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ARTICLES

Why Is Judicial Corruption Invisible? – *Shubhankar Dam*

This article is a meditation on invisible crimes. Judicial corruption, insiders including judges and ministers, lawyers, and litigants say, is rife in India. Still, no superior judge has ever been convicted on corruption charges. Why? Scaffolded around the theory of invisible crimes, I introduce – and catalog – the key elements of an “economy of ignorance” that has veiled judicial corruption in India: a controlled information ecosystem; a monopoly over investigative and prosecutorial discretion; and the aggressive use of contempt powers. But the executive and legislative branches, media, and the knowledge sector also fuel this economy. The invisibility, however, is only imperfect. Occasionally, judicial corruption sagas do escape the economy and become public spectacles. But mapped against global modes of judicial accountability, the Indian experience exposes the limits of the oft-prescribed self-regulatory model – judges screening complaints against fellow judges – and suggests that India is in the midst of a great experiment on social epistemology. 200

The Judiciary and Liberty: Assessing the Competing Rationales for the Lim Principle – *Andrew Foster*

This article argues that the judiciary’s special role in protecting liberty has a necessary role to play in the rationale for the Lim principle concerning constitutional limitations on non-criminal detention, which is a current point of contention in the High Court. There is a general acceptance that the independence and impartiality of the judiciary as required by the separation of federal judicial power forms part of the rationale for the Lim principle. This article contends that judicial independence and impartiality is insufficient and that judicial protection of liberty is also a necessary part of the rationale. The consequence of the High Court not adopting the liberty rationale is a narrow application of Lim that inadequately imposes the constitutional limitation on non-criminal detention. This article first considers the chronological development of the Lim principle and the critique in the literature. With this context established, the Lim principle’s rationales and how they impact judicial decision-making is critically examined. 226

A “Force of Last Resort”? A Critical Evaluation of the Use of the Australian Defence Force in the Context of Bushfires and Pandemics – *Maya Narayan*

In the last three years, Australia has experienced an unprecedented coalescence of threats posed to the health and safety of its population: the catastrophic 2019/2020 bushfire season; and the COVID-19 pandemic. In both contexts, the States and Territories have, consistently with the distribution of authority for emergency management within Australia’s federal system, taken primary responsibility for responding to the relevant crisis. Forced to play a supporting role, the Commonwealth has increasingly relied on deployment of the Australian Defence Force (ADF) to provide assistance. The position advanced in this article is that the key justifications for use of the ADF in responding to domestic emergencies – particularly those constituted by threats of a not directly anthropogenic nature – do not adequately explain the value of the ADF and that significant functional and legal constraints on defence personnel in this context may, in fact, hinder state and territory emergency responses. 246

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