natural resources are inherently conflicting. **Nopera Isaac Dennis-McCarthy** examines two modern attempts to incorporate Indigenous perspectives into non-Indigenous legal systems: Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, and the inclusion of "Rights of Nature" in the Ecuadorian Constitution. Dennis-McCarthy argues that neither initiative satisfies Indigenous peoples' fundamental claims in their relationships with the state to reconciliation and self-determination.

The Wai 262 claim sought rights for Māori to Indigenous flora and fauna species. In the final article, **Yao Dong** argues that the Waitangi Tribunal's report on the Wai 262 claim failed to address the claimants' fundamental claims to the exercise of tino rangatiratanga with respect to taonga species, and the mātauranga Māori associated with taonga species. To provide more holistic protection for taonga species, and the mātauranga Māori associated with such species, Dong proposes an access and benefit sharing regime, which would require prior informed consent and mutually agreed terms for access and use.

It would not be possible to produce an issue of this quality without a brilliant team with a passion for the public interest objectives of the Journal. We congratulate the Editors-in-Chief, Tariqa Satherley and Lydia Sharpe, for pulling together such an interesting and substantial issue. We also thank the editors and academics on the respective boards, who work hard to ensure we continue to meet our high standards for the Journal year on year.

15 *Barclays Bank plc v Various Claimants* [2018] EWCA Civ 1670, [2018] IRLR 947.