

Teaching the Theory of Law Reform

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Presentation overview



LAW REFORM AT
MELBOURNE LAW
SCHOOL



WHAT IS LAW
REFORM?



THEORIES OF LAW
REFORM



METHODS OF LAW
REFORM

By HENRY ERGAS

Role of law schools is to teach, not preach

 11 Comments



THE AUSTRALIAN

By ANDREW LYNCH

‘Black-letter’ law alone doesn’t make for good lawyers



Gift this article



21 Comments

7 hours ago

Law Reform at Melbourne Law School

Assessment =

- Attendance +
- Topic Proposal +
- Oral Presentation +
- Written Submission.

Students choose and research their own topic.

Law Reform at Melbourne Law School

Student feedback indicates they have limited opportunity in their studies to:

- Think about law reform
- Learn about legislation
 - How it is made and amended
 - How it is drafted
 - Its design, structure and elements

What is law reform?



Source: Google maps

What is Law Reform?

- Much broader than writing a submission to a law reform agency
- Ancient traditions of law reform in Australia and elsewhere
- Castan: All lawyers have an ethical and professional role in evaluating and critiquing changes in the legal system.
- It can involves courts, parliament, and the executive.

What is Law Reform?

A narrower category of “**systematic law reform**”.

- Many different review bodies in Australia, eg:
 - Royal Commissions;
 - Parliamentary committees;
 - Ad hoc committees;
 - Departmental reviews;
 - Law reform commissions.

What is Law Reform?

From CALRAS, “Changing the Law”:

- “A non-partisanly political form of (legal) policy formation, which is **within the professional capacity of lawyers** to accomplish.”
- “Law reform is **what law reform agencies do**; and law reform agencies are (mainly) there to do law reform.”
- “The result of **rational enquiry** based on meticulous research and consultation.”

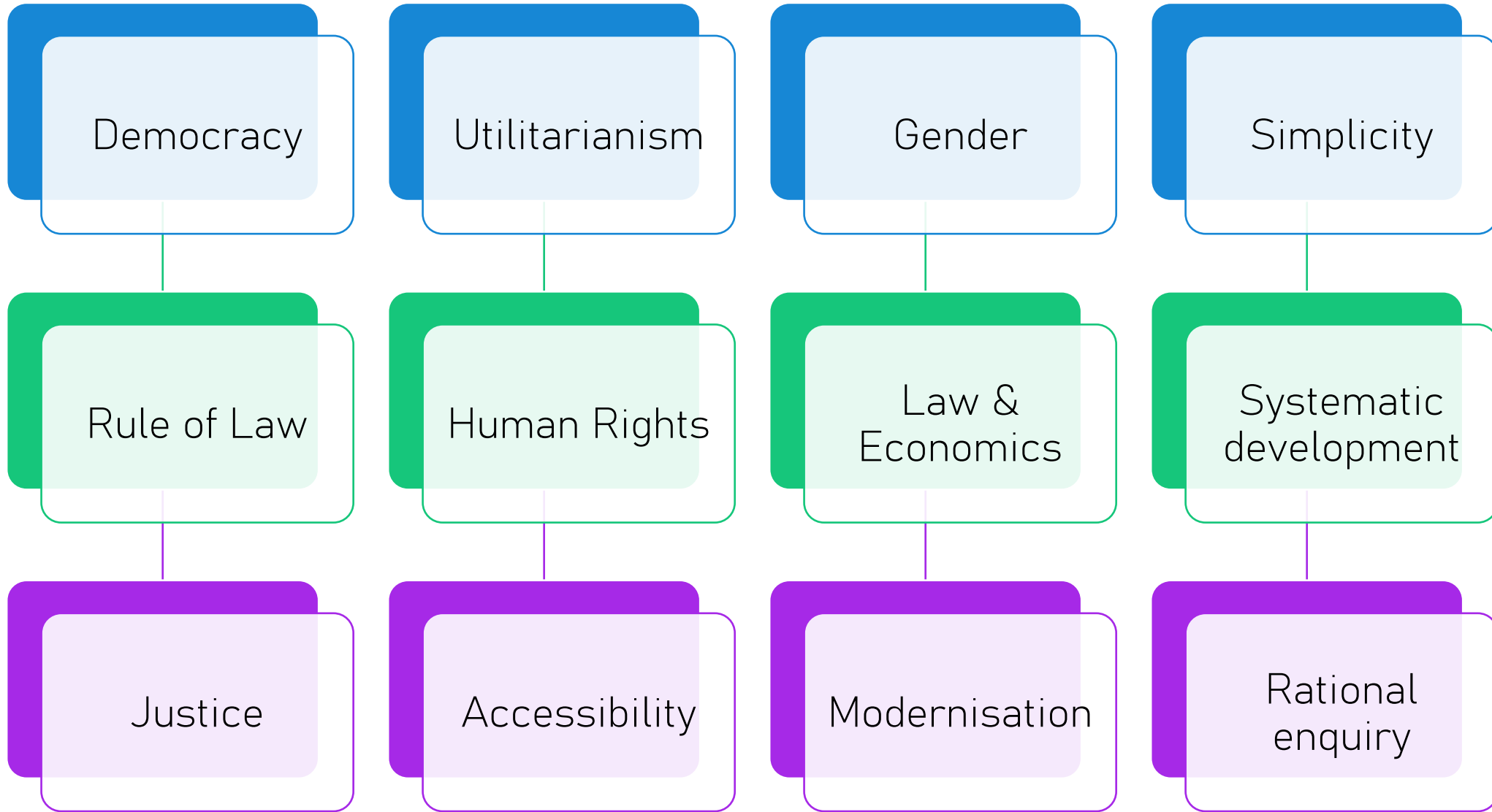
Principles of Law Reform

Kirby: Reform means “not just change, but change for the better”.

Woodman (1975) advocated for “a consistent set of principles which indicate how existing law can be replaced by better law”.

Palmer (2015): “No coherent philosophy for the law reform enterprise has emerged. Probably none can be devised because the Commissions occupy an awkward space between principle and expediency.”

Principles of law reform



Principles of Law Reform

Justice and the rule of law:

- Castan: “Law Reform or Law Deform?”
- Kirby: “Is there currently no remedy to right a plain wrong? Is the law causing positive injustice?”

Modernisation:

- Lee: “modernisation” is a dangerous concept
- Neave: It is better to focus on “solving socio-legal problems” than “modernising the law”



Toulson: Accessibility, Simplicity, and Systematic Development of the Law

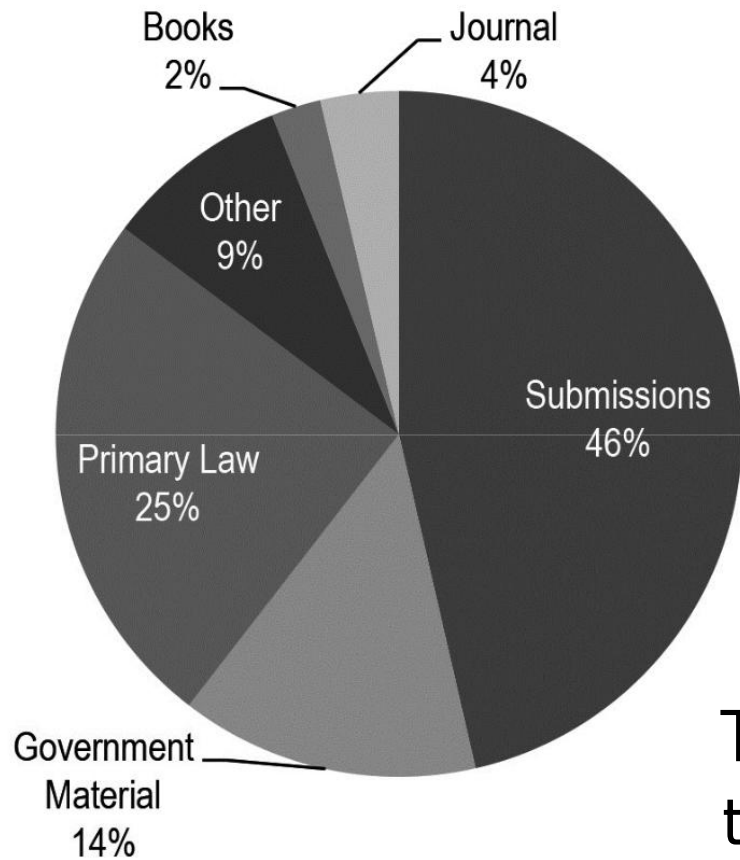
Image produced by chat.chaton.ai

Principles of Law Reform

Gender and law reform:

- Davies: State-centric law is a patriarchal institution with limited potential to affect fundamental change.
- Graycar & Morgan: Law reform is of limited value to women because of how law reform questions are asked and answered.

Methods of Law Reform



Tranter: Citation Practices of the ALRC



Methods of law reform: types of research

Theoretical

Doctrinal

Empirical

Personal

Historical

Comparative

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