

JuristDiction

Sydney Law School Faculty and Alumni Journal • Issue 1 2008

I WAS
HERE.
WAS TOO

THE FORGOTTEN CHILDREN

Exposing Australia's treatment
of child refugees

THE FUTURE OF LAW

A WORLD OF
DIFFERENCE

SIXTY YEARS OF
CAMARADERIE



The University of Sydney
Alumni



Sydney Law School
Australia's first



JuristDiction

A faculty publication of the Sydney Law School for alumni and the legal community.

Published twice a year, JuristDiction is Sydney Law School's magazine for alumni and friends. In addition to reporting the academic successes of staff and students, and exploring their contributions to professional and community life, it also relates the aspirations and achievements of you, our many graduates living in Sydney and around the globe. We welcome your feedback and ideas.

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DEAN'S MESSAGE

PROFESSOR GILLIAN TRIGGS

A NEW ERA

It has now been six months since I took up my position as Dean at the Sydney Law School and much has happened in this time. Six members of academic staff were selected to take part in the 2020 Summit; the Sydney Law School team has won for the second year in a row, the Australian final of the Jessup International Law Moot and Sydney Law students have been selected for the NSW Rhodes Scholarship and Fulbright Scholarships for 2008.

The new Law School Building progresses on time with the hand over to be expected in December 2008. I'm cheerfully expecting the relocation over the Christmas and New Year period! A tour of the structure, my first visit, last month with some colleagues was exciting. Not only is the building elegant and the spaces light and beautiful but it provides us with unprecedented opportunities to think about our teaching methodologies and collaborative research. One of the most important challenges presented by the relocation is to ensure that we maintain our close connections with the legal professional in Sydney – judges, solicitors, barristers, corporate advisors, government officials and NGO lawyers. At present they play an integrated role in teaching, mooting, legal research and seminar programs, providing a significant contribution to legal education in Australia. It is the university's intention that the Law School, as the premier tenant, will continue to run many of the LLM programs from the "old" Law School where appropriate. In short, where the course runs in the evening and is of particular interest to practitioners, we will continue to use the current building. For intensive courses we expect to use the new building where facilities will be more appropriate.

Bricks and mortar do not, of course, make the Law School. The heart of the school continues to lie with its high

calibre students and academic and support staff. I am pleased to report that in 2008/9 we will be offering fulltime and continuing positions to 14 new staff members, 7 of them entirely new positions. These appointments enable us to fill current gaps in our research and teaching program particularly in international commercial law, trade and investment law and contracts, tort and health law.

The legal profession has been particularly generous in supporting scholarships for our students and I am pleased to announce that Amish Bhasin has been awarded the Cameron scholarship and we hope to announce the winner of the Justice Peter Hely Scholarship shortly.

Amidst these positive advances for the law school we were sad to learn that our former Chancellor, the Hon Kim Santow, AO died a few weeks ago. Just before his death he was awarded an honorary LLD by The University of Sydney in a conferring ceremony attended by the Chancellor, Her Excellency Professor Marie Bashir AC CVO. Kim's speech on receiving the degree is included in this journal.

I hope that you enjoy this edition of the newly named "JuristDiction". The name was cleverly chosen by Edwin Bikundo, a PhD student of the Law School who also teaches International Law. We hope that this and future editions will keep you informed of the Law School's activities and give you an insight into some of the research that is currently conducted by the faculty.

Best wishes,

Professor Gillian Triggs
Dean, Faculty of Law

NEW STAFF

Dr Andrew Edgar

Dr Andrew Edgar is a lecturer in law at the University of Sydney who specialises in administrative law and environmental law. His research focuses on review of environmental decisions and the use of flexible rules and policies by government agencies.

He has written numerous articles and edited publications, such as the Local Government and Planning Law Guide and the Australian Digest of Law. He holds arts and law degrees from Macquarie University and a PhD from the University of Sydney.

Associate Professor Peter Cashman

Dr Peter Cashman was formerly Commissioner in charge of the civil justice enquiry with the Victorian Law Reform Commission; Commissioner jointly in charge of the reference on class actions with the Australian Law Reform Commission; founding Director of the Public Interest Advocacy Centre; founder and senior partner of the firm Cashman & Partners. He has practised law in the United Kingdom, the United States and Australia.

He holds a degree in law and a diploma in criminology from the University of Melbourne and a Master of Laws degree and a PhD from the University of London.

Wayne Courtney

Wayne Courtney specialises in corporate and commercial law, particularly, contract law. He publishes articles regularly in these areas in journals such as the Journal of Contract Law, the Journal of Business Law and the Companies & Securities Law Journal.

Before entering academia, Wayne practised as a commercial lawyer in a leading Australian law firm and also in-house at a major multinational company. Wayne is currently undertaking a PhD in the Faculty in the area of contract law.

Dr Simon Butt

Dr Simon Butt is an expert in Indonesian law, specifically the Indonesian judicial system. He is the author of many publications on the Indonesian Constitutional Court, the death penalty, and intellectual property law in Indonesia.

Prior to joining the faculty, Simon worked as a consultant on the Indonesian legal system to the Australian government, the private sector and international organisations, including the United Nations Development Programme (UNDP) and the International Commission of Jurists (ICJ).

Simon is fluent in Indonesian and was recently awarded the Melbourne Law School's inaugural Harold Luntz prize for the most outstanding PhD thesis on the Indonesian Constitutional Court.



COUNTDOWN TO 2020

The 2020 Summit was a chance to switch the focus of public debate from complaints about our system of government to ideas on how to improve it. The Sydney Law School had an outstanding opportunity to provide some policy guidance to the 2020 Summit through six academic members of staff who were selected to attend the Australia 2020 Summit.

Listed alongside their relevant areas of expertise are:

Professor Patricia Apps, Australian Economy; Dr. Ben Saul, Future Security; Dr. Katherine Fallah, Future Security; Associate Professor Helen Irving, Australian Governance; Associate Professor Anne Twomey, Australian Governance; Professor Mary Crock, Population, Sustainability, Climate Change and Water.

Anne Twomey an Associate Professor of Law at the University of Sydney and a participant in the Governance group of the 2020 Summit has given us 10 suggestions she threw into that debate.

1. Hold a constitutional convention on federalism. The federal system cannot be overhauled in one weekend. There needs to be a mechanism to address the allocation of powers and responsibilities and the operation of federal-state financial arrangements. It should involve experts, through a preparatory commission, and the wider community through a convention.

2. Establish a Federalism Commission. We should transform the defunct Inter-State Commission into a 'Federalism Commission' that is independent of both the commonwealth and the states. It could monitor the implementation of inter-governmental agreements and adjudicate upon disputes under them. It could determine the distribution of grants and incentive payments to the states and territories and identify areas that require harmonisation and cooperation.

3. Provide constitutional support for cooperation between governments. The Constitution caters for the competitive side of federalism, but hinders the cooperative side. It needs to be amended to allow the cooperative sharing and delegation of powers in the judicial, legislative and executive fields. This would mean the appropriate court could hear all aspects of a dispute without arid disputes about which aspects fall within state and federal jurisdiction, and cooperative legislative schemes could be administered and enforced by the one set of officials.

4. Ban donations to fund political parties and instead provide fair, transparent and limited public funding. This would have an economic cost, but it would have greater public benefits through reducing the reality

and perception of corruption and undue influence, restoring faith in the political system, attracting better political candidates and greater public participation in governmental affairs.

5. Protect the right to vote. Voting for Parliament and to amend the Constitution are both fundamental to the Constitution's operation. However, the Constitution not only fails to establish a right to vote, but also contains provisions that contemplate disenfranchisement on the grounds of race or sex. The High Court has resorted to strained interpretations and implications to protect the universal franchise. This needs to be done expressly in the Constitution.

6. Impose the responsibility to vote. The counterpart to a constitutional right to vote is a responsibility to vote. Compulsory voting should be included in the Constitution, but should also be accompanied by a right not to vote for candidates to whom the voter objects. Commonwealth elections would then use an optional preferential system, so voters could vote for as many candidates as desired, but choose to exhaust their vote rather than have it used to elect a candidate of whom they disapprove. This would give voters back control over their votes and mean that those elected were genuinely chosen, rather than being the accidental results of preference deals and party voting tickets.

7. Improve access to government documents. Both laws and bureaucratic practices need to be overhauled to allow reasonable access to government documents. Some existing exemptions should be confined to shorter periods and decisions based on the 'public interest' should be reviewed by an independent officer.

8. Establish an independent judicial appointments commission for the High Court. As the High Court is the adjudicator in

the federal system on the respective powers of the Commonwealth and the States then its appointment needs to be independent of all governments. Public trust in the court would benefit from a truly independent appointment system.

9. Allow the High Court to give advisory opinions and prospectively overrule. The disruption and instability created by the High Court striking down the validity of laws that have been operating for a long time could be minimised by permitting the Court to give advisory opinions on doubtful laws before they come into effect and allowing it to limit its findings of invalidity to the future application of a law, avoiding disputes about actions long past. British courts have recently been given such powers with respect to Scottish devolution.

10. Broaden the initiation of constitutional reform. There are many constitutional reforms that will never be put to the people in a referendum simply because it is not in the interests of the Commonwealth government to do so. One possibility is to allow the States, through uniform legislation, to put proposed constitutional amendments to a referendum. Another option is to establish a constitutional reform commission which could receive and assess public proposals for constitutional reform, and put three to the people at a referendum held every second election. Periodic constitutional reform would avoid constitutional stagnation and regularly stimulate public debate and involvement in public affairs.

Reform, especially constitutional reform, is often regarded as so difficult to achieve that it is not worth trying. The 2020 Summit will hopefully not only generate ideas but rekindle the desire to achieve reform to improve our system of government.

The Future of Law

An Update on the New Law School Building

by Raelene Lockhurst



Campus 2010 – Building for the Future, the largest capital works program undertaken by the University of Sydney in 70 years, was launched in 2003. This bold initiative, comprising six major infrastructure projects valued at \$250 million, is expected to be achieved by 2009.

Amongst other elements, Campus 2010 includes the School of Information Technologies building, an integrated student services facility known as Sydney Central, extensive enhancements to the public domain linking these and other sites, and – of course – the exciting new Law School complex.

Valued at \$85M, the most significant part of the Campus 2010 vision is due for completion at the end of 2008, upon which the Faculty of Law will relocate to the University's historic and beautiful main campus.

The new law building has been designed over four levels to accommodate academic and administrative staff, together with a range of research centres and institutes, collaborative spaces, meeting and conference rooms. Underground parking for 420 cars will help free-up open space on the campus – an important factor in improving the environment enjoyed by students, staff and the wider community.

Major components of the project include a Moot Court and Dispute Resolution Centre, the new Law Library, extensive and flexible teaching spaces, and – forming a dramatic welcome for visitors – an expansive forecourt.

The law building comprises 23 general teaching spaces ranging from 300 and 100 seat lecture theatres through to 60 and 24 seat seminar rooms.

The state-of-the-art Moot Court and Dispute Resolution Centre, located within the

teaching spaces on the eastern facade of level two, will enjoy views across Victoria Park. It will be utilised for a variety of teaching programs in litigation and dispute resolution.

The Faculty of Law Library occupies approximately 3,650 square metres on level one, including an associated mezzanine level to the western edge of the new facility. It too benefits from views to Victoria Park, as well as from a range of contemporary resource and research spaces.

The forecourt area will be ideally suited to a variety of University activities, in addition to its role as a more informal gathering place for students and others.

To its southern edge will be a new café together with a range of seating and landscaped areas.

Weather proofing should be completed by July, allowing for work on internal finishes to commence. The project is continuing to schedule and is expected to be handed over to the University in December 2008.

Sydney's world class new building for law has been made possible with significant encouragement and support from the community. To the numerous alumni, friends, law firms and corporations who have played their part in this historic initiative, students and staff say a sincere thank you.

Special appreciation is also expressed to our Principal Supporters (listed beneath) for their leadership contributions to the project.

Freehills **Clayton Utz** **The Turnbull Foundation**

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For more information about this project or other gift and partnership opportunities please contact:

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BUSINESS AS USUAL?

INTERNATIONAL PUBLIC HEALTH LAW EXPERTS DEBATE THE
ROLE OF INDUSTRY IN CONFRONTING THE CHALLENGES OF
TOBACCO, OBESITY AND CHRONIC DISEASE



According to Professor Stephen Sugarman, the Roger J. Traynor Professor of Law at Boalt Hall, Berkeley, most public health regulation follows a prescriptive, "command and control" approach. It sets out detailed rules ("inputs") that organisations and businesses are expected to follow. Professor Sugarman advocates a different approach. Businesses that impose social costs on society, he argues – such as manufacturers of junk foods, tobacco, alcohol, and guns – should be required to take responsibility for some of those negative effects. However, rather than prescribe inputs, law-makers should prescribe outcomes – targets for harm reduction – and leave it to the ingenuity of business to work out how best to achieve them. Businesses who succeed deserve praise. Those that don't should pay a fine, penalty or fee: a "polluter pays" principle. This is Professor Sugarman's "performance-based regulation" thesis.

The application of performance-based regulation to tobacco and obesity were just some of the ideas discussed at a conference convened by the Faculty's Centre for Health Governance, Law & Ethics, on 29 February. Entitled *Business as Usual? Debating the Role of Industry in Meeting the Challenges of Chronic Disease*, the conference was

convened by A/Professor Roger Magnusson with the aim of examining new ideas for the regulation of those industries whose products – tobacco, food, alcohol – contribute to the burden of chronic disease in Australia.

Joining Professor Sugarman as keynote speakers at the conference were Professor Lawrence Gostin, the Linda and Timothy O'Neill Professor of Global Health Law at Georgetown University Law Center, and Professor Fiona Stanley AC, the Founding Director of the Telethon Institute for Child Health Research and Professor of Paediatrics and Child Health at the University of Western Australia.

Also presenting were public health nutritionist and consumer health advocate Dr Rosemary Stanton OAM; Professor Wayne Hall from the School of Population Health at the University of Queensland; and A/Professor Roger Magnusson from Sydney Law School.

In the opening session (chaired by Professor Stephen Leeder, Director of the Australian Health Policy Institute at the University of Sydney), Professor Gostin reviewed the usual justifications given in support of public health regulation. Common justifications for regulation include avoiding harm to others, and protecting the interests of incompetent

people. Paternalistic interventions, however, are more controversial, since they mean second-guessing the freedom of action of individuals in order to protect their health, safety, welfare or happiness. Anti-paternalists argue that there is an inherent value in protecting the right of individuals to make their own choices about lifestyle, regardless of whether those choices are healthy or unhealthy. On the other hand, individuals may be subject to cognitive constraints, suffer from information deficits, or have limited willpower. Individuals are also influenced by social and cultural constraints.

Professor Gostin's paper set the scene for a range of more specific presentations on law, public health and the regulation of business. Professor Fiona Stanley AC, Chair of the Australian Research Alliance for Children and Youth, and the Australian of the Year in 2003, explained why harmful exposures and deficits during childhood and adolescence can have a lifelong impact on the health of adults. She argued that corporate social responsibility and voluntary codes have provided insufficient impetus for protecting the health of children, she argued, and regulation has an important role to play. Professor Stanley pointed out that industry sometimes actively obstructs regulation, as illustrated by industry opposition to the

fortification of bread with folate, following Professor Stanley's work on the relationship between lack of folate in the maternal diet, and neural tube defects in babies.

Dr Rosemary Stanton OAM, well known to Australian audiences as a consumer health advocate and independent commentator on public health nutrition, spoke about the challenge of obesity and unhealthy eating in Australia, the factors causing it and the role of regulation in reducing commercial influence over dietary choices. Professor Wayne Hall, and A/Professor Magnusson both presented perspectives on what regulation can offer to tobacco harm reduction and A/Professor Magnusson pointed to the inherent tension between regulation focused on improving the risk profile of combustible tobacco products, and regulation focused on encouraging the migration of smokers towards less harmful sources of nicotine.

In welcoming members of the audience and opening the conference, the Dean of Law, Professor Gillian Triggs, pointed to the role of the Centre for Health Governance, Law & Ethics as a focal point for research and teaching on health law and public health law within the Faculty. Sydney Law School is a leader in health law and public health law, offering a wide range of units of study for credit towards the Master of Health Law and Graduate Diploma programs. These programs are open to practising lawyers, medical practitioners, nurses, other allied health professionals, health executives and administrators, and other approved applicants. Members of Faculty with expertise in health law include Professor Belinda Bennett (Director of the Centre for Health Governance), Dr Isabel Karpin, Dr Kristin Savell, Professor Terry Carney, A/Professor Barbara McDonald, Professor Margaret Allars, A/Professor Peter Cashman, and A/Professor Roger Magnusson.

For more information about the Master of Health Law program, visit: <http://www.law.usyd.edu.au/fstudent/coursework/healthlaw.shtml>

For information about the Centre for Health Governance, visit: <http://www.law.usyd.edu.au/health/>

LAW SCHOOL VISITORS



Left: The Dean of Sydney Law School, Professor Gillian Triggs pictured with Professor McCorquodale and the Director of the Sydney Law School Lunchtime Seminar Series, Dr. Isabel Karpin.

Director of British Institute of International and Comparative Law delivers Human Rights Seminar

The Director of the British Institute of International and Comparative Law (BIICL), Professor Robert McCorquodale visited the Sydney Law School recently and delivered a special seminar entitled, 'State responsibility for corporations violating human rights overseas', as part of the Sydney Law School Lunch Seminar Series.

"The actions by AWB and by military contractors in Iraq show that transnational corporations can violate human rights," said Professor McCorquodale.

"There is a need to explore the extent to which these extraterritorial activities by TNCs can give rise to international state responsibility of their home state. States routinely provide support and assistance to their corporate nationals in their global trade and investment ventures. In such circumstances states may, by their actions or omissions, facilitate and contribute to a situation in which such violations by a corporation occur, and so incur international responsibility."

Professor McCorquodale succeeded the Dean of the Sydney Law School, Professor Gillian Triggs, as Director of the BIICL.

He is Professor of International Law and Human Rights, and former Head (Dean) of the School of Law, at the University of Nottingham.

Before embarking on an academic career he worked as a qualified lawyer with leading law firms in Sydney (Mallesons Stephen Jaques) and London (Herbert Smith).

"Robert's research and teaching interests are in the areas of public international law and human rights law," said the Dean, Professor Gillian Triggs.

"He has published widely on these areas, and has provided advice to governments, corporations, international organisations, non-governmental organisations and peoples concerning human rights issues, including advising on the drafting of new constitutions and conducting human rights training courses."

The Sydney Law School Lunchtime Seminar Series is open to staff guests and takes place on a regular basis throughout the year.

The seminars are given by distinguished visitors (often Parsons' fellows) and members of staff.

For the latest details visit www.law.usyd.edu.au/news/lunchseminars.shtml



From left to right: Mr. Brad Smith, Professor Gillian Triggs, Dean, Sydney Law School, Mr. John Galligan and Mr. Richard Sauer from Microsoft.

Microsoft Worldwide General Counsel pays visit to Sydney Law School

The Worldwide General Counsel for Microsoft Corporation, Mr. Brad Smith visited the Law School recently to meet with the Dean, Professor Gillian Triggs and deliver a special presentation to students.

Entitled, 'Globalisation: The Changing Role of Lawyers in a Flat World', the lecture examined the changing role of lawyers in the Internet age and engaged issues such as intellectual property, privacy, competition law, Internet safety and global citizenship.

Mr. Smith is Microsoft's most senior legal adviser. As Senior Vice President, General Counsel and Corporate Secretary, he leads the company's worldwide Legal and Corporate Affairs Department, which is responsible for all legal work and for government, industry and community affairs activities.

He is also a member of the Executive Management Committee for Microsoft Corporation.

For the latest information on academic and expert visitors to the Sydney Law School visit www.law.usyd.edu.au/news/visitors.shtml

In 2001, a 15-year-old Afghan girl arrived in Australia as an asylum seeker accompanied only by her 10-year-old brother. Her grandparents had smuggled the children out of Afghanistan to save their lives after her father, and others in the village, had been abducted and killed by the Taliban.

According to the policy of the day, the children were held in detention at Woomera where the girl was quizzed about their story through an interpreter. Scared and confused, and with little knowledge of life outside her village, she found it difficult to articulate what had happened to her, and so the children were deemed not to be refugees. They were held in detention for more than eight months, housed together with adult men who had also been denied refugee protection.

The story of the Afghan girl and her brother – who eventually gained asylum in this country as refugees – is not unique. Australia, in common with similar nations around the world, has seen a rapid rise in the number of children seeking protection here who arrive alone or in the company of adults who are not their relatives. But our immigration system has shown little regard of their vulnerability as children, resulting in a highly traumatic experience for many of the young people seeking asylum in Australia.

Today, however, the situation is changing, thanks in part to the efforts of Professor Mary Crock, a migration law scholar and long-time refugee advocate from Sydney Law School. She has played an important role in putting pressure on the Australian Government to change the way it deals with unaccompanied children through her landmark study *Seeking Asylum Alone*, an exhaustive investigation into the treatment of these children by Australia's immigration system which sets out a series of necessary policy reforms.

Professor Crock began taking an interest in the field of migration law back in 1985, when the legal discipline was still in its infancy. "It's hard for people to understand how recently immigration has become juridified," she says. "When I wrote my PhD, I was actually able to read every single judgment made by a court in the migration area, whereas you are now getting 50 decisions a week or more."

A key early achievement came in 1989 when Professor Crock established one of Australia's first community legal centres

for people with immigration problems, the Victorian Immigration Advice and Rights Centre (now the Refugee and Immigration Legal Centre), which helped to expand the reach of the law within the immigration system. The opening of the centre coincided with the arrival of the first boats of asylum-seekers from Cambodia, an event which Professor Crock says triggered the beginning of a "full-scale bloody war" between parliament and the courts. "Since then we have been trying to suppress the courts and any form of judicial oversight of migration decision-making, and in the process, we have actually damaged the whole judicial system for regular Australians too," she says.

While Professor Crock says that the Labor Government began the process of politicising migration law and diminishing judicial oversight of the system, she says that the situation then became worse with the election of the Coalition Government in 1996. "We were locking up babies that arrived throughout the 1990s and it got steadily worse from 1999 onwards, culminating in the huge riots and fires," she says.

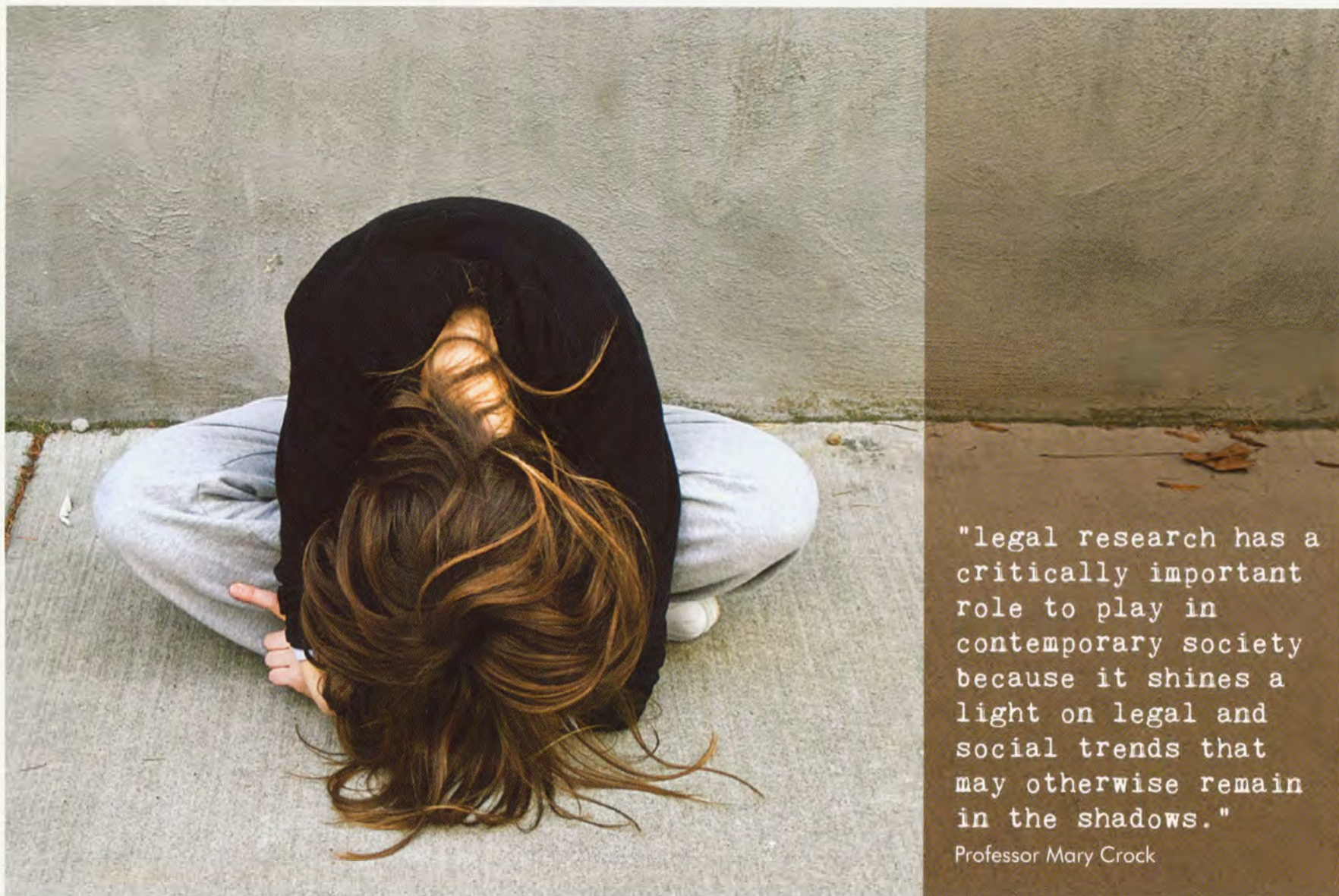
In response to the increasingly punitive stance taken towards asylum seekers over the past two decades, Mary Crock has taken an active role in advocating for policy changes, both through her scholarly books and articles as well her pro bono work on behalf of asylum seekers as a migration law practitioner. A pivotal moment for the researcher was the Tampa affair in 2001, which made her even more passionate for reform. "I decided I would try unilaterally to convert Australia to a more humane approach to refugees," she says. "I delivered lectures all over the country, probably to limited effect. More usefully, I sat down with a student, now a colleague, Ben Saul, and we wrote a simple book for the public on refugees (politics) and the law. We called it *Future Seekers*. It was a hard book to write because the law is complex and the emotions invoked by irregular migration are so strong."

In 2003, Professor Crock's work on asylum seekers took a new direction when she was invited by Professor Jacqueline Bhabha from

the forgotten children

Exposing Australia's treatment of child refugees

by Chris Rodley



"legal research has a critically important role to play in contemporary society because it shines a light on legal and social trends that may otherwise remain in the shadows."

Professor Mary Crock

Harvard University to join an international research collaboration into the phenomenon of children travelling by themselves and claiming protection as refugees. "To my great shame, I really hadn't thought about the issue enough before then, and the project just changed my life," she says.

The painstakingly researched study led Professor Crock into empirical investigation for the first time in her career. To develop a picture of how young asylum seekers were being treated, she interviewed children in detention centres across mainland Australia and on Christmas Island, as well as sources both inside and outside the immigration system. When the Immigration Department refused to co-operate, she sought help from her contacts in the Senate to have questions answered in parliament.

What Professor Crock discovered through her research was a system established with adults in mind that simply did not take account of the special needs of children. For example, under the "screening in" policy that was in place at the time, children as young as 13 arriving without a valid visa were required to demonstrate their entitlement to protection without any legal assistance, in spite of often being in a

traumatised state. When interviews with children were conducted by the authorities, she found poorly trained interviewers would often ask complicated questions that were completely inappropriate for the age, culture and education level of the child, often leaving the interviewee bewildered.

Since the study has been released, the response to the efforts of Professor Crock and her team has been "fairly amazing", she says. On the international stage, the Executive Committee of the United Nations High Commission for Refugees made an official "conclusion", or policy statement, in 2007 which incorporated nearly all the recommendations made in *Seeking Asylum Alone*. Meanwhile, in Australia, the situation has also changed substantially. When Professor Crock started her research, the immigration authorities did not have any policies on unaccompanied children and did not even count them. Today, the Department of Immigration and Citizenship has in place a raft of policies for dealing with these children. Children are also no longer detained in Australia. As a sign of the shift in attitudes that has occurred, Professor Crock now plans to apply for an ARC Linkage Grant in co-operation with

the Department which will study how children fare throughout the entire immigration system.

According to the scholar, legal research has a critically important role to play in contemporary society because it shines a light on legal and social trends that may otherwise remain in the shadows. "On the issue of unaccompanied children, I really believe it wasn't that we were malicious with our intention, we just hadn't thought about it," she says.

She believes that academic lawyers are in a unique position to be able to identify these unrecognised trends in order to change society for the better. "Having come from practice, I am very conscious of how legal practitioners are really up-to-date on their most recent cases, but don't have time to stand back and look at the patterns that are developing," she says. "The privilege of being an academic is having that time and space to study phenomena and sometimes those patterns will just hit you in the face."

THE FUTURE OF GLOBAL JUSTICE

In his new book **Governing by Globalised Crime**, leading Sydney Law School criminologist Professor Mark Findlay (LLM '77) argues that global criminal justice institutions such as the International Criminal Court have compromised their commitment to humanity in their efforts to achieve wider political objectives. Here, Professor Findlay speaks to JuristDiction about his research and his ideas for shaping a better future for international criminal justice.



What inspired you to write *Governing by Globalised Crime*?

For about five years now I have been involved with the International Criminal Trial Project, a UK-based research collaboration which is looking critically at how international criminal justice is servicing the needs of victim communities, those communities that are victimised by crimes against humanity and genocide. In doing that research, it became very clear that the international criminal trial in particular was being used for a lot more than simply determining the guilt or innocence of accused people. In many cases, international trial justice also looks to influence state restoration in situations of conflict and to restore a version of world order that the dominant political alliance is keen to ensure. So I became interested in how international justice was being used for wider political and social order themes.

Can you provide an example of what you mean?

The International Criminal Tribunal for the Former Yugoslavia would try notable individuals on either side of the conflict, then once they had a verdict, would send representatives out to communities to publicise the wider ramifications of punishing this particular person. There was a very clear intent on behalf of the Tribunal to expand the impact of its determinations from simply convicting the guilty to generating peacemaking and conflict resolution through community awareness and legitimacy.

And the International Criminal Court is also using justice to achieve broader social goals?

Yes it is. In the first three indictments the ICC has settled, there is a very clear attempt to grapple with wider world order issues like the exploitation of child soldiers, genocide in the Sudan or the disruption of legitimate governments in the Congo. These themes are caught up in the process of trying to prosecute notable criminals.

Isn't that a positive thing?

While it may be a commendable development, it is extremely selective, and many, many victim communities are in fact alienated from the process because they are on the wrong side of the political divide. So my book is a critique of the way in which criminal justice has been compromised in a

very selective vision for world order, so that it can't offer the kind of lightning rod that courts usually provide to make government accountable in a global sense. It is a critical exploration of the way in which the international justice machine – whether village courts or international tribunals – is being co-opted into a fairly selective notion of global governance. The tribunals and the ICC think they are engaged in a very worthy exercise by pursuing these goals, yet because they are required to represent the interests of some victims and ignoring others, they are watering down the universal application of criminal justice. For example, the ICC is happy to look at Africa and the Balkans, but if it is Israel against Lebanon we see no attempt to engage with that equally violent and disturbing conflict. Similarly, resistant communities that can be said to support terrorist groups are largely ignored.

What is the impact when a victim community is ignored in this way?

First, their concerns are not given due weight in terms of prosecution (for example, there has been no attempt to prosecute members of the Coalition of the Willing). Resistant or oppositional communities are also ignored when it comes to restitution and reconciliation because they are considered to be aligned with terrorists or political violence. Thirdly, they are not given the same degree of access to formal international criminal justice as communities that are considered worthy of protection. Who wins the conflict determines who gets the benefits of victor's justice.

What policy changes do you believe are needed to create a better future for global justice?

We need to transform criminal justice so it has a clear victim community focus, then make it more accountable to these communities. International criminal justice as a tool for global governance needs to swing its energies towards humanity and away from politics. That will open up a new potential to make global governance accountable to victim communities on the ground. Such a relocation of commitment will mean international criminal justice is redefined, and the prospects for a peaceful and democratic notion of world order will then be far greater. It's all about what justice provides to those who suffer from global crime: international criminal justice

has to open itself up to the communities it is engaging with and offer them more varied outcomes to satisfy their complex and legitimate aspirations. After this book, we are moving on to provide a blueprint for how the transition can happen. We will be giving the ICC and tribunals a manual for how they can expand their coverage and increase outcomes for victims within the framework they currently operate in. The ICC is interested in this, and it will be an exciting opportunity for academics and practitioners to engage with each other in the transformational project. The current book provides an argument for why the transformation should occur and what might happen to a polarised global governance if it doesn't.

What will happen if international criminal justice continues along its current pathway?

If we do nothing, the international criminal courts and even the truth and reconciliation commissions will perpetuate the segmentation of society into "us" and "them". And the more that happens, the more violent will be the reaction of those who believe they have been unjustly excluded. One of the real reasons behind global terrorism is cultural rejection from governance and meaningful engagement with world order. If international criminal justice is just another brick in the wall that keeps communities apart, then its aspirations for conflict resolution will fail, and it will work to exacerbate world conflict. The stakes are very high, and they are very immediate.

Do you think a transformation in the ICC specifically is likely to happen?

I believe it will start taking a broader and less sectarian view. The ICC now has a small window where it can develop a vision of its own if it has the courage and fortitude to do so. I think there is both a moral imperative for that, but also a very realistic imperative. International criminal justice is becoming more and more aware that its continued influence depends on whether victims see it as legitimate.

Mark Findlay is a Professor of Law at the University of Sydney and the Director of the Institute of Criminology.

Governing by Globalised Crime: Futures for International Criminal Justice was published in April 2008 by Willan Publishing, UK.

A **WORLD** OF DIFFERENCE

by Chris Rodley



In the area of tax law, Sydney Law School scholar Lee Burns (LLM '87) has made an impact that extends far beyond the pages of academic journals.

For the past 17 years, Professor Burns has been helping more than 25 developing and transition nations to design and draft better tax laws in his capacity as an adviser for the International Monetary Fund (IMF). His long series of assignments around the world has included designing new income tax laws in Uganda and Pakistan, a value added tax law in Lesotho and a new financial sector tax in the Philippines. A recent focus has been the Pacific, where Professor Burns has been working to draft new tax laws in countries including Fiji, Tonga, Micronesia, Samoa, Papua New Guinea and the Solomon Islands.

Now Professor Burns' extraordinary achievements in the field of tax law have been recognised with one of the Australian tax profession's highest accolades, the 2007 Graham Hill Annual Award. The prize honours individuals who have made an important contribution to improving the practice, administration or understanding of revenue law in Australia and is named in memory of the late Justice Graham Hill (BA '59 LLB '62), a Federal Court judge and lecturer at Sydney Law School for over 30 years who himself made a significant contribution to tax law in Australia. Professor Burns received the award at a ceremony held last November at the Federal Court in Sydney which was also attended by Professor Gillian Triggs, Dean of Sydney Law School, and Justice Hill's widow, Mrs Uta Hill.

"For me, it is terrific that this award recognises the development work that I have done," Professor Burns said in his acceptance speech, pointing out that he has a number of colleagues in the tax profession who are also making a contribution in developing countries.

"I really see myself as representative of a number of Australians doing this work and I believe that it is really important for Australians to be providing this assistance, particularly in the region."

Professor Burns' work in the development sphere began back in 1991 when he was approached by the IMF to fly to Lesotho in southern Africa to assist government officials in drafting a new income tax law. "I went on that trip with enormous trepidation," he remembers. "It was an incredible challenge to go as a young academic." Typically, an assignment in a country such as Lesotho will begin after the nation's government has requested technical assistance from the IMF. After studying the existing national laws, Professor Burns then meets with government officials to discuss policy issues and work through the "hundreds of micro-level" decisions that need to be made when framing a new tax law. He then returns to Australia to develop a draft of the legislation, which may then be amended in further consultations.

"As a lawyer I work with a precedent, which sets out what needs to be covered, then I take into account local conditions to make sure it works for the country," he says, adding that his work as an adviser for the IMF usually takes him to Commonwealth countries, which share many of the same common legal principles as Australia.

One of Professor Burns' main objectives when designing a new tax law for a developing nation is to modernise the rules to take into account the global economy when a country's laws have become outdated. He also aims to broaden the tax base and remove unnecessary tax exemptions which may have accumulated over time to ensure the government maintains its revenue base.

Using plain language is another important goal, he says, because simple laws are much easier to understand and enforce. Professor Burns points out that this can create difficulties in countries which have a strong tradition of legalese. In Pakistan, for example, where he advised on income tax reforms in 2001, the new law was hailed in the media as enabling ordinary people to understand the tax rules for the first time. "But the legal community wasn't quite as happy, because



"The idea was to put together a Masters program that was more principles-based in the way it approaches tax," explains Professor Burns. "The work we do helps the students to properly enforce the law, and it contributes to tax law reform, so the base is broadened and the system is fairer."

some of the mystique of the traditional forms of drafting had gone," he says. "At the end of the day, however, there is still plenty of work for lawyers."

As well as his work as a technical adviser for the IMF, Professor Burns is also making a contribution to international development through education. Recently, the Faculty was successful in applying for a Fellowship under AusAid's Australian Leadership Award ("ALA"). The application was supported by the Australian Taxation Office (ATO). The ALA Fellowship is designed to offer high-level training to a senior government official from a developing nation by providing access to courses at Sydney Law School as well as a short-term placement at the ATO's headquarters. The Fellow is Ms Lepaola Vaea, a senior legal officer from the Tongan Revenue Services Department. This Fellowship will build on the work that Professor Burns has done in assisting with the reform of the tax laws in Tonga over the last five years.

But perhaps Professor Burns' most significant accomplishment in the field of education has been his teaching in the Master of International Taxation program at Sydney Law School, which was launched in 1999. This unique degree aims primarily to provide

public sector officials from developing countries with expertise in designing better tax laws, although it also welcomes students from Australia and other developed nations.

"The idea was to put together a Masters program that was more principles-based in the way it approaches tax," explains Professor Burns. "The work we do helps the students to properly enforce the law, and it contributes to tax law reform, so the base is broadened and the system is fairer."

The program has attracted students from a number of developing countries including Rwanda, which has enrolled 12 officials from its tax authority in the degree over the past five years. One such official who completed the Masters in 2007 is legal officer Mr Stephen Zawardi, who says he believes the program is making a significant contribution to capacity-building in his country.

"I think this degree is going to accomplish much for Rwanda," he says, pointing out that his country has had to rebuild much of its skilled workforce after one million Rwandans were killed in the 1994 acts of genocide.

"I have been able to share experience with students around the world regarding the

practice in their tax systems in their respective countries, and this has indeed helped me to think of the way forward and the future of my own country's tax system."

Professor Burns points out that his overseas assignments for the IMF have provided a host of examples for his teaching, enabling his students to share in the benefits of his experience.

"For example, if I am talking about taxing fringe benefits, which in developing countries often go untaxed, I can explain how they approached it in Lesotho," he says. "It gets people thinking about what the options are in a less theoretical and more applied environment."

He says he is delighted that Sydney Law School has embraced his efforts to make a contribution to global development. "Our new Dean has been very supportive in allowing me the time to go to these countries, and the University is playing an additional role in training international students through this postgraduate program," he says. "It highlights what an important role the University can play in capacity-building in developing countries."



Legal Professional Development

The Law School's Legal Professional Development program offers you two ways to update your knowledge concerning current legal developments in all aspects of law and practice:

- Seminars and Conferences
- Single Postgraduate Unit Enrolment

Seminars and Conferences are offered in commercial and corporate law, environmental

law, health law, international law, taxation law, and labour law, as well as one-off seminars in other areas from time to time.

Single Postgraduate Unit Study is possible on an "Attendance Only" basis. Courses are available in Corporate and Commercial Law, Criminal Law and Criminology, Environmental Law, Health Law, International Law, Labour Law and Taxation Law.

Units of Study which will be offered over the next few months include: Australian Financial Services Regulation, Labour Law, New Directions

in Public Health Law and Policy, Environmental Law and Policy, Tax Administration and Corporate Taxation. (All conducted over 4-6 days by Intensive Mode Study)

For further information:

Please contact Sydney Law School
Tel: +61 9351 0259

Email: law.events@usyd.edu.au OR check our Website: <http://www.law.usyd.edu.au>

Faculty website address:
<http://www.law.usyd.edu.au>

CURRENT NEWS AND HAPPENINGS OF SYDNEY UNIVERSITY LAW STUDENTS

We are proud of the spectacular success stories Sydney University Law Students have had in the last few months. The following is a highlight of some of their achievements.

December '07

Sydney Law School students win again in Tokyo Moot

Wan Sang Lung (3rd year Arts/Law) and Showhei Matsui (4th year Arts/Law), were on the winning "Team Australia" that successfully defended its trophy in the 6th Intercollegiate Negotiation and Arbitration Moot Competition held in Tokyo over 1-2 December 2007.

They competed in the English-language division for a combined performance that fended off Japanese and international students particularly from the University of Tokyo, as well as 14 other top law schools in Japan.

"One day involved negotiating a complex commercial contract, and the second day involved arbitrating disputes under the UNIDROIT Principles of International Commercial Contracts," said the Law School's Associate Professor Luke Nottage.

The winning team was supported by the Australian Network for Japanese Law (ANJeL) and many generous sponsors.

February '08

Sydney Law School team wins National Round of 2008 Jessup International Law Moot

The University of Sydney team was victorious in the Australian National Rounds of the Jessup International Law Moot. The Sydney team defeated UNSW in the final in the High Court (presided over by Justice Kiefel). The Sydney Team progressed with

UNSW to the International Rounds in Washington D.C.

Joel Gilbourd, Lisa-Claire Hutchinson, Laura Johnston, Alexandra Meagher, and Suzannah Morris all performed at an exceptional level throughout the preliminary and advanced rounds of the competition.

Sydney faced a tough draw, confronting the University of Western Australia in the quarter finals, and the University of Queensland (last year's Australian winners) in the semi-finals. Both Laura and Suzannah were among the top ten oralists from the preliminary rounds, and Laura was awarded the prestigious award for best advocate in the final.

"Our thanks and congratulations must be extended to the team's dedicated coach, Houda Younan. Houda took considerable time out of her busy practice at the Sydney Bar to coach the team over the summer" said Dr Stephens.

March '08

Sydney Law School students awarded Aurora Project Native Title Internships

The Aurora Project is the collective name for a number of programs that work with Australia's Indigenous communities and organisations to facilitate prosperity through capacity building. To achieve this, the project focuses on professional development in law, anthropology, research, management, education and other disciplines.

Select Sydney Law School students were awarded Aurora Project Native Title Internships recently.

The successful students were as follows:

- Chloe Johnco @ the Torres Strait Regional Authority (TSRA)
- Catherine Gascoigne @ the Yawoorroong Miriwung Gajerrong Yirrgeb Noong Dawang Aboriginal Corporation
- Amanda Porter @ the Central Land Council
- Claire Deakin @ the Public Interest Advocacy Centre (PIAC).

Since 2003, the Aurora Project has provided law students with the opportunity to experience working in the area of native title through internships at Native Title Representative Bodies (NTRBs) and other organisations involved in indigenous affairs.

In 2008, students applied from 23 Australian universities.

The Sydney Law School's Dr. Thalia Anthony assisted in this year's interview and selection process.

April '08

Sydney Law School Students stand-out at the Harvard World Model United Nations

Students from Sydney Law School received recognition for their outstanding level of diplomacy skills at the Harvard World Model United Nations in Puebla, Mexico recently.

Of the six students from Sydney Law School who attended Harvard's WorldMUN, three won Diplomacy Awards.

The winning students were:

- Anshu De Silva Wijeyeratne (2nd year International Studies/Law) – representing



Jessup Team 2008 – From left to right: Joel Gilbourd, Alexandra Meagher, Lisa-Claire Hutchinson, Suzannah Morris and Laura Johnston.

the International Committee of the Red Cross in the WorldMUN NGO Program.

- Christine Ernst (4th year Economic and Social Sciences/Law) – representing the Bahamas in the Organisation of American States
- Angela Ha (4th year Arts/Law) – acting as a Judge on the International Court of Justice.

Team spokesperson, Angela Ha stated, "We are extremely grateful to the Sydney Law School for its support, without which our attendance and successes at WorldMUN 2008 would not have been possible."

Sydney Law School Jessup Team receive prestigious awards

Sydney Law School would like to extend its congratulations to members of its Jessup Team, two of whom received prestigious awards at the final in Washington D.C. recently.

Suzannah Morris and Laura Johnston were named 5th and 7th Best Speakers respectively.

"This is a tremendous achievement given the strength of the competition and the number of mooters eligible for the best oralist awards – well over 150 speakers," said Dr. Tim Stephens of the Sydney Law School.

"On behalf of the Sydney team, and their coach Houda Younan, I would like to acknowledge the tremendous support provided by many institutions and individuals.

"Allens Arthur Robinson, the NSW Bar Association, the Australian New Zealand Society of International Law, the International Law Association and Jessup International Law Moot Inc all provided substantial financial support which allowed the team to travel to Washington.

"Thanks also to so many of the Law School's Academic staff for devoting their time in judging practice moots."

The Sydney Law School Jessup Team faced four challenging moots at this year's finals, including against teams from the Netherlands and Hong Kong.

The team then progressed to the run-off rounds against a team from the Philippines, but in a close result were defeated.

"By all accounts the Australian national champions put in an exceptional performance in all of their moots in Washington D.C.," said Dr. Stephens.

The Winner of the Philip C. Jessup International Law Moot Court Competition for 2008 was Case Western Reserve University School of Law from Cleveland, Ohio, USA.

SULS UPDATE

Jordan Walsh

SULS Publications Director

2008 is a particularly exciting time for SULS with the launch of our community legal centre (CLC), a project developed in partnership with the Faculty. While Sydney University law students have enjoyed informal linkages with existing CLCs in the past, SULS is proud to be creating the first such dedicated CLC. When completed, the project will allow our members to gain experience at the coalface of community social justice issues, and apply their legal education pragmatically to the community's pressing concerns.

The 2007 world victory of SULS members at the prestigious international Jessup Moot confirmed that the standard of mooting and competitions at Sydney University has never been higher. In 2008, SULS is continuing to run its internal and intervarsity mooting, negotiation and client interviewing competitions. In addition, SULS is growing and consolidating its mooting prowess by creating dedicated and accessible guides and mentors for those who have just begun to dip their toes into the pool.

Of course, no year would be complete without Law Revue, and 2008 promises to continue to entertain by treading the fine line between farce and fantasy.



MATILDA'S A-WALTZING WITH UNCLE SAM

If Australian lawyers are contemplating enhancing their legal careers by practicing outside Australia today, it is because similar contemplations have already paved successful paths for many Australian lawyers abroad. Australian law students and lawyers alike are considering employment prospects outside Australia.

As a result, legal careers are stretching beyond the Southern Cross metropolises en route for the United States as well as Canada, China, Hong Kong, the Middle East, England and other European countries. Despite these wide-ranging destinations, no location carries New York's appeal. New York will continue to lure Australian lawyers because international experience and attractive remuneration packages are up for grabs.

This article will consider some issues relevant to Australian lawyers who have asked themselves what it would be like to live and work in New York City. Although it may take some determination and effort, it is within reach.

I. MAKING THE DECISION

A key concern for Australian lawyers considering relocating to New York is whether or not their offshore legal experience will remain relevant to Australian legal practice. They may feel they will lose touch with Australian legal developments and the partnership track will be disrupted or prolonged because Australian legal employers may not recognise their time spent working overseas. These concerns might be legitimate if the offshore experience came from an unknown legal system, in an unknown city in an unknown country. But, these concerns are inapplicable to New York for numerous reasons. American legal practice mirrors English common law principles just as much as Australian legal practice. *Hadley v. Baxendale* rings loud bells for American and Australian lawyers alike. Offshore legal experience in New York carries weight thanks to the first-class international reputation of its legal, financial, business and cultural organisations. Put simply, the United States is far from unfamiliar to Australians as the solid legal, political, economic and social links cement a solid relationship between the two countries. International legal skills acquired abroad with New York's first-rate attorneys will not only be recognised but highly coveted by progressive Australian legal employers.

II. GETTING IN

The E-3 Treaty Professional Visa, established on May 11, 2005 and only available to Australian citizens, gives its holder distinct advantages over other U.S. non-immigrant visas. It is renewable indefinitely in two-year increments, is devoid of expensive H-1B filing fees and permits its holder's spouse, whether of Australian citizenry or not, to work without restrictions in the U.S. Compared to the lengthy and expensive application process of other U.S. work visas, the E-3 is the drive-through work visa.

III. GETTING ADMITTED

Franz Kafka once said "Before the law sits a gatekeeper." These few words carry no greater sentiment than to those who have undertaken the right of passage to the law via the NY Bar Exam. Just as the Countryman anxiously awaited the Gatekeeper's permission to gain entry to the law, lawyers restlessly wait to learn if they passed the NY Bar for admission to New York's legal community.

New York's gatekeeper to the law can be found under Section 520.6 of the Rules of the Court of Appeals for the Admission of Attorneys and Counselors At Law. Put simply, NY Bar applicants educated outside the Anglo-American common law must show completed law studies based upon the jurisprudence of English common law principles. Australian-educated lawyers satisfy this requirement as Australian law schools' jurisprudence is based in part on the English common law. And not being required to do an L.L.M., with an approved American law

school before taking the NY Bar is helpful. Time and cost constraints are cut when transitioning to New York as most other U.S. states require non-U.S. educated lawyers to complete an L.L.M. to take its state bar exam.

For some, near enough is good enough. For others, good enough is never enough. And the NY Bar's complexity is designed to keep the near-enoughs out of New York legal practice. This means that the legal experience that you will acquire in New York will be gained alongside lawyers of unparalleled excellence.

IV. GETTING WORK

Whatever period of time Australian lawyers intend to spend in New York, be mindful of NY legal employers' dislike of hiring transient lawyers. Aversion to transient lawyers makes sense. Since quality law firms recognise time invested with clients, networking and skill development only effectively serve everyone's interests when these efforts flow uninterrupted. Demonstrating long-term professional commitment rather than short-term interest in New York cannot be over-emphasised.

With the exception of the University of Sydney and perhaps a few others, Australian law schools are not well-known in New York. Recognition of non-U.S. legal education and experience depends upon whether the American legal employer has previously worked with non-U.S. educated lawyers. Clearly, more work needs to be done to endorse Australian legal education abroad since the New York legal community's esoteric nature sometimes overlooks that

good legal education exists beyond the U.S. This creates a challenge for Australian lawyers' employment search because a well-known law school as well as a stellar academic record are not only preferred but mandated by most New York law firms.

Post qualification experience can address this imbalance. But, it is not uncommon for New York law firms to receive Australian lawyers with two, three, four and even five years post-qualification experience as first year law graduates. This drawback is not the result of lofty sentiments harboured by New York legal employers. Rather, it is the by-product of the legal profession's elitist nature whose reluctance to shred its antiquated cloak of traditionalism fosters cynicism of outsiders. Fortunately, Australian lawyers generally encounter a watered-down version of this cynicism as New Yorkers are a diverse social milieu where about 170 languages are spoken among its residents, 36 per cent of whom were born overseas. Even in this watered-down state, it helps to be aware of some of the similarities and differences between the two jurisdictions to counter this cynicism.

V. SOME DIFFERENCES

Despite the substantive similarities resulting from the firm entrenchment of English common law principles in both the Australian and American legal system, differences arise. Advantages can be taken from these differences. Because whether lawyers want to concede it or not, doing the same thing with the same people in the same place stifles innovation and is not conducive to professional growth. A lawyer's exposure to another legal system, another legal community and another way of doing things enliven and develop a lawyer's aptitude.

Comparing commercial litigation conducted in Sydney and New York highlight both the differences and resulting benefits imparted to Australian litigators in New York. The first difference arises from New York's absence of a split bar. Barristers are unavailable in New York to conduct an urgent preliminary



Jacquie Zalapa

injunction, trial or anything else. Clearly, Australia's split bar has its benefits. But, a weakness arises when hard questions – substantive, procedural and evidentiary questions – routinely find their way into briefs. Although helpful in the short-term, dependence upon a barrister's guidance to answer a case's hard questions develops the barrister's ability while stunting the lawyer's long-term growth. For these reasons, New York's absence of a split bar sharpens and expands a lawyer's legal thinking. Second, some methods of obtaining pre-trial discovery differ between the two countries. Although the threshold of relevance continues to control disclosure's scope, the main method of admitting sworn testimony in Australia via the affidavit is replaced with the deposition in New York. Simply put, a deposition is a record of testimony taken under oath outside the courtroom certified under the Federal Rules of Civil Procedure. Witnesses will be examined and cross-examined for up to seven hours without leave by opposing counsel. And this testimony is equivalent to courtroom delivered testimony at trial or for interlocutory and dispositive motion purposes. Again this difference enhances an Australian litigator's skill-set because if looking for weakness in the other

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side's case can be called a trial, then – discovery is the trial – in New York.

CONCLUSION

A new breed of Australian lawyer has emerged and they are giving Banjo Patterson's Waltzing Matilda new meaning since the word "waltzing" – from the German term *auf der waltz* – means to travel to learn new techniques before returning home. By nature, they are inquisitive and share a penchant to step rather than just think outside the square because they realise that if they always do what they have always done, then they will always give what they have always given. Nothing less. But nothing more.

Jacqueline Lee Zalapa is an associate with the litigation division of Reitler, Brown and Rosenblatt, LLC, a New York-based law firm. Jacqueline received an L.L.M., from Sydney University, a BA.LLB., from Macquarie University, and a Grad. Dip. L.P., from the University of Technology of Sydney. She is admitted to practice in NSW, Australia, New York, U.S.A., the United States District Court for the Southern and Eastern Districts of New York as well as England and Wales.

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AUSTRALIA DAY HONOURS

THE SYDNEY LAW SCHOOL
WOULD LIKE TO RECOGNISE
AND CONGRATULATE THE
FOLLOWING DISTINGUISHED
ALUMNI WHO HAVE BEEN
RECOGNISED IN THE
AUSTRALIA DAY HONOURS

**The Hon Justice Susan Crennan
(LLB '79)**

AC for outstanding service to the law and the judiciary, particularly through leadership and mentoring roles with legal and professional associations, as a contributor to reform, and to the community.

Mr Peter Coombes (LLB '71)

AM for service to the community, to the construction industry and as a supporter of a range of charitable organisations.

Mr David Hudson (DipCrim '96)

APM Member of the New South Wales Police Force.

**Ms Colleen Dreis
(BA '72, LLB '76, LLM '98)**

PSM for outstanding public service to the Legal Service Branch of the NSW Department of Housing.

Mr Peter Kerr (LLB '73)

AM for service to water polo as a player, referee, coach and administrator and to the community, particularly through executive positions with a range of sporting and charitable organisations.

Mr Paul Wakim (LLB '70)

OAM for service to the community through contributions to a range of migration and multicultural organisations and to the law.

Mr Timothy Peken (BA '62, LLB '65)

OAM for service to the law, and to the community through a range of executive and voluntary roles with alumni, business and sporting organisations.

**Mr Patrick Wilde
(BA '63, LLB '66, LLM '73,
DipBA '95, MBA '96)**

AM for service to the community, particularly through the Millennium Foundation, to the aged care sector through the development of residential facilities and to heritage, medical and environmental organisations.

ALUMNI ACHIEVERS

The Hon. Justice James Allsop (BA 1974, LLB 1980) named next President of the New South Wales Court of Appeal

The Sydney Law School would like to extend its congratulations to alumnus, **The Hon. Justice James Allsop (BA 1974, LLB 1980)** following the announcement of his appointment as the next President of the New South Wales Court of Appeal by the New South Wales Attorney-General, The Hon. John Hatzistergos MLC.

The current Federal Court judge will take up his new duties following the May retirement of current NSW Court of Appeal president and another Sydney Law School alumnus, **The Hon. Justice Keith Mason, AC QC (BA 1967, LLB 1970, LLD 2005)**.

The Hon. Kim Santow AO (BA LLM) awarded an Honorary LL.D by the University of Sydney

The former Chancellor of the University of Sydney, the Hon. Kim Santow was awarded an Honorary LL.D in recognition of his outstanding contribution to the law and legal education. The following is a speech that Kim gave on receiving his degree from the Chancellor.

Speech by GFK Santow at the conferral of honorary doctorate St Vincent's Hospital, 27 March 2008

Thank you, Chancellor, for being so accommodating in coming here to St Vincent's for this ceremony. I am touched that Sydney University—with which I have had such a long and happy connection as

an undergraduate student, postgraduate student, part-time lecturer, Chancellor and, most importantly, as a rower—has decided to confer this honour on me.

This occasion brings together a number of important strands in my life. First, it brings together many of my close family and friends, and I am delighted to have you here today. Secondly, it brings together the two most significant strands of my professional and intellectual life: law and education. Sydney University has given me the opportunity to unite these strands, and for that I am very grateful.

So, thank you, Chancellor, for conferring this honorary doctorate, and thank you to my friends and family for joining with me to celebrate this happy event.

SYDNEY UNIVERSITY STUDENT WINS NSW RHODES SCHOLARSHIP

The winner of the 2008 NSW Rhodes Scholarship is Joanna Mascarenhas, a University of Sydney economics/law undergraduate.

Joanna Mascarenhas, aged 24, aims to use her Rhodes Scholarship to Oxford to undertake an MPhil in civil law with particular focus on European labour law.

She was educated at MLC School, Burwood, before entering the University of Sydney where she completed a BA in economics and a LLB.

Joanna has completed the Duke of Edinburgh Award, has played hockey for the University of Sydney, represented the university in inter varsity debating, and served as an editor of the student newspaper Honi Soit. She's an active youth worker and has been a full-time volunteer with Youth Mission Team Australia.

Joanna has gained experience as a paralegal in the areas of labour law and litigation and wishes to study civil law at Oxford.

When she returns to Australia Joanna says: "I would like to inject fresh ideas into the debate over what shape our labour laws should take. I believe we need an innovative model of labour law that improves our international competitiveness but does not marginalise the more vulnerable workers."

From the selection of this year's NSW Rhodes Scholarship finalists, two other participants will now go into the selection for the 'Australia at Large Rhodes Scholarship', which will be announced in Canberra later this year. They are Phoebe Williams, a University of Sydney student who is studying for a bachelor of medicine/surgery, and Thomas Arnott, who has been studying for a bachelor of mechatronic engineering and commerce at the University of New South Wales.

Last year's NSW Rhodes Scholarship winner Kate Brennan, who is currently undertaking postgraduate study in development studies at Oxford, is also a University of Sydney graduate.

Previous prominent Rhodes Scholars include Malcolm Turnbull, Geoffrey Robertson, Kim Beazley and Bob Hawke.



Spring Back to Sydney reunion in 2008

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AUSTRALIA'S BEST AND BRIGHTEST WIN FULBRIGHT SCHOLARSHIPS

On 13 March, the Australian Fulbright Scholars for 2008 were announced at a ceremony at UWA in Perth. Of the twenty four outstanding Australians, two were awarded for Law, both to Sydney Law graduates – Tegan Brink (BA Hons '01, LLB '03) and Azadeh Dastyari (BA '03, LLB '04).

Like the Rhodes Scholarship last year, this is great news for the university which continues to snaffle more than its share of prestigious academic scholarships.

Tegan Brink, who completed an Honours degrees in Arts (Government) and Law, will undertake a Masters of Laws (LLM) at Columbia University in New York. She will undertake subjects focusing on international economic law when she begins her studies in August 2008.

Tegan's research, *Coherence in the International Legal Order: Managing Globalisation through Law* will look at the relationship between WTO law, preferential trade agreements and growing areas of global governance, such as the environment. The implications of these relationships for treaty development and dispute settlement will be a focus. The research draws strongly on the professional experience she has gained as a diplomat posted with the Australian Department of Foreign Affairs and Trade (DFAT) to Geneva, Switzerland.

"My interest in this study program is anchored in a strong belief in the important role of trade in the achievement of broader social and political goals. It also reflects what I see as the increasing challenge of coherence in international law in the context of globalisation. For an outward-oriented economy like Australia's, how these governance challenges are managed is critical. Developing international law in a way that supports positive environmental outcomes for example, while upholding the fundamental principles of the rules-based international trading system, will be a priority for Australian policy makers," Tegan said.

On her return from the U.S., Tegan aims to become a legal specialist with the Australian Government, sharing her experiences through contributions to policy-making, submissions in dispute settlement proceedings, and through outreach and advocacy to business and civil society.



Azadeh Dastyari, who completed a LLB with First Class Honours at the University of Sydney and is currently completing a PhD at Monash University, has won the Fulbright Postgraduate Alumni (WG Walker) Scholarship to undertake research at Georgetown University. Azadeh, an Assistant Lecturer at Monash University, will conduct a comparative study of U.S. and Australian immigration and refugee law.

Azadeh's research, *Offshore Processing of Refugees: A Comparative Study of United*

States and Australian Law and Practice, will study interception, detention and offshore processing of asylum seekers by Australia in Christmas Island, Nauru and Papua New Guinea and the U.S. in Guantanamo Bay, Cuba.

"This will be a comparative study of Australian and U.S. legal systems and refugee policies and their impact on the international protection regime. The research will also examine the implications of the recently signed MOU between Australia and the U.S. that means each country now has a vested interest in the other's offshore processing regime," explains Azadeh.

"I aim to contribute to informed policy decisions in both the U.S. and Australia with regards to the processing, exchange and resettlement of refugees. Furthermore, there are important differences between the offshore refugee processing models adopted by the U.S. and Australia and my research will evaluate the successful aspects of the U.S. model and will alert Australian policy makers to its less profitable features. An examination of the U.S. model will also enable Australian policy makers to see the long term effects of offshore refugee processing."

Azadeh will commence with the Institute for the Study of International Migration (ISIM) at Georgetown University and believes undertaking research at ISIM will enable her to utilise the expertise of ISIM's scholars, assess its extensive library and take advantage of ISIM for researching partnerships.

Azadeh has an extensive list of honours to her name. She has also written a book with Mary Crock and Ben Saul called *Future Seekers II: Refugees and Irregular Migration in Australia*.



When the Class of 1951 enrolled at Sydney Law School, Don Bradman was captain of the Australian test cricket team, Ben Chifley was prime minister and India was just gaining its independence.

It is now over 60 years since that time when they first came together, yet the bonds of friendship still remain remarkably strong among the Class of 1951. Every year, more than 20 of the former classmates continue to meet up for reunion lunches and swap stories from their past and present.

The majority of the Class of 1951 began their studies at Law School in 1947 when the institution was located at 167 Phillip Street. It was a large cohort of over 300 students, reflecting the huge volume of young people whose career plans had been delayed by World War II. Well over half of the students who commenced that year were ex-servicemen; a few of these were permitted to compress their four-year course into three years, while others were given leave by the Full Court to abridge their articles of clerkship. The group that continues to meet today also includes alumni who graduated one or more years later, as well as those who began before the others but graduated in 1951.

Studying for a law degree in the post-war years looked very different from today. For a start, students were required to dress formally for class. One lecturer is remembered as telling his classes, "I will not have people in front of us who do not wear

a jacket and tie", although at least one student did get away with wearing jungle greens. Another difference was the small number of female students: there were just four women in the cohort that began in 1947, one of whom was an ex-servicewoman.

A typical day would begin with an early morning lecture. Since Law School had only three full-time academics on its permanent staff, most of the lectures were delivered by practising lawyers. Classes were usually held off-site at locations such as Federation House or St James Theatre, which would later host the variety show *Around the Loop*, according to Harry Bell (LLB '51). At 9.30am, after the obligatory coffee at Cahill's or Mockbell's, most students would head off to city law firms where they worked as articled clerks, a requirement for those wishing to become solicitors. A second round of lectures was then held late in the afternoon.

The social side of life at Law School in the late 1940s also differed from today. Apart from seeing each other at lectures, students had few opportunities to meet, making it difficult to forge close ties. In spite of this, the graduates of 1951 remember their year as being a friendly one. "The camaraderie among most of us as we went through was

strong," recalls Bill Nash (LLB '51). "On the rare occasion that they had a roll call, no-one was marked absent." If a name was called and it remained unanswered, the lecturer would often prompt the group to respond in their classmate's place by asking whether or not the student had any friends.

When students did find time to socialise, typical activities included meeting during the day at coffee shops as well as playing cards, dominoes and chess. Bill Nash remembers being part of a group who would meet at the common room nearly every night to play poker and solo as they ate their sandwiches. "After that we would all retire to the library and do some study," he says. "I lost a month's pay on one hand of poker to David Godfrey-Smith, but we all did okay in the exams because we spent most of the night in the library."

After graduating, the majority of alumni who had started in 1947 went on to carve out very successful professional careers, and a significant number ultimately joined the bench. The year produced one Chief Justice of the NSW Supreme Court, one Chief Judge in Equity and one Chief Judge of the District Court, three Federal Court judges, four Puisne judges of the NSW Supreme Court, eight District Court judges, one Master of the Supreme Court, two magistrates and many notable solicitors and barristers. Other alumni established reputations outside the law, including as business people, members of parliament and, in one case, as a poet.



Harry Bell says that the career success enjoyed by his year is partly a reflection of its unusually large size, but may also be due to the fact that so many of his classmates had delayed their degrees in order to serve in the war. "Because most were late from school and had been in the forces, they graduated with a bit of extra maturity," he says. "That probably helped when it came to taking on a judicial career."

The Class of 1951 decided to hold its first reunion in the 1970s, with Harry Bell, Brian Cohen (BA '48, LLB '51, HonFellow '00) and Tony Houen (BA '48, LLB '51), as well as the late Richard Barbour (BA '49, LLB '51, LLM '77) and Tony Martin (LLB '51), volunteering to take on the organisational duties. Bell, Cohen and Houen continue to co-ordinate the reunions today, together with Douglas Cameron (LLB '51).

In the early years, the group held reunion dinners at the University and Schools Club on a very occasional basis. As time went on, however, they decided they wanted to meet more frequently. They began holding biannual reunions in 1990, and more recently, they have been convening annually. In November last year, the group marked the 60th anniversary of their commencement as law students with a celebration that attracted alumni from as far afield as Kentucky, NSW.

According to Brian Cohen, one of the reasons that friendships among the group have endured for so long is the very fact that the class has continued to hold gatherings. "It grew on itself," he says. "I think the mere fact that we held one reunion spurred people on to have another."

This year, in recognition of their long tradition of camaraderie, the group was

invited by Sydney Law School to a special alumni gathering held on 19 February. Over 20 alumni attended the event, which incorporated a morning tea at the Law School, where the group heard about the Faculty's new home that is now under construction, followed by a luncheon at the Hyde Park Barracks Café.

Representing the University of Sydney at the event were the Dean of Law, Professor Gillian Triggs, and a special guest speaker, Deputy Vice-Chancellor (Community) Professor Andrew Coats. Both spoke of their admiration for the achievements of the Class of 1951 and their hopes of forming ongoing ties with the group. Brian Cohen then gave a reply on behalf of his classmates.

"It is wonderful to be able to salute the contributions of this distinguished group of graduates, who represent an enormous reservoir of legal knowledge and practical experience," says Professor Triggs. "I am really looking forward to continuing our relationship into the future as part of our wider goal of strengthening the historic links between the Law School and the legal profession."

Has your graduating class recently held a reunion or are you planning one for later in the year? JuristDiction is keen to share your news with the wider alumni community.

Please contact:
Yvonne Cheong
Sydney Law School
P: 02 9351 0327
E: y.cheong@usyd.edu.au



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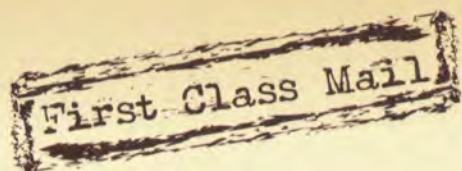
The Chancellor, Her Excellency Professor Marie Bashir AC CVO (MBBS '56, MD '02) with 2007 Alumni Award recipient Professor John Wong (BScMed '64 MBBS '66 PhDMed '72 HonMD '95)



ALUMNI ABROAD

POSTCARD FROM OXFORD

February 2008



POSTCARD



Dear Professor Triggs,

As the inaugural holder of the Peter Cameron Sydney Oxford Scholarship (BA '05, LLB '07) I thought I would send you a short note on my activities at Oxford that could be sent to the appeal donors to let them know how their kind donations are being used.

I am at University College in Oxford taking the Bachelor of Civil Law (BCL) with a focus on restitution, conflict of laws and public international law. I recently won the 2008 Shearman and Sterling University of Oxford Moot along with Dave Hughes (UNSW alumni) and have also been working on projects relating to human rights and international arbitration with the Oxford Pro Bono Public Group. I am also rowing in the Second VIII for the College and reinforcing the second row of the College Cuppers Rugby Side (with an upcoming Quarter Final on Wednesday). I'm also active within the Oxford University Australia New Zealand Society and competed in the

Australian Rules Varsity match against Cambridge (victory) and the Australia Day International Rules match against the Irish (defeat). The rest of my time is spent at the Bodleian Law Library, Queens Lane Coffee House, or the Kings Arms.

I am currently planning to go to the English Bar in London next year with a focus on commercial dispute resolution, international arbitration and public law.

I hope the scholarship selection process this year is progressing well and that a second Sydney law school graduate will benefit as much from this scheme as I have!

Kind Regards,

Oliver Jones
University College
University of Oxford

OBITUARIES

Emeritus Professor Patrick H Lane (BA '53, LLB '57, LLM '60, LLD '73)

A member of Sydney Law School from 1959 to 1988, died in Sydney on 25 December, at the age of 84. His funeral was held on 3 January at St Brigid's Roman Catholic Church in Coogee.

Professor Lane was one of Australia's most distinguished scholars of constitutional law, and was the author of numerous texts and commentaries on the Constitution. Many in the Law School will know his work. Some of our colleagues taught with him, or were taught by him, during his years here.

Gerald Kenneally (LLB '61)

Gerald was a former Associate Professor in the Law School. He will be known especially to those in the tax program, as well as to those who taught or studied here in the 1960s and '70s.

Gerald Kenneally began teaching income tax law with Ross Parsons in the Master of Laws program. He and Parsons co-wrote the University of Sydney law school notes on income taxation, which was an early forerunner to Ross Parsons' Income Taxation in Australia (1985). He started his tax career in the ATO, and taught tax at Sydney until his retirement through ill health in the late 1970s. He died in Sydney on 26 December, and was buried in a private funeral.

The Hon GFK Santow AO (BA '61, LLB '64, LLM '71, HonLLD '08)

The former Chancellor of the University of Sydney, the Hon. Kim Santow, AO has died, aged 67.

Kim Santow was Chancellor from October 2001 to May 2007. He also served as a Judge in the Supreme Court of New South Wales Court of Appeal from 2002 to 2007. He was the first solicitor in recent times to

be appointed a judge of the Supreme Court without prior service as a Barrister or Master of the Court

A graduate of the University with a blue in rowing, Kim Santow was recently awarded an honorary degree of Doctor of Laws by the University of Sydney.

"It is sad to lose someone who has achieved so much and had so much more to offer," said Professor Gavin Brown, Vice-Chancellor and Principal of the University of Sydney. "He completed a period of distinguished service as Chancellor last year, and his ongoing contribution to higher education will be deeply missed," he said.

A Memorial Service was held in The Great Hall at 6.00pm on Wednesday, 23 April 2008.

RECENT ALUMNI EVENTS

The Sydney Law School maintains a proud and distinguished relationship with its alumni and recognises the importance of its alumni in maintaining its culture of excellence.

The Law Faculty is keen to establish close relationships with our graduates. We have planned a range of interesting and enjoyable alumni events to help you to reconnect with the law school, fellow alumni and the opportunity to expand your professional networks.

Here is a snapshot of some of the events that have occurred and a preview of what we have planned ahead. We look forward to you joining us.



19 February – Luncheon for Law Class of '51 and Friends

On Tuesday 19 February, Professor Gillian Triggs hosted a luncheon at the Hyde Park Barracks Café for a group of 21 law alumni and friends, drawn mainly from the class of '51. The purpose of the event was to recognise the fact that the group had been holding reunion gatherings for many years. Special guest, Professor Andrew Coats, Deputy Vice-Chancellor (Community) attended.



28 February – Sydney Law School Inaugural Alumni Cocktail Function

The Sydney Law School's inaugural Alumni Cocktail Function held on Thursday 28 February at The Sydney Mint drew a good cross section of law alumni from LLB '51 through to LLB '07. Professor Gillian Triggs hosted the event and the guest speaker for the evening was Mr Bruce McWilliam, BEc '78, LLB '79, Commercial Director of Seven Network Limited who gave a brief talk on 'Access all Areas: How a Legal Education Unlocks Diverse Career Doors'.

This event will be the first of a range of alumni faculty events planned for the year.



15 April – Sydney Law School Inaugural Wine & Cheese Appreciation Evening

On Tuesday 15 April, the Faculty of Law in association with The Wine Society hosted its very first Alumni Wine & Cheese Appreciation Evening held in the Minter Ellison Room at the Sydney Law School.

There was a small group in attendance, which consisted of young and old alumni and a few academics from the Law School.

This event was very well received and a great success. A second Wine & Cheese event is scheduled for 15 July 2008.

UPCOMING EVENTS

15 July '08 – Wine & Cheese Appreciation Evening

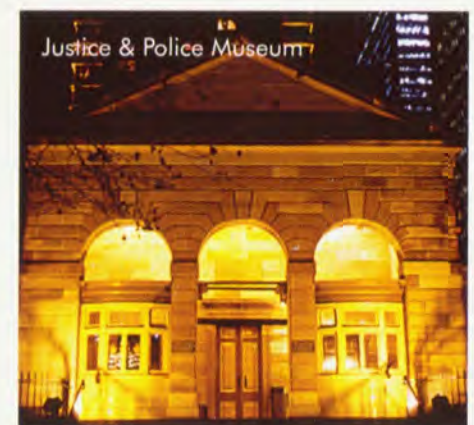
To be held at Sydney Law School, Level 13, Minter Ellison Room, 173 – 175 Phillip St, Sydney

24 September '08 – Alumni Cocktail Function

To be held at the Justice & Police Museum, Cnr Albert and Phillip Sts, Circular Quay, Sydney

26 November '08 – End of an Era, Farewell to the Sydney Law School Building

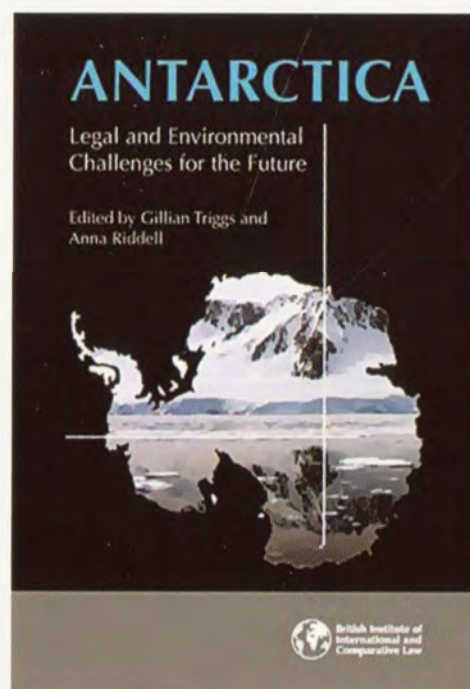
To be held at Sydney Law School, Level 4 – Assembly Hall, 173 – 175 Phillip St, Sydney



To find out more about these events, please contact Yvonne Cheong, Alumni Relations Officer Sydney Law School
P: 02 9351 03287 E: y.cheong@usyd.edu.au W: <http://www.law.usyd.edu.au/alumni/events.shtml>

RECENT PUBLICATIONS

FACULTY STAFF AND ALUMNI



Antarctica: Legal and Environmental Challenges for the Future

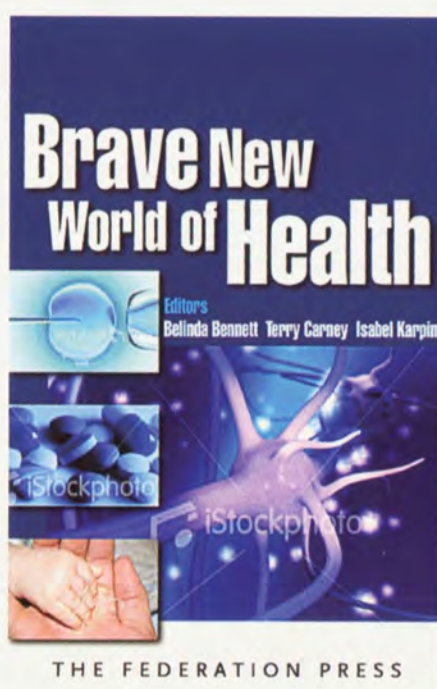
Gillian Triggs and Anna Riddell

Publisher BIICL

Paperback/

ISBN 9781905221097

English RRP £65.00



Brave New World of Health

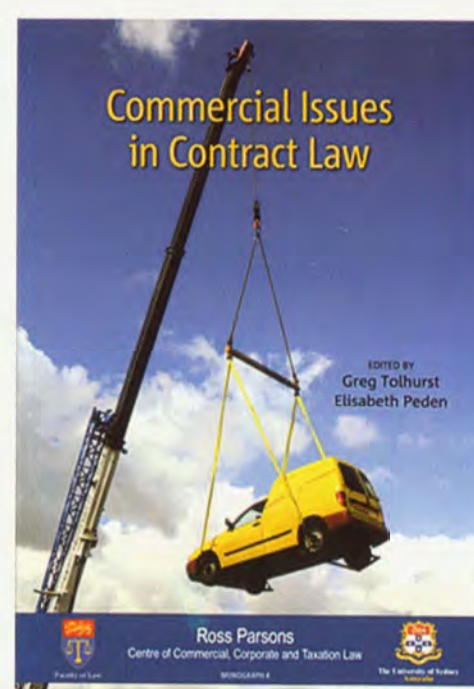
Belinda Bennett, Terry Carney
and Isabel Karpin

Publisher The Federation Press

Hardback/300pp

ISBN 9781862876729

Australian RRP \$69.90



Commercial Issues in Contract Law

Greg Tolhurst and Elisabeth Peden

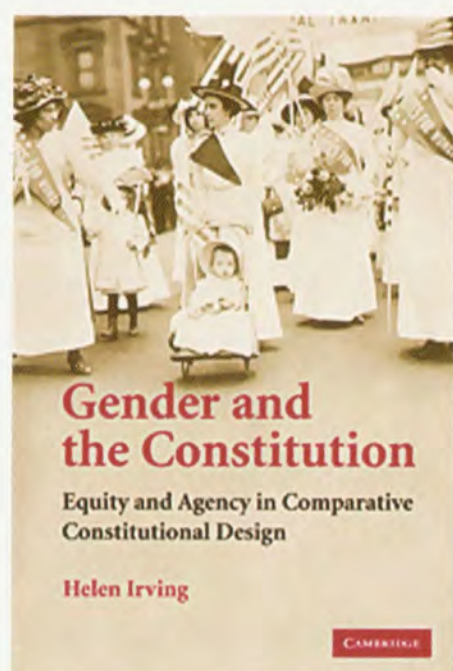
Publisher Ross Parsons Centre for

Commercial, Corporate and Taxation Law

Paperback/111pp

ISBN 9780980334623

Australian RRP \$49.50



Gender and the Constitution

Helen Irving

Publisher Cambridge University Press

Paperback/260pp

ISBN 9780521707459

Australia RRP \$29.99

The Critical Criminology Companion

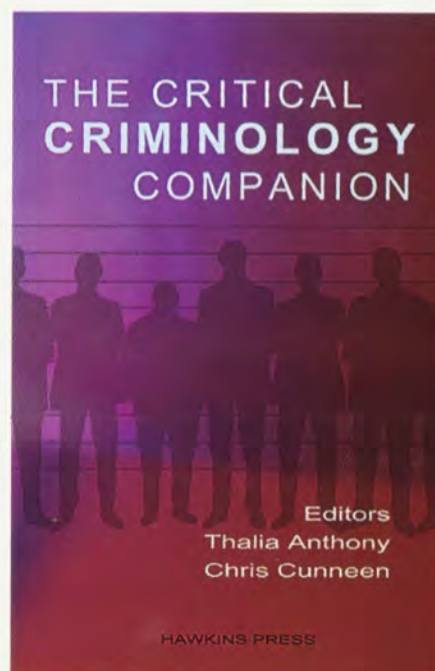
Thalia Anthony and Chris Cunneen

Publisher Hawkins Press

Paperback/384pp

ISBN 9781876067236

Australian RRP \$64.95





Sydney Law School in Europe 2008



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CONTRACT NEGOTIATION

Lecturer: Professor David Yates, University of Cambridge

Location: Robinson College, University of Cambridge

Dates: Sunday, 22nd June to Thursday, 26th June 2008

INTERNATIONAL CORPORATE LAW

Lecturer: Saul Fridman, Sydney Law School

Location: Walter Hallstein Institute, Humboldt University, Berlin

Dates: Wednesday, 2nd July to Saturday, 5th July 2008

INTERNATIONAL COMMERCIAL LITIGATION

Lecturer: Justin Hogan-Doran, Wentworth Chambers, Sydney

Location: British Institute of International & Comparative Law, London

Dates: Wednesday, 16th July to Saturday, 19th July 2008

DOING BUSINESS IN CHINA

Lecturer: Vivienne Bath, Sydney Law School

Location: Bentham House, University College London

Dates: Monday, 8th September to Thursday, 11th September 2008

www.law.usyd.edu.au/LLMinEurope

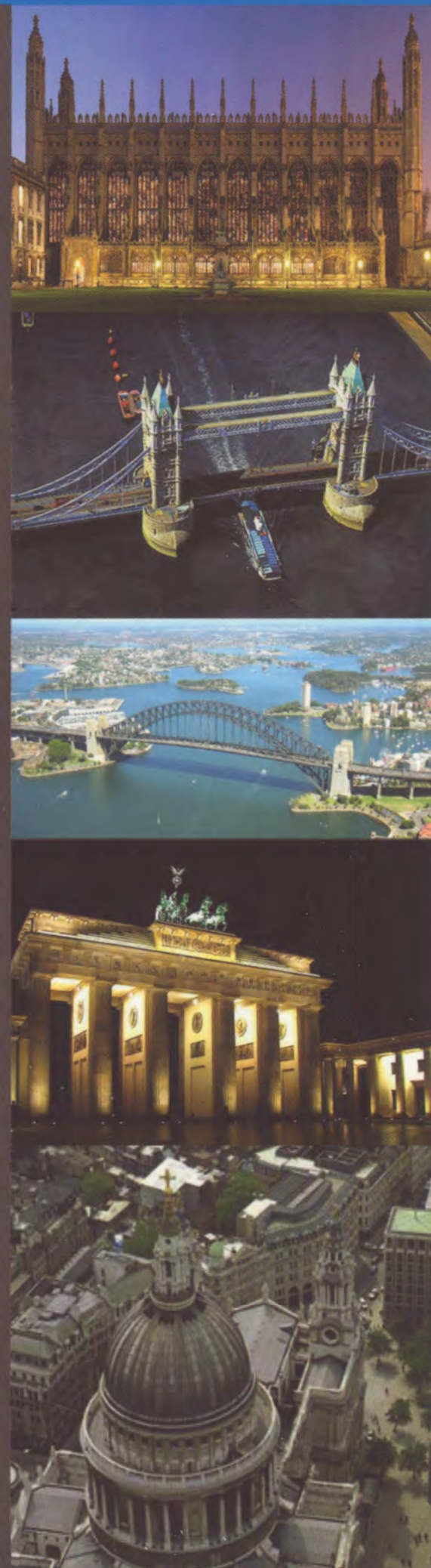
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