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CONTENTS

THE QUEST FOR JUSTICE IN A TIME OF GLOBAL UNCERTAINTY

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This paper draws upon two recent papers delivered by the author — 'David Solomon Lecture: Accountability in the Age of the Artificial August 2019', Brisbane; and the keynote presentation to the Australian Lawyers Alliance Conference 'A Quest for Justice, Evolution or Catastrophe October 2019', Port Douglas.

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I INTRODUCTION

A student of the law soon comes to realise that the law is often detached from the quest for truth, justice, equality, integrity and accountability. These qualities are critical to the strength of our democracy but are often ignored in the design of laws and their application in practice. The common law is regarded as largely immutable, resisting changes in political mood, public opinion and the desire for just outcomes, and striving always to appear impartial and objective.[1]

But the application of the law is not always just. It does not serve the truth, it does not guarantee equality and it is seen to be inadequate in protecting against breaches of integrity and accountability.

A great fault line runs between law and justice. The division is heightened in the context of global challenges of extraordinary complexity we currently face involving the changing climate; the movement of populations; access to increasingly scarce food, water and mineral resources; environmental damage; corruption; and unequal wealth distribution.

It is timely to reflect upon a few examples of the failings of the law to deliver just outcomes.

[1] Whilst there is an occasionally acknowledged need "from time to time, to reformulate existing legal rules and principles to take account of changing social conditions", the Courts have a self -described 'modest and constrained role' in this regard, consistently with the common law tradition: *D'Arcy v Myriad Genetics Inc* (2015) 258 CLR 334, 350 [26] (French CJ, Kiefel, Bell and Keane JJ); [2015] HCA 35. When the judgment of the courts seek to reflect changing social opinion, common law principles and rules of interpretation are usually cited in support. See, eg, *R v L* (1991) 174 CLR 379 for rape in marriage; *Australian Communist Party v Commonwealth* (1951) 83 CLR 1 for political party deregistration; *Mabo v Queensland* (1992) CLR 1 for recognition of native title rights.

II TRUTH

We should begin with our own nationhood and entrenched history of untruth. As a law student in the 1980's, I was taught legal history and constitutional law by eminent scholars. The traditions of the law were explained in a context of established historical fact. Whilst I sometimes wondered at the logic and morality of those lessons, I did not question the prevailing narrative of Australia's history as a sovereign state.

Today, however, it is widely recognised that the languages and traditions of our Aboriginal and Torres Strait Islander peoples represent the world's oldest continuous cultural heritage. Theirs is a history that remembers the changing of seasons and teaches the great stories and the cycle of life; when to harvest, when to hold back the harvest. It is a history of complex stewardship of the land and waters for current and future generations.[2] It is a history steeped in a sense of common good, of common heritage.

A parallel concept of common heritage was well understood in Roman and English law. Originally conceived as a concept of the global commons designed to protect the seabed and ocean floor,[3] later the moon and Antarctic region,[4] the notion can trace its origins to Roman law concepts of *res communis* and *res nullius*.[5]

Founded upon a notion of public trust, the law recognised that certain lands including rivers, seabeds, lakes, forests, tidal zones and submerged lands, could not be 'owned' by individuals and were held by the Crown as trustee for the benefit of all citizens to freely use and navigate. Misuse of the commonly held property by commercial exploitation or

[2] See, eg, Love v Commonwealth; Thoms v Commonwealth [2020] HCA 3, 11; Bruce Pascoe, The Little Red Yellow Black Book: An Introduction to Indigenous Australia (AIATSIS, 4th ed, 2018); Bruce Pascoe, Dark Emu Black Seeds: Agriculture or Accident? (Magabala Books, 2014).
[3] Declaration of Principles Governing the Sea-Bed and Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction, GA Res 2749(XXV), UN GAOR, A/RES/2749 (17 December 1970, adopted 15-17 September 1970) leading to the United Nations Convention on the Law of the Sea, opened for signature 10 December 1982, 1833 UNTS 397 (entered into force 16 November 1994) (UNCOLS).
[4] Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, opened for signature 27 January 1967, 610 UNTS 205 (entered into force 10 October 1967) (Moon Treaty); Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, opened for signature 18 December 1979, 1363 UNTS 3 (entered into force 11 July 1984) art 7.
[5] Translated as 'communal things' and 'no-one's thing' respectively.

adverse possession was, according to the doctrine, a misuse against the community and protections were enforceable by any member of that community.[6]

In Australia, the concept of *res nullius* — or ownership by none — was deliberately employed to create enormous injustice for our First Nations peoples. Their land management practices and cultural traditions were, in the eyes of the colonial new arrivals, unsophisticated and unrelated to notions of ownership. This was convenient, as the law mandated that new lands could only be obtained by conquest, by cession or by occupation of lands that were 'desert and uncultivated'.[7]

Although I did not learn the truth at the time of my own studies, Captain James Cook had in fact been given secret instructions from the British Admiralty to find the Great South Land and:

> … with the Consent of the Natives to take Possession of Convenient Situations in the Country in the Name of the King of Great Britain: Or: if you find the Country uninhabited take Possession for his Majesty by setting up Proper Marks and Inscriptions, as first discoverers and possessors.[8]

It is now abundantly clear that consent to possession was never sought and was not forthcoming. Governor Arthur Philips also failed in his instructions to treat the natives with 'amity and respect' in establishing the colony of New South Wales. There was no payment, or consideration, for the use of lands that were used and occupied. The evidence of existing stewardship, or custodianship, of the original inhabitants was expressly rejected and so the land, it was determined, was effectively uninhabited and available to

[6] See, eg, *M.C. Mehta v. Kamal Nath* (1997) 1 SCC 388 (Supreme Court of India).
[7] Sir William Blackstone, *Commentaries on the Laws of England* (Clarendon Press, 1765-1770) vol 1, 104-105; Aileen Moreton-Robinson, 'Whiteness, Epistemology and Indigenous Representation' in Aileen Moreton-Robinson, *Whitening Race: Essays in Social and Cultural Criticism* (Aboriginal Studies Press, 2004) 75, 76.
[8] James Cook and Great Britain Admiralty, 'Cook's Voyage 1768-71: Copies of Correspondence', *National Library of Australia* (Manuscript, 1768) <http://nla.gov.au/nla.obj-229111770>; Tony McAvoy, 'High Court's 'Alien' Decision is not Surprising', *The Guardian* (online at 12 February 2020) <https://www.theguardian.com/commentisfree/2020/feb/12/high-courts-alien-decision-is-not-surprising-but-it-wont-be-the-end-of-the-story>.

be acquired by possession. The law was thus used as a justification for dispossession despite the fact these acts now appear to be unlawful.

This meant, in Australia, the dispossession and state sanctioned or condoned murder of our First Peoples, occurred with a brutality with which we are still struggling to come to terms.

Until relatively recent times, it also meant that we pursued government policies that encouraged the removal of Aboriginal and Torres Strait Islander children from their families, their communities and their country, considering that it was better for those children to be raised away from their communities, in many cases, in homes where they were abused. In many cases, the pain of removal was so profound that the effects are seen across the generations.[9]

The exclusion of Indigenous Australians as citizens and as people of the Commonwealth, until 1967, has compounded the sense of isolation and powerlessness. The legal recognition of the strong bonds between our First Peoples and their traditional lands has also been a long time coming, with recognition of common or native title to lands and waters only upheld by the High Court of Australia in 1992, overturning our former notions of historical truth.[10] The strength of the connection to lands and waters was expressed powerfully in the Uluru Statement from the Heart[11] and was recognised again by the High Court in cases concerning the 'aliens' power of the Commonwealth under our Constitution.[12]

The reality is that the wrongs of our colonial predecessors can no longer be ignored. If we strive to be a lawful nation we must confront the truth of unlawful possession in order to do justice according to law.

Notions of common wealth or common good should be revisited, because these ancient concepts underpin notions of collective law and justice. And because the complex challenges that confront humanity require us to work, not for the benefit of a few enabled

[9] Australian Human Rights Commission, Bringing them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families (Report, April 1997).
[10] *Mabo v Queensland (No 2)* [1992] HCA 23; (1992) 175 CLR 1.
[11] First Nations National Constitutional Convention, *Uluru Statement from the Heart*, 26 May 2017.
[12] Love v Commonwealth; Thoms v Commonwealth (n 2).

sovereign states or a handle of individuals wealthy beyond imagining, but for the common good of all.

III JUSTICE & EQUALITY

In Australia, it is widely accepted, in theory at least, that in order to guarantee the protection of our rights and freedoms including equality before the law, there must be universal access to justice, including the means to obtain and understand legal advice and representation to address legal issues as they arise.

However, chronic and institutionalised social and economic barriers within Australia provide enormous challenges to access to justice. 14% of our population lives below the poverty line, yet legal aid grants are available to only 8% of Australians. Community legal centres turn away an estimated 170,000 people each year. Our courts and tribunals face critical pressures to deliver fair, efficient and effective outcomes to parties including burgeoning caseloads. The number of unrepresented litigants continues to grow.

In 2017, more than 40 years after the delivery of the landmark *Commission of Inquiry into Poverty*, known as the Sackville Report[13], and after many years of advocating for adequate funding for legal aid and the community legal sector in Australia, the Law Council of Australia undertook an ambitious national review into the state of access to justice in Australia: The Justice Project.[14] The Justice Project considered the impact of laws, policies and practices compounding inequality and systemic discrimination in Australia. It focused on the lived experiences of our most vulnerable and demonstrated widespread injustice and the devastating impact of not being able to access legal services for many, including those experiencing homelessness, family breakdown, neglect and violence, declining health, exploitation, entrenched poverty, and incarceration.

In conceiving of this Project and undertaking consultations across Australia during my term as President of the Law Council, I saw first-hand that, despite our lofty commitment to equality before the law and the dignity and worth of each human being, for many tens of thousands of Australians, equality and justice are out of reach. In courts convened in

[13] Ronald Sackville, Parliament of Australia, *Law and Poverty in Australia*: *Commission of Inquiry into Poverty Second Main Report* (Parliamentary Paper No 294, October 1975).
[14] Law Council of Australia, *The Justice Project* (Final Report, August 2018).

the red dirt, in retirement villages, in refuges, church halls and cramped offices, in prison cells across the country, I met with people caught up in the system and living on the margins, and observed cases where early intervention could have made all the difference.

Hearing these stories was both shocking and moving. As distressing as they are, we have seen no greater commitment to structural reform and to resourcing of the sector. I conclude that unless these cases touch us personally or professionally, we embrace a kind of national anaesthesia to injustice. We accept the situation as inevitable when it is not. We do so perhaps because we have been told the cost of services for all is too high, or that some people are less deserving of our support. Or perhaps because we do not understand the devastating impact of injustice upon lives, because the voices of those on the margins are not heard until they are in our own loungerooms, within our own families. The Justice Project makes absolutely clear that a systemic lack of access to justice contributes enormously to cycles of intergenerational trauma and disadvantage within communities.

A rigid approach to the application of law that does not accommodate diversity and vulnerability, or permit exceptional circumstances such as mandatory sentencing, was observed and found to impact disproportionately upon certain groups. Thus, laws targeting unpaid fines, unlicensed driving, public drunkenness or family violence disproportionately result in the entrenched over-representation of certain groups amongst those interacting with police and the criminal justice system.

Our First Nations peoples are being imprisoned at a higher rate than any cultural group in the Western world.[15] The drivers of Indigenous imprisonment are complex and intertwined: high rates of cognitive impairment in the prison population and foetal alcohol syndrome is rife; hearing and other health challenges mean young people disengage from schooling early; socioeconomic disadvantage; low school completion; high rates of alcohol and drug abuse; family violence; homelessness; unemployment; and poor health all play roles. As undoubtedly does the dislocation and grief of dispossession and denigration over the centuries.

These factors are self-perpetuating — they form a cycle of disadvantage which is virtually

[15] Australian Law Reform Commission, Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples (Report No 133, December 2017); Royal Commission into Aboriginal Deaths in Custody (Final Report, April 1991).

impossible for many, who are caught within it, to escape. Perhaps the most toxic of these factors is family violence.

Our governments contribute to the imprisonment crisis through a negatively self-reinforcing and criminal justice response. State and territory governments in recent decades have introduced various populist 'tough-on-crime' policies that cause more Indigenous Australians to be caught up in the justice system. The federal government claims justification for withholding adequate funding for legal services, arguing responsibility should lie with the states who have effectively driven up demand. It has denigrated those dependent on welfare through social disadvantage, imposing welfare quarantining with no apparent regard for the voices of medical, legal and human rights proponents who warn of further harm.[16]

While the problems are complex, there are a number of immediate cost-effective measures which could yield significant results. Small changes to laws and practices would immediately yield outcomes and could reduce recidivism, save money, and prevent crime. Justice reinvestment trials and specialist courts in consultation with Indigenous leaders, for example, are having positive impacts on community empowerment and ownership of justice solutions.[17]

Adequate funding for legal aid and legal assistance support is critical. In Australia, Aboriginal and Torres Strait Islander Legal Services were established in every state and territory some 40 years ago to provide culturally competent legal assistance services to Indigenous peoples. Unfortunately, after decades of inadequate and declining funding from the Commonwealth Government, these services are increasingly unavailable or inaccessible to many who need them most.

Across the country, unmet legal needs for people seeking asylum, refugees and vulnerable migrants is endemic, unprecedented and escalating. Amongst them are people facing destitution after being stripped of their basic income support, housing and trauma counselling while seeking protection; women and their children seeking protection from

[16] See, eg, Senate Community Affairs Legislation Committee, Parliament of Australia, *Inquiry into the Social Services Legislation Amendment (Cashless Debit Card) Bill 2017*, including evidence of the author Hansard, 2 November 2017.
[17] Law Council of Australia (n 14) part 1: Aboriginal and Torres Strait Islander People, part 2: Governments and Policy makers.

family violence; people being detained indefinitely; and people battling for family reunion after years of separation.

The problems are massive, but they are not insurmountable. It is a question of whether we prioritise our spending on the type of nation we want to be, or not. Laws and policies that are inherently unjust, or that entrench inequity, must be discarded in favour of principled, evidence-based laws created in collaboration with citizens.

IV INTEGRITY

The strength of our democracy also depends upon the integrity of those entrusted to exercise power and a complex framework of checks and balances that scrutinise such exercise of power.

We count our blessings, as dictators and populist oligarchs assert wide discretionary executive powers in other parts of the world, protected by laws and with powerful military and intelligence assets at their command.

However, the first twenty years of this century have not been marked by any improvement in Australia's global standing for integrity.[18] We have seen numerous examples of law enforcement struggling to keep pace with the ingenuity of criminal organisations, the vast profits of illegal conduct pouring through the accounts of subterranean operatives and obscure networks of influence. We have witnessed politicians influenced by those who have purchased access, and Ministers and public servants spending public funds without due process. We observe a captive or disorganised press, unable to protect whistleblowers effectively, incapable of piercing the propaganda of well-resourced government 'messaging'.[19]

[18] See, eg, 'Corruption Perception Index', *Transparency International: The Global Coalition against Corruption* (Web Page, 2019) <https://www.transparency.org/research/cpi/overview>.
[19] Stephen Charles AO QC, 'The Fitzgerald Oration 2019' (Accountability Round Table, 1 September 2019). See also Katharine Murphy, 'Sports Rorts Changes Everything. It's Time for a Federal ICAC', *The Guardian* (online at 7 March 2020) <https://www.theguardian.com/australia-news/2020/mar/07/sports-rorts-changes-everything-its-time-for-a-federal-icac>; Senate Committee on Administration of Sports Grants, Parliament of Australia, *Inquiry into the Administrations of Sports Grants, Parliament of Australia,* including evidence of the author Hansard, 12 March 2020.

We appear powerless to address growing economic and social inequality, witnessing gross violations of human rights and environmental catastrophes across the globe where few are held to account, and future generations bear the cost.[20]

Most people instinctively understand these facts, if they do not understand the causes. They also understand the fact they are powerless to effect change in their own lives. The erosion of trust turns to anger, boiling over into all areas of life from the protest at the ballot box to outbursts of violence.

In this context, our efforts to build robust integrity and accountability mechanisms in support of the observance of human rights and the rule of law throughout the world, are crucial, both in maintaining trust in the system and social cohesion, and in addressing the causes of inequality and instability.

Globally, the trend is towards populism driven by patriotism, the loss of trust in government and multiple examples of executive overreach. It is therefore vital that our institutions are continually strengthened and improved.

V ACCOUNTABILITY

'Accountability' in essence, encompasses the processes and the enablers that allow people to hold government and the institutions of state to account — to answer for their conduct and omissions, their decisions and indecisions. In the context of public sector integrity, we have observed the steady erosion of institutional protections and singular resistance to robust anti-corruption measures.[21]

Naturally, those with power would prefer to avoid scrutiny and criticism, to control the means by which we find things out and talk about them. While openness can be productive of discomfort, governments that embrace this scrutiny and the direct participation of citizens, ultimately make better, more informed decisions.

Greater accountability builds trust and respect, and supports a more equitable society.

[20] See, eg, 'Uyghurs Tell of China-led Intimidation Campaign Abroad', *Amnesty International* (Web Page, 25 February 2020) <https://www.amnesty.org.au/uyghurs-are-not-safe/>; William Thiesen, 'The 10th Anniversary of the Deepwater Horizon Spill', *The Maritime Executive* (Online at 24 April 2020) <https://www.maritime-executive.com/editorials/the-10th-anniversary-of-the-deepwater-horizon-spill>.

[21] See, eg, n 20.

Government legitimacy depends on decisions being open to scrutiny. Ultimately it is why we consent to being governed and the corresponding legitimacy of government.

And yet, in Australia, our parliamentarians are not bound by a code of conduct and have no ability to access independent ethics advice.[22] There are no consequences for a breach of the Statement of Ministerial Standards unless an inherently conflicted Prime Minister decides to act. Current laws and practices mire our freedom of information laws, campaign financing and the regulation of lobbyists. Our tendering processes are routinely subverted or ignored. Money is sprinkled around marginal seats like confetti, regardless of principles of probity and equity.

Commissioner the Honourable Ken Hayne AC QC recently lamented, in the wake of inaction over his Banking Royal Commission recommendations and Crown casino revelations, trust in government and institutions has been 'damaged or destroyed'.[23]

Our commitment to the global initiative Open Government Partnership has not, so far, been productive of any particularly stunning advances. Two National Action Plans have been produced with timid commitments to integrity safeguards, public participation in democratic processes and accountability. There were some early commitments to review the Freedom of Information law reform and a promise of transformation of the delivery of government services, but nothing explicit in terms of assurances of accountability beyond the use of information.[24]

Increasing dependence upon technology, with the rush to embrace big data harvesting,

[22] Fiona McLeod and Stephen Charles, Submission No 32 to Senate Committee on Administration of Sports Grants, *Inquiry into the Administration of Sports Grants* (28 February 2020).
[23] The Honourable Ken Hayne AC QC, 'On Royal Commissions' (Speech, Melbourne Law School, 26 July 2019) 6.
[24] In May 2017, PMC indicated a commitment to develop a new Privacy Code for government agencies. On 26 November 2017, the government announced it would create a Consumer Data Right as one of the reforms in its upcoming response to the Productivity Commission (PC)'s Data Availability and Use Inquiry Report. The Report proposes reforms to strengthen Australia's data system and give individuals more control over their digital data. Several of the recommendations relate to high value datasets, including the designation of National Interest Datasets and a public nomination process for access to high value datasets. In May 2018, the government committed to the establishment of a National Data Commissioner and new legislative and governance arrangements to improve use of data while ensuring appropriate safeguards are in place to protect sensitive information. It included the establishment of a new Consumer Data Right that will give citizens greater transparency and control over their own data. This announcement means the High Value Dataset Framework has been delayed, but suggests the scope of the work was probably underestimated. In March 2019, the membership of the National Data Advisory Council met for the first time.

use, sharing and retention, compounds this lack of transparency and accountability. Machine learning or artificial intelligence is seen as a panacea for all ills despite concerns with inaccuracy and optimisation, confirmation biases inherent in programming, intrusions upon privacy, security of data, and misuse for law enforcement or hostile purposes. The scale of data harvesting, learning and commercialisation by private actors and government departments is staggering, particularly as most users are ignorant about the extent of surveillance, design flaws and default terms and conditions. The potential use and misuse of data to influence human behaviour, including by private entities such as Facebook and Google is frankly, terrifying.

Private complaints resolution processes increasingly avoid the courts altogether, substituting contractual and algorithmic determinations for human led interventions. In this context, the preservation of the rule of law and informed human involvement in judicial and administrative decision-making, is more precious and critical than ever before. If citizens are unable to scrutinise, comprehend and challenge decision-making, we head towards totalitarianism.

The future beckons with the possibility of human 2.0 with life extension, genetic and robotic enhancement, implantables, injectables, biometrics, the downloadable consciousness and virtual relationships meeting our need for intimacy and love. We are merging our virtual lives with the non-virtual. Increasingly, advertising and gaming are using sophisticated immersion experiences indistinguishable from real life. Our human minds are not particularly adaptive, and the temptation of each shiny new promise is irresistible.

There is a growing awareness, articulated by Human Rights Commissioner Ed Santow, the Australian Competition and Consumer Commission and others, that technological developments pose unprecedented challenges to privacy, freedom of expression and equality.

In Victoria, the right to privacy is protected by human rights legislation without substantive enforcement rights.[25] The ACT and Queensland Acts are in almost identical

[25] *Charter of Human Rights and Responsibilities Act 2006* (Vic) (Charter) s 13. Identical provisions are found in the ACT and in Queensland Acts. Public authorities are required to act consistently with the Charter, and there is a scrutiny process that mirrors the Commonwealth statement of compatibility

terms. But at the Commonwealth level, in the absence of a Human Rights Act, the only direct protections available are found in the Privacy Act.[26] In 2001 and 2004, the High Court[27] and the Victorian Supreme Court[28] respectively held there was no cause of action in privacy.

It is more than a decade since the Australian Law Reform Commission review of Australian privacy laws and five years since the *Serious Invasions of Privacy in the Digital Era* Inquiry Report. Our protections are lagging well behind the technology and well behind other states. We need a wide-ranging review into data use, sharing and storage, and the laws and practices that will be required to protect us including privacy, informed consent, human rights implications and regular assurances and audits.[29] Law reform will need to occur in many areas of law, including administrative law, with increased reliance upon machine-assisted decision-making, discrimination laws, contracts and consumer protections, procurement and design standards.

Contracts and consumer protection laws will also need to be reviewed. Our concepts of privacy protection are anachronistic, possibly obsolete, based on an assumption we choose to share discrete pieces of information for a specific purpose, and that further use will be constrained by the terms of use. The cyber context is one that assumes disclosure is sufficient and people will accept an intrusion into their private lives for a benefit or social good. The effectiveness of a notice regime depends on identifying and locating/contacting the affected individual, providing a meaningful opportunity to respond, an explanation of decisions and access to proprietary software components and

process, but it creates no stand-alone right of action and the rights are effectively unenforceable unless they are raised as an adjunct to other forms of legal claim. Recently, in *Jurecek v Director, Transport Safety Victoria* [2016] VSC 285, Bell J considered the scope of the protection of personal privacy under the Charter and Victorian *Information Privacy Act 2000* (now *Privacy and Data Act 2014*).

[26] The *Privacy Act* was intended to implement the privacy obligations under the *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 17(1), discussed in Human Rights Committee, *General Comment No 16: Article 17 (Right to Privacy)*, 32nd sess, UN Doc (8 April 1988); Organisation for Economic Cooperation and Development, *OECD Guidelines on Other Protection of Privacy and Transborder Flows of Personal Data* (2013) guideline 17. See also Joseph A Cannataci, Human Rights Council, *Report of the Special Rapporteur on the Right to Privacy,* UN Doc A/HRC/31/64 (8 March 2016).

[27] ABC v Lenah Game Meats Pty Ltd (2001) 208 CLR 199.

[28] *Giller v Procopets* [2004] VSC 113 (Gillard J), concerning the distribution of a video of private sexual activity.

[29] See, eg, New Zealand Government, *Algorithm Assessment Report* (Report, October 2018).

course code.[30]

A consequence of entrenched inequality is that users do not have access to or understand their rights and have little capacity to challenge abusive behaviour. Existing inequalities are exaggerated by technical knowledge asymmetry and cost of legal and other expert services.

Access to justice and access to information are critically empowering to the success of our adaptation. Unless we address existing problems with an eye on the future, we risk marginalising a whole new class of the technologically unsophisticated who will be denied access to justice.

It is only by operating openly and with transparency, mindful of the challenges to equality, that we will be best placed to navigate these pressures. Processes that enable accountability, on the other hand, create the mechanism for governments to answer for their conduct and omissions, and their decisions and indecision.

VI CONCLUSION

Our laws serve us best when they fairly reflect our aspirations of truth, justice, equality, integrity and accountability. They strengthen our democracy when they allow the governed to raise voices of dissent and heretical ideas, to express with potency the lived experiences of those who are otherwise invisible, oppressed, marginalised and unseen by those wielding power.

When laws serve opposite interests and aspirations, when they entrench inequality and vulnerability, we should not be afraid to revisit them and start afresh.

We are facing imminent social and economic upheaval on a number of fronts in a context of political inertia and compromise in our nation and across the world. But the possibility of stopping the worst of the predicted outcomes lies within our grasp. New legal frameworks founded upon the notions of the commons have been used before to protect precious natural heritage and ensure the viability of the environment that sustains all

[30] The Canadian Directive on Automated Decision-Making requires Algorithmic Impact Assessments and the provision of notice to affected individuals. In New Zealand, the Chief Data Steward developed the Principles for the Safe and Effective Use of Data and Analytics and published a direction in 2017.

living things.[31] This paper has touched upon some of the measures we might adopt to better align law with justice, equality, integrity and accountability, to adapt our notions of existing rights and responsibilities to ensure equality and justice for all.

[31] Declaration of Principles Governing the Sea-Bed and Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction (n 3).

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