

EDITOR'S NOTE

Social Justice Courses

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With the social justice curriculum expanding year on year, students are being increasingly prepared to advance social justice during their time at university and when they embark on their careers. This Note takes stock of the course offerings at New Zealand universities for students to learn about social justice and develop skills to prepare them to advance social justice. The stocktake explores social justice course offerings at our six universities with law schools: the University of Auckland,¹ the Auckland University of Technology,² the University of Waikato,³ the Victoria University of Wellington,⁴ the University of Canterbury⁵ and the University of Otago.⁶ The prescription for each course referenced in this Note explicitly advertises the course as concerning justice.⁷

Social justice makes an expectedly frequent appearance in law courses focused on the criminal and family justice systems.⁸ For many law schools, those are the only courses explicitly advertised as concerning justice. However, some law schools offer courses

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1 University of Auckland *Calendar 2023* (Auckland 2022).

2 Auckland University of Technology *2023 Calendar* (Auckland, 2023).

3 "Calendar" University of Waikato <<https://calendar.waikato.ac.nz>>.

4 Victoria University of Wellington *2023 Calendar* (Wellington 2022).

5 University of Otago *Calendar Puka Whakamārama 2023* (Dunedin, 2023).

6 University of Canterbury *2023 Maramataka Calendar* (Christchurch, 2022).

7 No doubt, there will be other courses that concern justice but do not advertise it in the prescription as a key idea or theme in the course.

8 The University of Auckland (UOA) offers "Law and Social Justice", "Youth Justice", "'Justice' in Sentencing", "Contemporary Issues in Criminal Justice", "Restorative and Therapeutic Justice", "Criminal Procedure" and "Miscarriages of Justice", as well as broader courses like "Criminal Law and Policy", "Advanced Topics in Criminal Law", "Theory and History of Criminal Law and Policy", "Introduction to Criminology" and "Criminology". The Auckland University of Technology (AUT) offers "Justice", "Youth Justice", "Social Justice, Law and Society", "Non-Adversarial Justice" and "Criminal Appeals and Miscarriages of Justice". The University of Waikato (UOW) offers "Jurisprudence" and "Crimes". The Victoria University of Wellington (VUW) offers "The Criminal Justice Process" and "Youth Justice". The University of Otago (UOO) offers "Criminal Justice" and "Children and the Family Justice System".

explicitly advertised as concerning justice on other aspects of law, such as rights,⁹ including Indigenous rights,¹⁰ and dispute resolution.¹¹ Further, many law schools provide opportunities for students to partake in practical learning experiences, such as internships with legal aid organisations, and pro bono work, where they can engage with social justice issues in a real-world context.¹²

Several non-legal qualifications have developing social justice curricula as well. Law students may be able to take these courses—for example, if they are studying a conjoint or double degree. The Faculty of Arts at each university offers several social justice-flavoured courses. For example, most Criminology courses include a social justice dimension, exploring how actors on the ground can help disenfranchised communities overcome structural inequalities.¹³ The Sciences have developed in parallel with the Arts; science students too have opportunities to explore technical perspectives on social justice issues. As an example, environmental justice is an emerging area of interest.¹⁴ There is no denying the disproportionate impact of environmental degradation on marginalised communities, and the Faculty of Science at some universities are rightly offering courses to draw attention to, and problem solve, issues of environmental racism and discrimination.

Further, many qualifications explore social justice issues facing Indigenous peoples. Māori social justice issues have been core to these courses, as the Crown continues to address systemic grievances due to colonisation. Students in these courses gain an understanding of the complex and multifaceted nature of Indigenous issues and how social justice can be advanced by developing laws and policies, and being advocates. These courses also examine the importance of cultural competency and culturally responsive practices when working with Indigenous communities, and explore how non-Indigenous people can be allies in the fight for social justice for Indigenous peoples. In taking such courses, students should appreciate Indigenous perspectives on social justice and consider how Indigenous insights might advance it.

This stocktake shows that tertiary education is keeping pace with social change. It is heartening to see the numerous opportunities available for students to empower themselves with the knowledge and skillset needed to advance social justice. New Zealand universities must remain vigilant in identifying and offering courses on emergent social

9 The UOA offers “Foundations of Human Rights” which discusses the major theories of justice; “Theories of Contract Law” which discusses distributive justice; and “Patients’ Rights” which discusses access to justice.

10 The UOA offers “Nga Tikanga Māori”, “Contemporary Tiriti/Treaty Issues”, “Race and the Law”, “Researching Indigenous Rights Theory, Law, and Practice”, “Indigenous Peoples’ Rights in National Law”, “Indigenous Peoples and the Law” and “Comparative Indigenous Rights Law”.

11 The UOA offers “Mediation” which discusses ethical dilemmas and power dynamics in mediation, and the future of the justice system. The UOW offers “Advanced Civil Litigation” which discusses access to justice.

12 See, for example, the UOA clinical placement courses “Social Justice Lawyering”, “Indigenous Rights Legal Clinic”, “Community Law Internship”, “Community Law Project” and “Social Welfare Law, Policy and Action”. These courses give students the opportunity to work under legal practitioners on real-world issues.

13 The UOC, for example, offers the “Bachelor of Criminal Justice” which is a dedicated qualification exploring the criminal justice system and its processes, including governance, enforcement, rehabilitation and improvement. The degree is the first of its kind in New Zealand.

14 The UOA, for example, offers “Collaborative Environmental Management Justice” which explores the reconciliation of natural resource management with human welfare, social justice and Indigenous rights. Also, the UOO offers “Geographies of Justice” which considers how social and environmental injustices affect people differently in different places.

justice issues. Furthermore, they must strive to incorporate the perspectives of underrepresented and marginalised groups in their curricula, to ensure that all students receive a well-rounded education that prepares them to navigate an increasingly complex world, including a bilingual, bicultural and bilingual Aotearoa New Zealand legal system. In this Issue, we celebrate authors who are contributing to these kaupapa (purposes).

The recent Waikeria Prison protest drew attention to the deplorable living conditions of individuals detained across New Zealand.¹⁵ **Clair Caird** reviews the inadequacy of safeguards for prisoners' human rights and the disproportionate effect the shortcomings have had on Māori in the criminal justice system. Caird uses the case study of Waikeria Prison to unpack the prison system's conditions, which perpetuate human rights abuses against prisoners. Caird proposes that the mechanisms for keeping Te Ara Poutama Aotearoa (the Department of Corrections) in check must be reconsidered, recommending reforms of the internal prisoner grievances system and the external Ombudsman review process, and pushing for wider constitutional transformation informed by te ao Māori (the Māori world).

End-to-end encryption (E2EE) is stoking concerns about the risk posed to public safety by inaccessible communications. **Benjamin Christy** explores the privacy-public safety debate concerning the general availability of E2EE technologies on numerous popular messaging platforms in New Zealand. Christy argues that E2EE does not pose a material risk of "going dark" (law enforcement being unable to access communications) and instead provides vital communicative privacy for the public. Christy recommends that New Zealand adopt a technologically and legally defensible position in favour of E2EE rather than enact emergency legislation in the wake of a crisis exacerbated by such technologies.

Anita Chung addresses the entrenched health disparities that Māori and Pasifika populations faced in the wake of COVID-19.¹⁶ Chung argues that the New Zealand Government's COVID-19 policies failed to meet its obligation to provide vulnerable communities with a right to health, and that this was due to existing inequities in New Zealand's health system. Chung uses a right to health framework to evaluate New Zealand's COVID-19 policy and concludes that a human rights-based health system should be adopted for future health and disability legislation.

Do extraordinary circumstances call for extraordinary measures? **Christopher McCardle** asks this question about the use of emergency powers in the War on Terror. McCardle proposes that the Executive is justified in acting contrary to positive law if its actions are judicially determined to be consistent with fundamental constitutional principles. McCardle uses Oren Gross' *extra-legal measures model* as the foil for his emergency powers model and seeks to capture the benefit of Gross' model while avoiding its flaws. In his analysis, McCardle explores several seminal case studies from the War on Terror canon, including John Locke's theory of prerogative, Lord Hoffman's ruling in *Belmarsh Detainees*¹⁷ and Abraham Lincoln's suspension of habeas corpus.

Nicholas Stewart argues that Māori experience dire health outcomes because negative determinants of health impact them disproportionately. With the release of the Waitangi Tribunal's report *Hauora: Report on Stage One of the Health Services and Outcomes*

15 New Zealand National Preventive Mechanism *Monitoring Places of Detention: Annual report of activities under the Optional Protocol to the Convention Against Torture (OPCAT) - 1 July 2014 to 30 June 2015* (Te Kāhui Tika Tangata Human Rights Commission, December 2015) at 30.

16 Felicity Goodyear-Smith and Toni Ashton "New Zealand health system: universalism struggles with persisting inequities" (2019) 394 *Lancet* 432 at 438.

17 *A v Secretary of State for the Home Department* [2004] UKHL 56, [2005] 2 AC 68.

Kaupapa Inquiry,¹⁸ Stewart explores how existing healthcare policy and legislation have failed to overcome persisting health inequities. Stewart proposes several recommendations to meaningfully improve Māori health outcomes, including the creation of a Māori Health Authority, and the Crown provision of increased funding and support for Māori to drive their own health solutions.

Although New Zealand is now perceived to be progressive when it comes to LGBTQ+ rights, there is a history of hostile subjugation of same-sex activity in the not-so-distant past. **Scott Yang** appraises societal attempts to intensify the regulation of sexual activity between men in the period 1840–1930. Yang examines the United Kingdom’s social purity movement in the late 19th century and its abhorrent consequences for same-sex sexual activity in New Zealand. Yang argues that such legal history must inform contemporary conversations about homophobia and concludes with a reminder that legal history matters in working to address harmful ideologies in New Zealand today.

Finally, **Renee Zhang** considers how New Zealand’s criminal justice system can better manage young adult offenders in the “care to custody” pipeline. Zhang argues that young adult offenders aged 18–25 with backgrounds in care and protection are highly vulnerable to structural deprivation on leaving state care. Criticising the current cliff edge of the Oranga Tamariki Act 1989, Zhang proposes that a welfare-based approach should be adopted to accommodate the complex needs of young adults who have experienced state care, and to facilitate a more gradual transition to adulthood.

The editors also worked on Hanna Malloch’s article “Beyond a Numbers Game: Developing a Nuanced Approach to Judicial Diversity for Aotearoa New Zealand”. The article was concurrently accepted for publication by the New Zealand Journal of Public and International Law (NZJPIL). The editors of both journals agreed that the article would be published in the NZJPIL. The author and the NZJPIL have acknowledged the hard work of the PILJNZ’s student editors, wider editorial board and academic review board on the article before its eventual publication by the NZJPIL.

It remains for me to acknowledge the work of those who made this issue possible. I thank the Editors-in-Chief, Christian Poland and Pearlyn Tan, for their leadership in the editing process. The editors were exceptionally efficient. In fact, this Issue was finalised well before schedule, which is impressive—certainly unusual in my experience of law journal editing! I thank the editors on the Editorial Board for taking on the painstaking tasks of citation checking and style editing the articles. A primary purpose of the Journal is to provide law students with opportunities to be involved in the editorial process. We share this kaupapa with other New Zealand law journals and we enjoy great relationships with those journals, especially the Auckland University Law Review—usually several editors serve on both journals at the same time. In this regard, it is also great to see the New Zealand Law Students’ Journal (2006–2015) will be rebooted in 2023 and I thank the New Zealand Law Students’ Association for consulting the PILJNZ on the reboot, which we think can only be good news for students looking for opportunities to gain editing experience and get their work published! I thank the academics on the Academic Review Board for their valuable insights in the article selection process. I thank Pearlyn Tan and Nicholas Goodman for their research assistance for this Note—scouring the 2021 and 2023 university calendars for every social justice-related course. I thank my fellow managing editor Michelle Chen for helping to steer this Issue. Finally, I thank Desmond Yong for his exceptional work in helping to finalise the Issue.

18 Waitangi Tribunal *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Wai 2575, 2019).