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An economic perspective on the law:  
Is there “legal failure”?

A thesis presented in partial fulfilment of  
the requirements for the degree of

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in  
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New Zealand.

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## ***Abstract***

The law fulfils important functions in society, contributing to its institutional structure, its policies and resolution of disputes. Workers employed in the law are providing a service, and economics can be applied to analyse the nature of this service. Such analysis must recognise the characteristics of law, including the costs and nature of deliberation. This requires more than the use of theoretical approaches which assume exogenous preferences and no transaction costs.

Rhetoric is important in law, and there may be a rhetorical dimension to economics itself. This theme has led to the thesis having two components. The first considers methodological issues in the application of theories and techniques. The second then assesses aspects of the law.

Groups and group cultures are considered as influences on academic disciplines including economics, and professions such as the law, as well as shaping political activity and social beliefs. The interpretation of theory as analogy is developed to evaluate the application of theory and empirical analysis to real world issues. Cross-disciplinary material is then used to provide alternative perspectives on democracy. These aspects assist in identifying possible failures in the formulation and implementation of law.

From this foundation, and using selected criteria to assess policy development, parliamentary debate leading to changed legislation is investigated and limitations identified. Characteristics are then identified for the services provided to consumers by the legal sector. Provision involves a mix of participants, including lawyers, court staff and other professions. Process and persuasion are important, and there can be game playing between opposing parties. The result may be misleading signals to others operating “in the shadow of the law”.

Overall, concerns are identified about research methods, the quality of laws, the cost and quality of legal deliberation, and implications for behaviour by others. This a relatively untapped area with much potential for further research.

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## **List of Abbreviations**

*New Zealand Parliamentary Debates* citations will follow the legal citation method as in Chapter 5 of the New Zealand Law Style Guide (McLay, Murray, & Orpin, 2009): [Date of debate, volume, NZPD, page number], for example [14 November 2000, 588, NZPD, 6530]. The same format will be followed for citations of Parliamentary Questions for Written Answer to the end of 2002, with the source being *New Zealand Parliamentary Debates Question Supplement* (NZPDQS) , and for which the date refers to the date on which the question was lodged. All other citations, including Questions for Written Answer from 2003 (available online) and case law, follow APA 5<sup>th</sup>.

CDA	Critical discourse analysis
CEDAW	The Convention on the Elimination of All Forms of Discrimination against Women
IDF	Ideological-discursive formation
INUS	INUS condition – insufficient but necessary part of an unnecessary but sufficient set of conditions
MMP	Mixed Member Proportional (voting system)
MSD	Ministry of Social Development
MWA	Ministry of Women’s Affairs
NCWNZ	National Council of Women of New Zealand
NGO	Non-government organisation
NZCTU	New Zealand Council of Trade Unions
NZFLR	New Zealand Family Law Reports
NZLR	New Zealand Law Reports
NZPD	New Zealand Parliamentary Debates
NZPDQS	New Zealand Parliamentary Debates Question Supplement
QALYs	Quality Adjusted Life Years
RIA	Regulatory Impact Assessment
RMA	Resource Management Act