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Announcements

Lord Cooke of Thorndon: Collected Papers Part VIII: Perspectives on the Common Law

The Cooke Series forms part of the Victoria University of Wellington Legal Research Paper Series (VUWLRPS). Lord Cooke (1926-2006) was one of New Zealand's most prominent jurists and the first and only New Zealander to sit as a judge in the House of Lords. He was a Distinguished Fellow of the Victoria University of Wellington Law Faculty. The faculty gratefully acknowledges the generous support of the Cooke family for their sponsorship of the series. Lizzie Chan and Tim Cochrane, Wellington solicitors, abstracted and posted Lord Cooke's papers.

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"Master Goff's Common Law Through Commonwealth Eyes"

Robin Cooke "Master Goff's Common Law through Commonwealth Eyes" (undated) *The Inner Temple* 33
Victoria University of Wellington Legal Research Paper Series, Cooke Paper No. 36/2016

ROBIN COOKE, Victoria University of Wellington - Faculty of Law (Deceased 1926-2006), House of Lords
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This paper is a tribute to Lord Goff, an English law lord. Lord Cooke assesses the development of the English common law from a Commonwealth lens. In particular, he discusses how in the second half of the 20th century, some courts in Commonwealth countries became bolder in diverging from principles established by the English common law. Lord Cooke then outlines how, in turn, the English courts became more willing to treat Commonwealth decisions as not so much "essays in the application of the principles of the common law of England" but as sources of comparative law. He concludes by noting that the fact that the "rest of the common law world" had grown up and "mainly [stood] on its own feet" did not at all diminish the international respect for English judges. Abstract by Elizabeth Chan.

"The Common Law Through Commonwealth Eyes"

(1998) *2 Inter Alia Spring* 45

Victoria University of Wellington Legal Research Paper Series, Cooke Paper No. 37/2016

ROBIN COOKE, Victoria University of Wellington - Faculty of Law (Deceased 1926-2006), House of Lords
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This article is based on a speech Sir Robin gave at the Inner Temple in honour of Lord Goff of Chieveley. In it, he discusses the development of the common law. Sir Robin considers that the common law has shifted from a primary focus and application of English judicial decisions to a more cosmopolitan approach, including divergences in Commonwealth jurisdictions from the English common law in certain areas of law. He observes a two-way relationship developing between the English and other Commonwealth jurisdictions. As other Commonwealth countries become more confident in diverging from English common law, the English courts have increasingly treated other Commonwealth decisions as valuable comparative materials. Abstract by Elizabeth Chan.

"One Golden Thread?"

Robin Cooke "One Golden Thread?" in Robin Cooke *The Hamlyn Lectures: Turning Points of the Common Law* (Sweet & Maxwell, London, 1997) at 28

Victoria University of Wellington Legal Research Paper Series, Cooke Paper No. 38/2016

ROBIN COOKE, Victoria University of Wellington - Faculty of Law (Deceased 1926-2006), House of Lords
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In this lecture, the second of Lord Cooke's Hamlyn Lectures on "Turning Points in the Common Law", Lord Cooke assesses the operation of the "golden thread" principle of the common law (that it is the duty of the prosecution to prove an accused's guilt subject to any statutory exception) by discussing *Woolmington v Director of Public Prosecutions* [1935] AC 462 (HL(E)), as well as related cases leading up to and following this decision. Lord Cooke then discusses bigamy as an exception to the golden thread before canvassing cases evidencing the "erosion" of this principle in England following *Woolmington*. He next outlines the New Zealand position by reviewing the related "total absence of fault" defence. Lord Cooke concludes by recognising that common law courts take a pragmatic approach to the golden thread and related principles by distinguishing between regulatory and more serious criminal offences.

"Dynamics of the Common Law"

Sir Robin Cooke "Dynamics of the Common Law" (paper presented to the 9th Commonwealth Law Conference, Auckland, April 1990).

Victoria University of Wellington Legal Research Paper Series, Cooke Paper No. 39/2016

ROBIN COOKE, Victoria University of Wellington - Faculty of Law (Deceased 1926-2006), House of Lords
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This is a revised version of a paper presented on 17 April 1990 by Sir Robin at the 9th Annual Commonwealth Law Conference in Auckland. The first part of this paper discusses the judicial climate in 1990. Sir Robin begins by listing examples in which common law achievements are overstated, discussing the common law of contracts, the neighbourhood principle, and damages in defamation. He then refers to the development of "common laws" of individual jurisdictions and the possibility of an

international common law. He refers favourably to the Supreme Court of Canada's dynamic approach to the common law, and discusses individual examples of the same approach by New Zealand courts in the late 1980s. The second part of his paper focusses on race relation cases, referring to litigation arising out of the Springbok tours and the Government's asset sales programme. He concludes by highlighting the particular problem posed by racial questions for the common law. — Abstract by Tim Cochrane

"Divergences — England, Australia and New Zealand"

[1983] NZLJ 297.

Victoria University of Wellington Legal Research Paper Series, Cooke Paper No. 40/2016

ROBIN COOKE, Victoria University of Wellington - Faculty of Law (Deceased 1926-2006), House of Lords

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This is a slightly edited version of a paper given by Sir Robin Cooke at the 22nd Australian Legal Convention held in Brisbane in July 1983. In the paper Sir Robin considers differences and similarities in judicial attitudes on a variety of topics among judges in the major common law jurisdictions, including in criminal law, torts, and equity. He makes the point that where there are different views possible the New Zealand Court of Appeal has adopted the solution most consonant with our legal development and social values, and concludes by suggesting the creation of an international bulletin or "common lawyer's airmail weekly" to easily enable legal actors to compare differences between jurisdictions.

"The Place of Equity and Equitable Doctrines in the Contemporary Common Law World: A New Zealand Perspective"

Robin Cooke "The Place of Equity and Equitable Doctrines in the Contemporary Common Law World: A New Zealand Perspective" in Donovan WM Waters (ed) Equity, Fiduciaries and Trusts 1993 (Thomson Canada Ltd, Scarborough, Canada, 1993) 25

Victoria University of Wellington Legal Research Paper Series, Cooke Paper No. 41/2016

ROBIN COOKE, Victoria University of Wellington - Faculty of Law (Deceased 1926-2006), House of Lords

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In this paper on the topic of equity, Sir Robin Cooke begins by outlining various philosophies on equity and its relationship with common law before turning to consider equity as applied in the New Zealand Court of Appeal. Lord Cooke does this through a discussion of the following cases that had come before the Court while he was a member: *Day v Mead* [1987] 2 NZLR 443 (CA), *Aquaculture Corp v New Zealand Green Mussel Co* [1990] 3 NZLR 299 (CA), *Gathergood v Blundell & Brown Ltd* [1992] 3 NZLR 643 (CA), *DFC New Zealand Ltd v Goddard* [1992] 2 NZLR 445 (CA), *Liggett v Kensington* [1993] 1 NZLR 257 (CA) (Goldcorp), *Mouat v Clark Boyce* [1992] 2 NZLR 599 (CA), and *Phillips v Phillips* [1993] NZFLR 321 (CA). Lord Cooke notes that healthy cross-fertilisation between jurisdictions in relation to the development of equity has led to a "common movement" across the common law world "towards an equity consonant". He concludes by submitting that the profession and academics should assist the judiciary to "mould and refine similar cautious and reasoned advances".

"The Road Ahead for the Common Law"

Robin Cooke, "The Road Ahead for the Common Law" (2004) 53 Int'l & Comp LQ 273

Victoria University of Wellington Legal Research Paper Series, Cooke Paper No. 42/2016

ROBIN COOKE, Victoria University of Wellington - Faculty of Law (Deceased 1926-2006), House of Lords

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This is the text of Lord Cooke's Third Annual Commonwealth Lecture delivered to the British Institute of International and Comparative Law in October 2003. Lord Cooke maps out several emerging trends in the common law. First, he observes that the common law of England is becoming "less English", with growing influence from the European, Commonwealth and American jurisdictions. Secondly, he disputes the omnipotence of parliamentary sovereignty, preferring to see the political and judicial branches as working in tandem to safeguard equality and the rule of law. Thirdly, he considers that the courts play an important role in upholding human rights and freedoms, both those recognised by statutes and international conventions as well as fundamental common law rights. Fourthly, Lord Cooke examines growing jurisprudence in negligence liability of public authorities. Finally, Lord Cooke expresses support for the use of parliamentary materials, such as Hansard, to construe ambiguous legislation.

"The Changing Place of Remedies"

Victoria University of Wellington Legal Research Paper Series, Cooke Paper No. 43/2016

This is a paper presented by Sir Robin Cooke on the changing place of remedies in the common law. He argues that courts today have a "rich heritage of remedies" available, arising from the "changing and more direct emphasis on working out substantive rights". He illustrates this by discussing issues that had come before the New Zealand Court of Appeal and other common law courts, including the Rugby Union case (*Finnigan v New Zealand Rugby Football Union Inc* [1985] 2 NZLR 159 (CA)), intellectual property piracy, freedom of information (*Commissioner of Police v Ombudsman* [1998] 1 NZLR 385 (CA)), damages, fiduciary duty, and contributory negligence (*Day v Mead* [1987] 2 NZLR 433 (CA)), constructive trusts and unjust enrichment (*Gillies v Keogh* (reported as [1989] 2 NZLR 327 (CA)), and issues arising from providing declarations (*Re Chase* [1989] 1 NZLR 325 (CA)). He concludes by commenting that "[r]emedies no longer rule" in terms of the development of the common law yet continuance to be of assistance with its gradual development. Abstract by Tim Cochrane.

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About this eJournal

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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