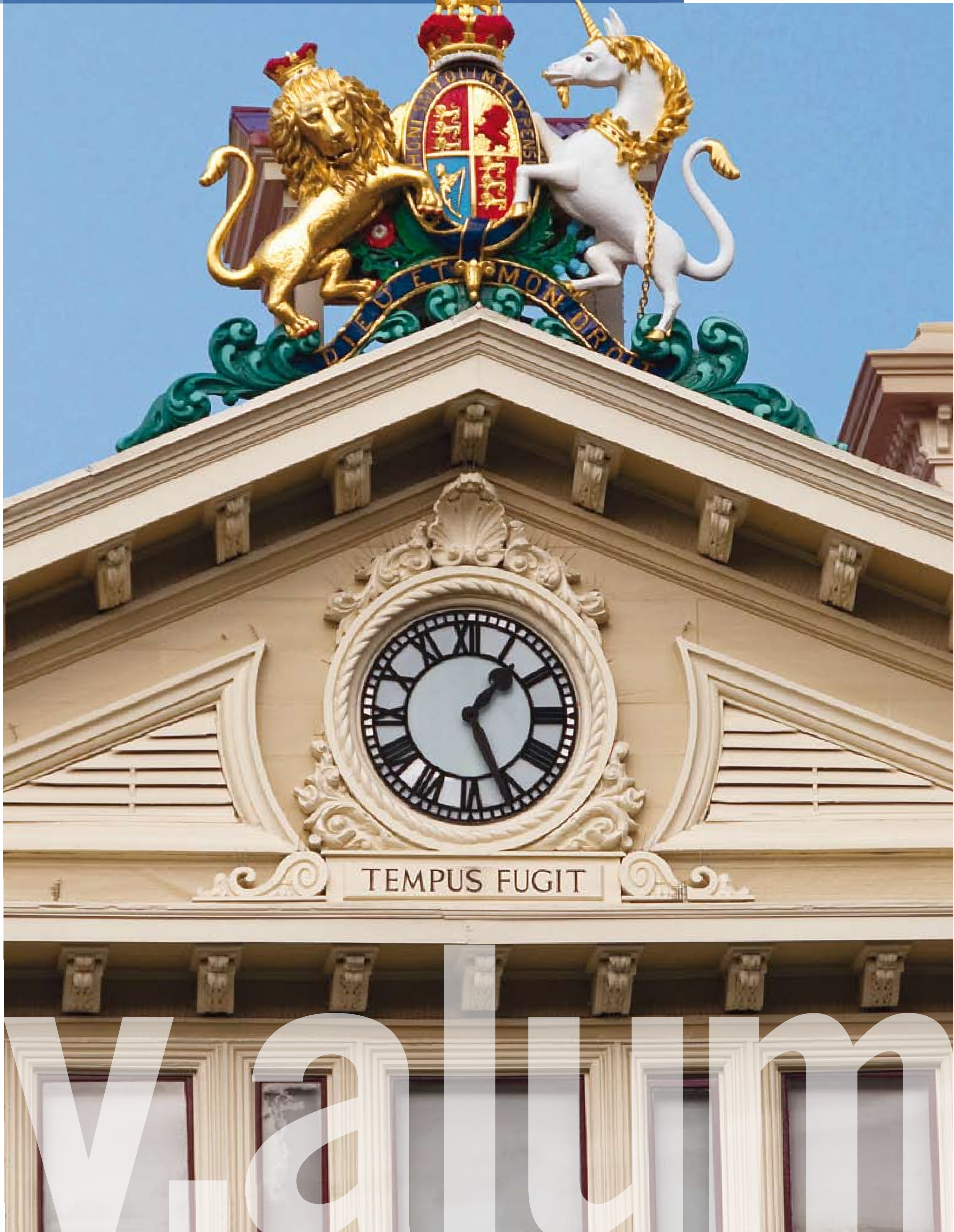
FACULTY OF LAW | A YEAR IN REVIEW 2009

TE WHARE WĀNANGA O TE ŪPOKO O TE IKA A MĀUI
VICTORIA UNIVERSITY OF WELLINGTON



From the Dean

Welcome to another edition of V.Alum.

The handsome clock pictured on the cover of this publication adorns the apex of Old Government Building, where Victoria's Law School is situated. It reminds us all "Tempus Fugit" and as another year finishes there could be nothing more apposite.

What a year it has been. We held a celebration for Richard Boast's success at the Montana Book Awards which was attended by a wonderful cross-section of people from the University and the city. The History Department, Crown Law, the Waitangi Tribunal, the Stout Research Centre – were but a few of the institutions represented.

I said then that Richard's work was further proof of the contribution that this Faculty makes not only to the law firms of the nation but also to the analysis of the fabric of history and the evolution of nation-building itself.

The following pages resonate with such activities, which engage with the past, the present and the future: research on the criminal procedures surrounding trials of sexual offences case is side-by-side with an account of a conference which celebrated the 60th anniversary of the Universal Declaration of Human Rights.

There is much to read. I hope you enjoy it and feel as proud of it as I do.

Professor ATH Smith
Dean, VUW Law Faculty

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December 2009

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AT VICTORIA'S LAW SCHOOL you are surrounded by lions. LIONS ARE A SYMBOL OF LEADERSHIP, justice, dignity, courage and wisdom and are represented in the imagery and culture of the Crown, the city and the University. THROUGHOUT THIS ISSUE OF V.ALUM are images of the lions that live on campus and in its surrounding environs.

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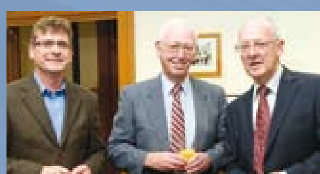

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v.alum

Lawyer, Academic, Historian and Prizewinning Writer

Some years are more significant than others. 2009 has been one of those for Associate Professor Richard Boast, who won the History section of this year's Montana Book Awards, reviewed the country's most controversial legislation and was appointed Professor.

Richard Boast

"THE MONTANA WIN is a remarkable result," says Dean of Law, Professor Tony Smith. "It represents a unique crossover from academia to a mainstream audience."

Richard Boast currently teaches property law, legal history and energy and resources law. He also practises in the area of Māori and Treaty litigation. This year he was on the panel that reviewed the Foreshore and Seabed Act. The Government is acting on the panel's recommendation to repeal the Foreshore and Seabed legislation.

The book, *Buying the Land, Selling the Land* is a study of Crown Māori land policy and practice in the period 1865-1929 and is something of a reaction to the "Crown-has-been-very-naughty" school of New Zealand history.

Richard Boasts says: "Alienation of land requires two parties, a buyer and a seller. The book is about both. It is as important to understand the motives of the Crown as it is to attempt to gauge the social and economic effects of purchasing on Māori people."

Boast posits that it is important to recognise that government purchasing of Māori land was in its own way driven by genuine, if blinkered idealism. Many of the most impressive and most idealistic politicians that New Zealand has produced, including Sir Donald McLean, John Balance and John McKenzie were strong advocates of expanded and state-controlled land purchasing.

The narrative that unfolds, however, is a bleak and grim one of a tsunami of Crown purchasing crashing over a people who were in very difficult circumstances.

Buying the Land, Selling the Land was launched at the Law Faculty in 2008. Retired High Court judge Eddie Durie officiated at the launch and spoke of his childhood to illustrate the significance of the book.

He grew up on the banks of the Rangitikei River, in a cluster of whare that were built so closely together "the grass couldn't grow between them". He would sit on the banks of the river and look across to Westoe, the mansion built by Governor Fox, with its surrounding thousands of acres. "How did it happen?" was the recurring question of his elders, comparing the situations.

"Richard Boast's book answers that question," says Durie. "Our people could handle chief-to-chief property negotiations, they could even handle confiscation – but they couldn't understand legal processes that weren't transparent."

At the launch, Dr Shaunnagh Dorsett, then Acting Editor of the *Victoria University Law Review*, thanked Judge Ian Borrin for his generous support of the *Law Review* which is co-publisher of the book with Victoria University Press.

Richard Boast also thanked those supporters, and his family, for their forebearance during the book's 10-year gestation, adding: "I would like to acknowledge the work of earlier historians which provided background information, and pay a tribute to the unsung heroes who undertake research for the Waitangi Tribunal. The most exciting historiography is taking place there and I fervently hope it is recognised and rescued from the greyness of bureaucracy."

The Dean held celebratory drinks at the Law School following the Montana Book Awards win. It was well attended by Richard's colleagues, academics from many departments of the university and friends and family. Congratulating Richard, the Dean commented that his win showed that the Law Faculty did not only work to produce well-paid lawyers for law firms.

"The issue of the Crown and Māori land rights is a complex and ongoing challenge to this country's legal and political institutions," says Professor Tony Smith.

"Richard's book is an extraordinarily valuable contribution to the understanding of this issue. It is a shining example of what academics can do – contribute depth and analysis to a debate which has its roots in the past, a lively and contentious present and a bearing on this country's future."

London Calling: Visitors from the UK

Left: Dame Hazel Genn

Right: The Rt Ho The Baroness Scotland QC

Below: Lord Walker

Three outstanding legal figures from the United Kingdom visited the Faculty and gave public lectures.

THE RT HON THE BARONESS SCOTLAND QC, the Attorney General of England, Wales and Northern Ireland spoke on "Developments in Public Law: A UK Perspective," in February.

"I am clear that the primary function of a state must be to protect its citizens," she said, in a lecture which ranged over the themes of the executive, the courts and terrorism. "I am equally clear that , in responding to the terrorist threat, it is more, not less, important that we scrupulously maintain our respect for the rule of law and for the values which underlie it."

Baroness Scotland said the UK, along with many other countries, looked forward to a change of attitude towards these issues in new US administration.

The Rt Hon The Lord Robert Walker of Gestingthorpe's August lecture was "The Developing English Law of Privacy". This development stems from the UK Human Rights Act 1998, and has been influenced by the jurisprudence of the European Court of Human Rights at Strasbourg, but is "horizontal" in that it mainly concerns the citizen and the media (rather than the citizen and the state). "So far English courts have approached the problem of reconciling free speech and privacy as one requiring an 'intense focus' on the particular facts rather than the application of fixed presumptions", Lord Walker said, adding: "This approach raises many issues for debate".

Lord Walker is a judge of the newly-created Supreme Court of England.

Dame Hazel Genn was the 2009 NZ Law Foundation Distinguished Visiting Fellow. She is Dean of Laws, Professor of Socio-Legal Studies and co-director of the Centre for Empirical Legal Studies in the Faculty of Laws at University College London, where she is also an Honorary Fellow.

She spoke in September on "Civil Justice and the role of Assisted Dispute Resolution". It is a topic which created a public spat and made front page news in London when she spoke at the Hamlyn Lectures earlier in the year.

In essence, she maintains that reforms of the UK's justice system encouraged the practice of mediation over civil justice through the court system. She maintained mediation has little to do with access to justice – that is, access to the courts or to just outcomes.

"Mediation is not about just settlements. It is just about settlements," she said. It was, she added, "an admission of defeat" and was a cheaper option for government than trying to fix or invest in "dysfunctional" court systems.

On the side of Angelo: Forty years on

Below, left to right: Geoff Mclay, Judge Ian Borrin, Tony Angelo

Bottom, left to right: Geoff Mclay, Petra Butler, Tony Angelo, Campbell McLachlan, Yves-Louis Sage, Sir Ivor Richardson, Auson Quentin Baxter, Ian Borrin, Peter McKenzie QC, Alberto Costi, George Barton QC

Victoria University's *Law Review* launched a special issue in honour of Professor AH Angelo.

TONY ANGELO began at Victoria on 20 December 1967. His has been an extraordinary career and he continues to be one of the Faculty's academic leaders.
He has done considerable work in developing countries, particularly Mauritius and smaller Pacific Island states such as Niue and Tokelau. In addition to his roles in administration, such as Dean and Deputy Dean, he has also served throughout his time on the editorial committee of Victoria University's *Law Review*.

The *Law Review* was keen to celebrate the anniversary of his remarkable first 40 years at the Faculty. The edition was in no way intended to suggest that he ought to retire. Geoff McLay said at the launch, "Tony has been greatly needed over the last 40 years, and he remains one of true driving forces behind the Faculty."

The editors of the issue, Geoff McLay, Alberto Costi, Petra Butler and Bill Atkin, invited a wide range of contributors who would reflect Tony's experiences both in New Zealand academia and internationally. Such was Tony's standing that no invitation was declined and the special edition contains issues which reflect the diversity of Tony's interests.

It is divided into two parts, the first containing reflections from people such as Sir Ivor Richardson and George Barton QC in relation to Tony's career and also the reflections of those who have worked with Tony more closely in the Pacific, such as Andrew Townsend (a former Research Assistant) and University of Dundee and former University of the South Pacific academic, Sue Faren.

The second part contains research from both Victoria University academics and also academics from outside New Zealand. Included are contributions in French by Dr Yves-Louis Sage of the French University of the Pacific; and in Italian by Mario Patrono of the University of Rome. Other significant pieces include an important piece of work about the status of free association between New Zealand, Niue and the Cook Islands and the independence of Tokelau written by leading expert and Wellington barrister, Alison Quentin-Baxter.

Esteemed European academics Professor Ingebor Schwenzer and Katharina Boele-Woelki, both leading comparative lawyers in Europe, are contributors. In deference to Tony's expertise in things Japanese there is a contribution from a Professor of the University of Tokyo and from his former student and now Associate Professor at Sydney, Luke Nottage.

For a contents list of this issue of the Law Review, *see page 31.*

Seychelles Digest

Left:
An exact miniature replica of Big Ben is positioned in front of the High Court

Right:
The High Court of Sechelles

Tony Angelo shares his experience of writing a new Seychelles Digest after his visit to the islands early in 2009.

TWENTY YEARS AGO a substantial digest of the caselaw of Seychelles (*The Law of Seychelles Through the Cases*) was prepared by Tony Angelo, Edwin Venchard (former Solicitor-General of Mauritius), and Sir Victor Glover (former Chief Justice of Mauritius). Early in 2009 it was decided to write a new and up-to-date Seychelles Digest. This digest is being prepared in direct collaboration with senior members of the Seychelles law profession.

The preparation of the digest depends substantially on the availability of law reports, and there have been none since the time of the publication of *The Law of Seychelles Through the Cases*. In Seychelles there is a law reporting committee actively engaged in bringing the law reports up-to-date. Tony Angelo and his research team have participated in and coordinated their endeavours with the work of the law reporting committee. The result is that the backlog of law reports will be completed by mid-2010 and the digest can be published shortly after that.

The Seychelles endeavour has also included the production of a basic concordance for the Civil Code of Seychelles. Unrtil 1976 Seychelles had the Civil Code of France of 1804 in a very slightly amended version. In 1976 that Civil Code was reformed and enacted in the English language.

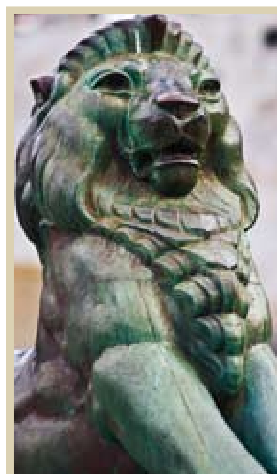
The new Civil Code is expressly stated to be a new law and is not to be interpreted as a direct successor of the pre-existing law. Nevertheless there are provisions which are literal translations of the French Civil Code either in its original or its current form.

Equally there are provisions which have been inspired by those in the Mauritius Civil Code.

The result is that on a number of matters, the French or Mauritius case law and commentary is of direct relevance to Seychelles.

The Concordance addresses this by cross-referencing the provisions of the Seychelles Civil Code to corresponding provisions of the French Civil Code of 1804 and to the French and Mauritius Civil Codes of today.

To add value to the Concordance, the team has also produced a Legislation Finding List for Seychelles, accurate to 15 October 2009. This is the first such list publicly available since the independence of Seychelles in 1976.



A Lion Beneath the Throne

Lord Bingham of Cornhill delivered the Robin Cooke Lecture 2008: *"Law must be accessible, clear, predictable."*

Lord Bingham of Cornhill delivers the Robin Cooke Lecture 2008

LORD COOKE OF THORNDON rejected the description of judges as "activist", and rightly so. "For it is plain that an undue willingness in a judge to innovate subverts the very principle I am commending," Lord Bingham of Cornhill said during the 2008 Lord Cooke Lecture at Victoria University.

That "core of the rule of law principle" was that all persons and authorities within the state, whether public or private, should be bound by and entitled to the benefit of laws publicly and prospectively promulgated, and publicly administered in the courts.

"Observance of this principle requires that the law should be accessible and so far as possible intelligible, clear and predictable," he said. That was particularly so in the criminal field.

"I note that Professor Tony Smith (Dean of Victoria's Law School) has praised the New Zealand judges, blessed as they are with a criminal code, for their faithful interpretation of it in accordance with the intention of Parliament, comparing them favourably with their English counterparts.

"It is one thing to apply existing principles to a new situation, or fill a gap, or move one step forward when an existing train of authority peters out, or nudge the law in the direction of modernity. These are things which a legal adviser can reasonably be expected to foresee and allow for.

"It is quite another to strike out in new and unpredictable directions. This was not Lord Cooke's style.

"It was for his great gifts as a simplifier, a clarifier, an expounder of the law that he is remembered with such admiration and respect."

Lord Bingham outlined three reasons why he considered the law should be accessible and, so far as possible, intelligible, clear and predictable.

"First, and most obviously, if you and I are liable to be prosecuted, fined and perhaps imprisoned for doing or failing to do something, we ought to be able without undue difficulty to find out what it is we must or must not do on pain of criminal penalty," he said.

"One important function of the criminal law is to discourage criminal behaviour and we cannot be discouraged if we do not know, and cannot reasonably easily discover, what it is we should not do.

"The second reason is rather similar, but not tied to the criminal law. If the civil law gives us rights or imposes obligations on us which we or others can enforce, it is important to know what our rights or obligations are: otherwise we cannot claim the rights or perform the obligations.

"It is not much use being entitled to (say) an allowance from public funds if you cannot reasonably easily discover your entitlement and how you set about claiming it. Equally, you can only perform a duty to (let us say) recycle different kinds of rubbish in different bags if you know what you are meant to do.

"The third reason is rather less obvious, but extremely compelling. It is that the successful conduct of trade, investment and business generally is promoted by a body of accessible legal rules governing the rights and obligations of the parties.

"No one would choose to do business, perhaps involving large sums of money, in a country where the parties' rights and obligations were vague or undecided," Lord Bingham said.

"In commending the virtues of simplicity, brevity and clarity, I am vividly conscious, as this audience will be, that Lord Cooke's judgments were shining examples of all three.

"There could be no better illustration than his lapidary statement of the grounds for judicial review, quoted by Professor Philip Joseph in his admirable work on Constitutional and Administrative Law in New Zealand: '[T]he decision-maker must act in accordance with law, fairly and reasonably.'

"It would be impossible to state this proposition more simply, more briefly or more clearly, and if today we would include to add 'proportionately', that would only increase the 11 words to 12," Lord Bingham said.

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World-champion Mooters

Katherine Belton and David Hume in Madrid.

Katherine Belton's lasting memory of being on top of the world may well be driving around Vienna in a horse-drawn carriage sipping Veuve Cliquot from a white plastic cup.

KATHERINE and her mooting partner, David Hume, had won – beating 233 teams from 59 countries. Won the largest mooting competition in the world, the Willem C Vis Moot.

It was a long way from wondering "Why am I doing this?" when she tried out for the Victoria team the night before a 300-level exam. "I think about it now and I'm so glad I did try it – although it was really intense. The judges are looking for the ability to remain calm under pressure, so there are lots and lots of questions fired at you, designed to fluster you. I remember holding my hands together to stop them shaking so as to appear totally fine!"

Katherine heard about Vis Moot through a friend who'd done it the year before. It sounded great – you get to go to Vienna and it's well-timed for Vic students because the preparation time is in Vic's summer holidays. At other universities it is term time.

"There is a Vis Moot family at Victoria," says Katherine, "and Petra (Dr Petra Butler, Senior Lecturer and Vis Moot maven) encourages that. Contact with her is a big part of what makes it such a good experience. Past Vis Mooters also help coach, give feedback and are always keen for a good BYO evening."

Her experience took her all over Europe, making meetings in foreign cities and practising against other university's teams. "You get to meet all the other teams. It's like an amazing race and it's more than just a fierce competition because you get to meet so many amazing people."

> "When I heard 'The winner is Victoria University of Wellington' I can't remember the following moments. We hugged. Went up on stage."

Once in Vienna for the final round, the pressure mounted. The general rounds involve one moot a day for four days.

"Every day we'd go back to the apartment and debrief – it was like being a lawyer on a really big case. You're living and breathing it – for a geeky law student, it's the best, like a tutorial in real life with everything you know coming together."

Her partnership with David Hume was essential to the result: "We knew the facts so well that we could switch sides, we were completely in sync. We only had to start a sentence to know where each other was coming from and how to work in with that."

Other Vic teams have reached the final. For Katherine, the least she wanted was to equal that. Then they won.

"When I heard 'The winner is Victoria University of Wellington' I can't remember the following moments. We hugged. Went up on stage," says Katherine. "David made the acceptance speech, thanking everybody and got the whole room clapping for Petra, which was great."

"I don't know if there's going to be another moment in my life that's as good as that one."

The Relationship between IP and Culture

Vice-Chancellor Pat Walsh, Susy Frankel and Dean of Law Tony Smith

The right way to discuss the limits of intellectual property is to try to articulate the relationship between intellectual property and culture, according to Professor Susy Frankel.

INTELLECTUAL PROPERTY LAW was designed to encourage works of culture, Professor Frankel said in her inaugural lecture in March 2009. "The theory is you reward creators of work so they benefit and are encouraged to produce more. But how much protection you give to achieve that is a balancing act."

The University's first female law graduate to be appointed a law professor at Victoria, Professor Frankel delivered her lecture "From Barbie to Renoir: Intellectual Property and Culture" on 10 March, the day after Barbie turned 50.

Barbie was emblematic of products that emanated from so-called cultural and creative industries, Professor Frankel said. Intellectual property rights were "enormously important" for cultural and creative industries. They were the legal mechanism used to make sure that no competitor could produce the same products.

Intellectual property rights enabled cultural industries to profit from the notion that their products were "genuine" and consequently desirable for consumers to purchase. "This is perhaps the modern version of Renoir's concept of 'unable to be imitated'."

Many mega successful product or product lines such as Barbie had corporate owners who were vigilant about protecting their intellectual property rights and fought off those who attempted to free ride on them, in any way.

"But not all free rides should be treated the same. Some free rides are valuable to society. Great works can be improved by other authors."

Because of the pervasiveness of intellectual property in our culture, the right way to discuss the limits of intellectual property was to understand and try to articulate the relationship between intellectual property and culture.

"We know it's there but what does this relationship tell us? And how can we use the understanding of that relationship in a practical way? The problem with the incentive and reward approach to intellectual property was that it lost sight of the public interest in the structure of the law as a whole. It is almost taken for granted that the reward and incentive formula will capture the public interest.

"In essence, the rights of individuals appear to have trumped the collective interests in intellectual property law. Those collective interests include its effect on culture. This includes what we might call expressive values and free speech, but it is not just those values at play. Society has a vested interest in supporting individual rights.

"The appropriate balance between collective and individual rights is not an easy balance to achieve. Finding that balance involves looking at all of the fundamental reasons that we have laws, such as private rights in intellectual property.

"Asking how much reward is necessary, and questions of that kind, ultimately don't reveal much more than some businesses do rather well out of intellectual property rights. Looking at the relationship between culture and intellectual property is a much better starting place, because ultimately it can show more clearly where to draw the line."

The idea that there was a link between culture and intellectual property was not new, Professor Frankel said. "But exactly what the link is, and how it can be appropriately reflected in the law, is not self-evident.

"The starting clue that I have used, is that cultural industries are protected by intellectual property rights. But it is not the status as a cultural industry that achieves this. It is the creation of cultural products. You receive copyright whether you are a big player or a small player

"When intellectual property rights interfere too much with the type of cultural product that emerges, particularly from small players, that's when a line can be drawn. But it is complete nonsense to suggest that the drawing of the line is for any reason other than to support one cultural interest over another.

"This dominance of one cultural interest over another is often the consequence of a focus only on an economic interest."

In as far as New Zealand could, it should draw its own lines about cultural values. Such an approach was also likely to be economically beneficial. "Can we draw lines to support New Zealand cultural interests? Of course we can. How we do this is a lengthy discussion to which I am dedicating much research effort," Professor Frankel said.

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Real Issues in Real Time: The NZ Centre of International Economic Law

Professor Peter Van den Bossche

The NZCIEL continued to set the pace in its second year of operation, with publications, a major conference and a symposium being on its agenda for 2009

THE NEW ZEALAND CENTRE of International Economic Law was established in 2007 as an interdisciplinary centre of research. It has organised several major international conferences and symposia and gained a reputation for rigorous and relevant work on international economic issues.

The Centre is pleased to announce the publication of papers following its 2008 conference, "Patent Law Reform: Getting it Right to Support and Drive Innovation". A special issue of the *Journal of World Intellectual Property* has been published with several papers from the conference.

It includes contributions from the keynote speakers, Professor Rochelle Dreyfuss, NYU Law School, and Professor Daniel Gervais, Vanderbilt Law School. Other contributors include Justice Susan Glazebrook and victoria University alumna Professor Megan Richardson, Melbourne Law School. The publication and the conference were supported by the New Zealand Law Foundation.

It can also report that the collection of papers from its inaugural conference will be published by Cambridge University Press in 2010. This book, edited by Centre Co-Directors Meredith Kolsky Lewis and Professor Susy Frankel, will be entitled *International Economic Law and National Autonomy*.

The NZCIEL hosted a number of events in 2009, including a two-day conference "Trade Agreements: Where Do We Go from Here?" The keynote address was delivered by Professor Peter Van den Bossche of Maastricht University, who will become a member of the World Trade Organization Appellate Body in December. The conference was very successful and included speakers from five continents and a dozen countries, as well as considerable local participation.

Meredith Kolsky Lewis says: "We examined trade agreements in the context of the current world economic crisis and the uncompleted WTO Doha Round of trade negotiations.

With economies shrinking and protectionism on the rise, many fear a protracted global recession."

"What role should trade agreements – multilateral, plurilateral, and bilateral – be playing? Will the proliferation of regional trade agreements render the WTO irrelevant? How can developing countries use trade agreements to their advantage? What are the synergies between climate change negotiations and trade agreements?" were among the questions the conference addressed.

"These issues are happening right now and are particularly vital to New Zealand. This country is heavily dependent on international trade and this gathering was devoted to analysing the mechanisms that do (or don't) support it," says Susy Frankel.

The Centre is grateful to its primary conference sponsor, whose donation was made in honour of Dan Chan, and other sponsors: the Ministry of Foreign Affairs and Trade; the Ministry of Economic Development; and Chapman Tripp.

In addition, the Centre held a colloquium entitled "How New Zealand Negotiates Free Trade Agreements" and a copyright symposium entitled "The Copyright Future: Authors, owners, orphans, users and repeat infringers".

The keynote speaker at the copyright symposium was Professor Jane Ginsburg, Morton L. Janklow Professor of Literary and Artistic Property Law at Columbia Law School. She also directs that law school's Kernochan Center for Law, Media and the Arts. She spoke on "The Copyright Future: The Author at the Centre?"

"The symposium drilled down into a hot issue: the protections that authors and owners have under copyright law and the challenges they face from legitimate and illegitimate users," says Susy Frankel.

"It was a great opportunity to hear from an internationally recognised copyright expert, Jane Ginsburg, and for New Zealanders interested in current copyright topics to participate in the symposium discussion," she says.

"The NZCIEL wishes to thank all those in the alumni community who have attended its events and otherwise supported the Centre. We are looking forward to furthering the NZCIEL research agenda in 2010."

Sex, Trials and Criminal Procedures

Yvette Tinsley and Elisabeth McDonald

Two Faculty members are involved in a research project which has been awarded more than $85,000 by the New Zealand Law Foundation to investigate alternatives to the current pre-trial and trial processes in sexual offence cases.

ASSOCIATE PROFESSOR Elisabeth McDonald and Dr Yvette Tinsley, along with Professor Jeremy Finn of Canterbury University, will spend 21 months investigating whether the current criminal justice system is failing victims.

The project will investigate possible options for modification of the current procedure for trial and pre-trial processes relating to the prosecution of sexual offending. This may include possible alternatives to adversary criminal trial, as well as any other alterations of law and practice within the current criminal justice framework that could increase the effectiveness and accuracy of criminal trials for sexual offences.

The research project will investigate the practicability and merits of changes to current law and procedure in effecting improvement in pre-trial and trial procedures in sexual offending cases. This will involve examination of possible reforms and the value of utilising those reforms in the New Zealand context.

The Law Commission has a reference from the Government to investigate alternative trial and pre-trial processes (including inquisitorial models) and to advise whether New Zealand ought to adopt all or any part of them.

It has been decided by both parties that we should undertake the work on a collaborative basis, whilst maintaining independence with regard to ultimate recommendations for change. The research is in the early stages, sourcing information about relevant reforms and initiatives both within New Zealand and overseas.

"The current mode of proceedings in criminal trials for sexual offences is widely perceived to be unfair to complainants and likely to lead to undeserved acquittals of offenders," says Elisabeth McDonald.

Possible options include changes to the existing law, particularly in regard to the onus of proof where consent is an issue; the creation of specialist tribunals or courts to hear sexual offence cases; and the adoption of some form of inquisitorial procedure.

Inquisitorial procedures could see the investigation supervised by a judge rather than the prosecution, and the trial judge, rather than the parties, would determine what witnesses were called and how they were questioned.

"The adoption of inquisitorial procedures would be a very major change, but in the light of overseas experience suggesting inquisitorial procedures may better safeguard the interests of victims and witnesses, the option should be investigated and evaluated," says Yvette Tinsley.

The researchers will collect and evaluate data and opinion on the current law, investigate inquisitorial procedures and then provide feedback for discussion and formulation of policy advice.

"The research is intended to stimulate debate within the community over the need for reform of the law, to indicate the possible options for change, and to provide a principled and objective evaluation of the merits and disadvantages of each option," says Professor Finn.

"It will help to shape the form of any proposals for law reform in this area."

The support from the New Zealand Law Foundation will make it possible to employ an experienced researcher who will work under the joint supervision of the three legal academics.

All three researchers say the size and scope of the project was only possible because of co-operation between the universities' law schools, which allowed the researchers to combine their different skills and expertise.

The Director of the New Zealand Law Foundation, Lynda Hagen, said the foundation was keen to support cross-university co-operation on research projects, and was pleased to be able to fund this important research that would evaluate current procedures, stimulate public debate and recommend possible improvements.

Elisabeth McDonald *is Associate Professor in the Faculty of Law at Victoria University where she teaches criminal law, the law of evidence, law and sexuality and feminist legal theory.*

She has been researching in the area of sexual offences, both substance and procedure, since 1993 when she was awarded, together with Dr Jan Jordon, a FoRST grant to investigate the

The First Step: Launch of the Legal Māori Archive

Right: Māmari Stephens

The first stage of The Legal Māori Project – the Legal Māori Archive – was launched in June. It is the initial step towards producing New Zealand's first Legal Māori Dictionary.

IT HAS INVOLVED the collection of more than 14,000 pages of 19th century documents that illustrate the bi-lingual nature of New Zealand's legal history. The Archive has been created in partnership with Victoria University of Wellington's New Zealand Electronic Text Centre (NZETC) which has digitised the documents and made them available as fully searchable text.

The Legal Māori Archive is freely available to the public and can be accessed via the NZETC website at **www.nzetc.org/tm/scholarly/tei-corpus-legalMāori.htm**

"This is our first funded milestone," says project co-leader, Victoria University law lecturer, Māmari Stephens. "The point of digitising the documents is to make the texts electronically available so we can analyse the language and establish the Legal Māori corpus, which is our next milestone."

It is the first time the documents have been brought together in one place and is the largest collection of single documents that the Electronic Text Centre has digitised.

The collection includes speeches of Māori MPs, Turton's collection of land deeds, Māori language translations of Acts of Parliament, Parliamentary Bills, as well as petitions from concerned Māori and Native Affairs Select Committee reports.

Last year The Legal Māori Archive has been made possible by funding from the Victoria University of Wellington Library Contestable Fund and the Foundation for Research, Science and Technology.

The project is informed by a Reference Group which includes prominent academics, experts in te reo Māori, linguists and judges.

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experience of women rape complainants. Since then she has authored more than 15 articles and chapters focussing on the rules of evidence and procedure in sexual offence trials, as well as being a contributing author to The Evidence Act 2006: Act and Analysis.

She is particularly interested in whether the application of legal rules reinforces particular views of female sexuality, as well as whether public perceptions about rape trial process impact on reporting and attrition rates.

Yvette Tinsley *is a Senior Lecturer in the Faculty of Law, Victoria University. Her teaching and research interests lie in the fields of criminal law and justice, evidence, and law and science.*

She has been working in New Zealand since 1996, before which she carried out a number of empirical projects in the UK. In New Zealand she has conducted research on eyewitness evidence, sentencing, community policing and was a primary researcher, together with Dr Warren Young and Neil Cameron, in research on jury decision-making (a multi-agency funded project). She is a co-author of The Evidence Act 2006: Act and Analysis and has worked with groups including the Law Commission, the Ministry of Justice and New Zealand Police.

She has particular interest in the effect of pre-trial processes and prosecutorial decision-making on the outcomes of sexual offending complaints.

Law and Literature/ Law and Visual Media Database

Author Charlotte Grimshaw addressing the symposium

In September 2009 the New Zealand Law and Literature/ Law and Visual Media online database was launched at a Law School symposium.

THE DATABASE has been created by Dr Grant Morris, Senior Lecturer in Law. It includes annotated bibliographical references to over 500 New Zealand texts that include legal references. The database can be accessed on **www.victoria.ac.nz/lawlit**. Guest speakers at the symposium included novelists Charlotte Grimshaw and Damien Wilkins.

Grimshaw talked about the use of law in her novels, especially *Provocation*. As a former criminal lawyer, Grimshaw makes a specific effort to portray the law in an accurate fashion. While she does not see *Provocation* as a legal thriller, law acts as an important literary device in the novel. The controversial partial defence of provocation provides a backdrop for the events that occur in story, for example, there is "provocation" in both the legal and romantic action contained in the text. The tension between the precision of law and its inability to contemplate subtleties is also explored in Grimshaw's work.

Wilkins discussed the legal themes arising out of his works, *The Miserables* and *Chemistry*. In *The Miserables*, the main character experiences the infamous Socratic teaching method. As a former law student, Wilkins was able to draw on his own experiences in writing this fictional account of legal education. *Chemistry* features criminal acts and ends with a courtroom scene. Wilkins discussed the rigidity of law and its need to publicly display private emotions. He is also interested in the way in which lawyers take stories and transform them to paint their clients in the best possible light.

The symposium also included presentations by Dr Morris and Kathryn Helms, who worked as a research assistant on the project. The day concluded with a panel discussion. The panel consisted of experts in law, literature and visual media. Audience members interacted with the panel which resulted in a very interesting open discussion.

Dr Morris hopes the database will inspire others to explore this area of research. The Law and Literature/Law and Popular Culture movement is well established in the United States and other jurisdictions. Up until the database launch, one of the problems for New Zealanders interested in this area was identifying our key texts. This problem has now been solved. The database allows academics to quickly and effectively locate New Zealand fictional works that contain law. This will aid in producing journal articles, post-graduate papers and other academic outputs.

There has already been increased interest in the project now it is online. At present the database is up-to-date as of mid-2008. The aim is to keep the database are current as possible. Work on the project this year has been possible due to a University Research Fund grant.

The Freedom to Connect

Jonathon Penney is the 2009 InternetNZ Senior Research Fellow at the Faculty of Law.

BEFORE COMING TO VICTORIA, Jonathon spent time researching and studying at Columbia Law School in New York City where he was a Fulbright Scholar and at Oxford University, where he was a Mackenzie King Travelling Scholar and Associate Editor of the *Oxford University Commonwealth Law Journal*.

Jonathon's research focuses on constitutional law and history, technology law and intellectual property, both separately and where these areas intersect in comparative, technological, or security contexts. These background interests provide a solid foundation for his research project for the year – exploring the notion of a "freedom to connect" in New Zealand, which will involve a mixture of public, intellectual property, and regulatory law.

In several countries, including New Zealand, the idea of a "freedom to connect", or basic right to online connectivity, has emerged and received some legal and political recognition in response to legislative proposals to terminate Internet access as a punishment for copyright violation.

Jonathon's research will explore the idea of a "freedom to connect" and its different dimensions – as a new form of social or economic right, a principle of online free expression and information, or a regulatory rule of non-discrimination and network neutrality- and ask whether such a freedom or right exists, and if so, how it might be recognised under New Zealand law.

Jonathon is also engaged beyond academic research. He has previously worked as a lawyer with the Justice Department, providing advice and legal representation in a broad spectrum of civil litigation for Canadian federal agencies. More recently, he served as a policy advisor to the leader of the official opposition party in the Canadian Parliament.

This involved assisting with strategic communications and formulating policies and strategies on a range of legal and public policy issues, including constitutionalism and national unity, technology infrastructure and its regulation, national security, immigration and economic development.

Besides academic writing, Jonathon writes legal, political and public policy commentary for *The Mark News* online and the 'Canada's World' project at the Morris J Wosk Centre for Dialogue at Simon Fraser University in Vancouver. The Project aims to engage Canadian citizens, organisations, businesses and institutions with global concerns and build a future oriented vision for Canadian international policy.

Jonathon Penney

Jonathon will be teaching a course in the next academic year on the law and regulation of the Internet and cyberspace, which will explore the host of complex legal and public policy issues – such as privacy, intellectual property, jurisdiction and national security – raised by the regulation of the Internet and digital technology. He will also lecture on intellectual property.

Higher and Higher

ONE OF THE UNIVERSITY'S most distinguished honours, the Higher Doctorate, was awarded twice this year, both to legal candidates – alumnus the Rt Hon Sir Edmund Thomas KNZM QC and David McGee NZCM QC.

Sir Edmund Thomas, a former judge of the Court of Appeal, was awarded the degree for services to jurisprudence. The core publication submitted in his portfolio of published works for the degree was his book: *The Judicial Process: Realism, Pragmatism, Practical Reasoning and Principles* (Cambridge University Press, 2005).

David McGee's degree was awarded for the body of work he completed in his field of parliamentary law. The major publication in his submission was his text *Parliamentary Practice in New Zealand*. David McGee is acknowledged as an authority on parliamentary practice. His examiners said his text is frequently referred to in other Commonwealth jurisdictions.

A Higher Doctorate is awarded for a substantial body of published work which provides an original and prestigious contribution to the relevant field. Applicants submit their work to a committee which decides whether or not it will proceed to an examination by a panel considered to be authorities of international standing in the relevant area. Before this year, a Higher Doctorate was last awarded in 2000.

A Date with History: 60 Years of Universal Human Rights

From left:
Professor Hilary Charlesworth,
Dame Sian Ellis, Petra Butler,
Judge Margaret Macauley

Robin Cooke described 10 December 1948 – the date of the ratification of the Universal Declaration of Human Rights (UDHR) – as "The most important date in world legal history".

THE UNIVERSAL DECLARATION of Human Rights (UDHR) celebrated its 60th anniversary last year. The occasion was marked at Victoria University's Faculty of Law with a two-day conference. The conference programme featured a photograph of Eleanor Roosevelt and asked the question of how "this trail-blazing human rights figure" would mark New Zealand's but also the world's human rights record to date? It asked the questions: How have human rights developed over the last six decades? How do we assess contemporary rights needs and challenges? What rights pathways need opening into a better future?

Eleanor Roosevelt might note the commendable progress that has occurred in rights rule formation within states, among regions, and across the globe. But she might sharply interrogate evident funding inadequacies in the delivery of rights promotion, adherence and compliance. Above all, she would probably simply tell us to read, explain promote, and act on the Declaration.

The conference started with a retrospective session on the UDHR. Both Sir Kenneth Keith and Professor Hilary Charlesworth spoke of how human rights have developed over the last six decades. Professor Charlesworth emphased the truly international character of the drafting and debating of the UDHR.

> "How have human rights developed over the last six decades? How do we assess contemporary rights needs and challenges? What rights pathways need opening into a better future?"

The next session saw an evaluation of human rights in practice. Justice Margaret Macaulay gave an account on the work of the Inter-American Court of Human Rights, offering the audience a rare insight in the workings of the court and its most pressing issues including interesting decisions, for example, on indigenous peoples' rights.

Professor Ratna Kapur explored the tension between human rights, as stipulated first in the UDHR, and the claim to culture and tradition, drawing on her personal experience when being part of a mission to Nepal.

She pointed out that while there has been a proliferation of laws in the name of human rights, the assumption that more law equals more equality and freedom and that human rights is an optimistic and hopeful pursuit, is, in her view, quite mistaken. She said promises of progress, emancipation and universalism have been exposed as myopic, exclusive, and informed by global panics.

After the general introduction and wider and international perspective on human rights the conference turned to specific human rights issues. Dr Elizabeth Stanley's paper, *Securing Human Rights through Transitional Justice*, gave a critical account of transitional justice bodies pointing out, inter alia, that transitional justice bodies generally concentrate on local, individual violators and subsequently miss opportunities to understand or challenge the role of structures, cultures, institutions or external actors in violations.

Prfessor Ratna Kapur

She also found that transitional justice can deflect attention away from continuing injustices and violation and sometimes excludes or silences certain populations, and might produce or distort the "truth" about violence or harm inflicted on those groups. New Zealand's Chief Human Rights Commissioner, Rosslyn Noonan, reflected on the human rights advance in New Zealand in the last 60 years.

The first day finished with a very interactive audience and panel discussion on the issues raised during the first day.

The second day continued to explore distinct human rights issues. Professor Emeritus David Mullan started the day with an exploration of the Canadian example of the duty to consult aboriginal peoples.

Dr Stephen James explored the right to welfare, a very apt topic during a global economic downturn. The paper examined the origins of economic and social rights in the UDHR and identified and discussed in their light New Zealand's welfare history in the last 60 years.

Tim O'Donovan and Joanna Spratt explored "Intimate Relations: Sex, Lives, and Poverty" next. The paper highlighted the need for sexual and reproductive health and rights to be a central component of any development intervention. It examined the extent to which sexual and reproductive health and rights are being realised and argued that a renewed focus on, and investment in reproductive health and rights is needed to realise these rights and to achieve the related Millennium Development Goals.

The next session took a look at the legal reality. Natalie Baird explored the domestic application of international human rights and norms with a particular reference to the Pacific and presented research and information often not easily available. Claudia Geiringer discussed court decisions in regard to courts issuing declarations of inconsistency and examined whether that remedy will have future in New Zealand.

The afternoon started with a panel discussion on current human rights issues, including a discussion on the newly ratified Convention on the Rights of Persons with Disabilities by Matt Frost.

The day ended with the presentations of the papers by the Ministry of Foreign Affairs and Trade's Youth Human Rights essay finalists, Sophie Macaulay and Charlotte Davis and Ced Simpson expressing ideas how to build human rights communities in New Zealand through education.

The conference was organised by the New Zealand Centre for Public Law and supported by the Ministry of Foreign Affairs and Trade, the New Zealand Human Rights Commission, the Australia & New Zealand Society of International Law, the New Zealand Institute of International Affairs, Amnesty International New Zealand, Human Rights in Education New Zealand, and the New Zealand United Nations Association.

Of singular complexity: The Future of Multilateralism in a Plural World

AUSTRALIAN & NEW ZEALAND SOCIETY OF INTERNATIONAL LAW
17th Annual Conference
2-4 July 2009, Wellington, New Zealand

Summary by Karen Scott

In light of the conference theme – The Future of Multilateralism in a Plural World – it is perhaps unsurprising that two topics dominated: climate change and security.

Although the human impact of climate change is hard to measure, a report issued in May 2009 by the Global Humanitarian Forum, a think-tank run by Kofi Anan, estimated that 325 million people in the world are already seriously affected by climate change every year, and that this number could be around 660 million by 2030.

In the very first plenary of this conference, Alan Boyle explored the extent to which the Security Council could be utilised as a body to develop, implement and enforce climate change regulations. This was an ambitious proposal, which generated lively discussion.

Rather more conservatively, in session six, which focused on the world trading system, Jo Feldman ably demonstrated how Article XX of the General Agreement on Tariffs and Trade has been evolved through recent jurisprudence to provide a platform for the adoption of unilateral measures for the protection of the environment, including those which address climate change.

Jo also argued that Article XX as interpreted by the WTO Appellate Body actively promotes the negotiation of multilateral environmental measures as opposed to the adoption of unilateral measures. Nevertheless, Crawford Falconer in the same session, cautioned against using WTO litigation to try to legitimise climate change-related trade measures. In his view (again, quite correctly) the need for a politically negotiated solution is an imperative.

Climate change was of course the focus of a designated session on Thursday. All three speakers, rather than addressing climate change directly, focused on the potential impacts of climate change on other regimes. Both Stuart Kaye and David Leary examined the extent to which the law of the sea regime is able to respond to both challenges and opportunities resulting from climate change.

Stuart focused on the impact of sea-level rise on low-lying territories, baselines and the status of rocks and islands under the 1982 United Nations Convention on the Law of the Sea (UNCLOS), whilst David examined the extent to which UNCLOS facilitates the development of wave and hydrokinetic energy. Both speakers concluded that the law of the sea as it stands is sufficiently robust and able to adequately manage these challenges and opportunities.

The same conclusion was not reached by the third speaker – Bruce Burson – who examined the hotly contended issue of climate refugees and migrants. Bruce concluded that the Refugee Convention is found wanting in terms of its application to persons forced to flee on account of the impacts of climate change. Bruce indicated that he regarded the Convention as illustrative rather than definitive with respect to providing a model for the management of so-called climate refugees. Rather, it is the role of human rights to respond, and, in particular, an application of the concept of self-determination.

What all these papers have in common is that they recognise that climate change will have, is having, an impact on many, if not all institutions, and many, if not all, regimes and bodies of rules. Climate change has the undoubted potential to challenge long-accepted rules and concepts in international law, such as the definition of statehood, the notion of self-determination, and the concept of nationality.

The second theme, which to an extent dominated, is that of security. Colin Keating in his paper on multilateral security reminded us that twenty percent of UN members are currently subject to Security Council consideration. Moreover, he noted that global military expenditure has increased by 45 percent in the last decade. Nevertheless, in contrast to previous ANZSIL conferences, there was much less focus on terrorism and much more emphasis on the recent attempted and successful secessions in Eastern Europe and beyond, and on managing the aftermath of conflict.

Turning to the aftermath of conflict, Roger Clark described international criminal law as having a past, a vigorous present and a hardy future. Two speakers explored alternative mechanisms to the multilateral approach to post-conflict resolution. Anees Ahmed examined the option of a hybrid tribunal as the preferred model for bringing justice to post-conflict societies. Christopher Joyner, in this session, focused on reconciliation as a tool for conflict resolution and, in particular, explored its growing role in domestic US politics.

Professor Campbell McLachlan QC

Both papers indirectly point to the limits of a multilateral response to conflict and, to a greater extent, to post-conflict situations. Nevertheless, Colin Keating pointed out that reliance on unilateral, bilateral or even regional approaches can, at times, be ineffective. In his opinion, the failure to implement a multilateral response has led to the neglect of Afghanistan and to an increase in the proliferation of nuclear and other weapons in North Korea, Iran, Syria and Israel.

At the first session, Campbell McLachlan showed us a front cover of a recent edition of *The Economist* headed: "What a Way to Run the World!". Some papers presented at this conference responded to this exclamation.

Many papers presented over the last couple of days focused on a rather different question: "How do we want to run the world?" And the answer would appear to include concepts and notions such as legitimacy, transparency, and the inclusion of both state and non-state actors within the system, to name but a few.

What perhaps struck me most about the conference was the focus on process and legitimacy – in both international law-making and international institutions. This might be described as the constitutionalisation of international law – constitutionalisation in the broader sense of the term.

A Duty to Protect? Human Rights and the Military

On 28-30 August 2009, the New Zealand Centre for Public Law hosted a conference of the Armed Forces Law Association of NZ.

Jointly organised with the University of Canterbury, the conference brought together scholars and practitioners in the area of military law and human rights from Europe, North America and Australasia to discuss the place of human rights in traditional military missions and in non-traditional military operations combating transnational crime and civil disorder.

Things have changed since the main architect of the 1949 Geneva Conventions, Jean Pictet, wrote that "humanitarian law is valid only in case of armed conflict while human rights are essentially applicable in peacetime."

Inspired by the same events, the Geneva Conventions and the Universal Declaration of Human Rights evolved separately. The latter formed the founding pillar of human rights treaties while the former set out to protect certain categories of persons during an armed conflict. However, international humanitarian law and human rights law are increasingly interlinked. United Nations organs, treaty-based human rights mechanisms and regional bodies now concur that human rights generally apply in armed conflicts. Nevertheless, humanitarian law still prevails over human rights norms in some circumstances.

According to the conveners of the conference, Alberto Costi (Senior Lecturer and Secretary-General, ILA New Zealand Branch) and Chris Gallavin (Senior Lecturer, University of Canterbury), the difficulty is that the role of the military has changed: "internal conflicts outnumber international conflicts. From internal disturbances to counter-terrorism initiatives to reconstruction efforts, military forces act as peacekeepers and peace enforcers; they conduct policing operations and participate in state-rebuilding efforts."

The development of human rights norms and the expanded range of operational possibilities facing modern militaries render more complex the role of the military in the application and enforcement of such norms.

Central to the conference discussions was the extent to which the responsibility to protect human rights by military forces is necessary or may hinder their efforts.

In the first session, presenters, including Alberto Costi, spoke of the tensions between respect for human rights and derogations to the latter in times of war or other emergency. The second session looked at the parameters within which the military may act when targeting pirates, drug traffickers or terrorists. The third session addressed further operational dilemmas and claims involving sexual abuse and exploitation by peacekeepers. The fourth session was very informative, with operations briefs by Australian and New Zealand officers, including Brigadier Kevin Riordan (Director General Defence Legal Services and Adjunct Lecturer). The final session centred on recent moves by Australia and New Zealand to reform the disciplinary procedures within the military to meet human rights requirements.

Conference participants were privileged to hear keynote speeches by Anthony Cleland Welch OBE on morality and human rights, Professor Jonathan Black-Branch (Oxford University) on cluster munitions and Lieutenant-Colonel Robin Holman (Office of the Judge Advocate General, Ottawa) on Canada's experience in the protection of human rights during counter-insurgency operations in Afghanistan.

The conference papers and related debates provided a fertile ground for further reflection. The conveners aim to publish revised versions of the papers as a collection of essays.

Alan Boyle in the first session noted that process is integral to the legitimacy of law-making and, in fact, that process matters more than substantive consensus. His paper explored the extent to which the Security Council has the right processes to be accepted as a legitimate law-making body.

Jacqueline Mowbray's paper on linguistic diversity can also be categorised as one focused on issues of process. In a fascinating study she ably pointed out that the inability to participate in UN institutions and negotiations in one's own language impacts upon that participation. It operates as a practical and symbolic barrier; and as such, can also affect the perceived legitimacy of the institution or regime.

Issues of process, legitimacy, transparency and accountability all arose in papers given by Chester Brown and Duncan French in the context of international adjudication and international dispute settlement. Alison Duxbury explored issues of process and legitimacy in the context of the expulsion of states from regional organisations. She identified a number of problems connected to process – not least the selective use of expulsion by these organisations. And the lack of due process and transparency have seriously undermined any claim to legitimacy by Security Council Resolution 1267, which requires states to freeze assets, restrict the movement of individuals and entities associated with Al Qaeda and the Taliban. Christopher Michaelson, who examined this resolution in depth yesterday afternoon, indicated that the consequences of a lack of protective processes and legitimacy may have potentially far reaching consequences for the UN in terms of the damage it may do to other counter-terrorism tools and the loss of its moral authority to criticise states about the human rights implications of their own measures. Many of the innovations to human rights instruments highlighted by Sarah McCosker in her paper focused on process, including the controversial decision to provide draft comments to states and civil society for feedback and changes to reporting obligations. While Sarah conceded that by and large these are positive developments (although they themselves create certain challenges) she did express the concern that these instruments could potentially persuade states to prioritise process over substance.

Many papers point to the virtues of, and the imperative nature of a multilateral response. But the vast majority of these papers also recognise the limitations of a multilateral response, which is sometimes drafted as a one size fits all solution to international problems. The future of international law in my view is clearly a multilateral one (and this was strongly endorsed by the MFAT/DFAT speakers who presented earlier this morning); but one in which we are aware of the many sides of multi-dimensional problems and multilateral solutions.

Visitors to the Faculty 2009

JANUARY

Sung Pil Cho, a Judge from Korea, continued his research visit with the Faculty.

Kenneth Norrie, University of Strathclyde, Glasgow, continued teaching LAWS 534/434 International and Comparative Family Law for the 2009-2010 Summer School.

Verena Murschetz, Professor at the University of Innsbruck, once again taught LAWS 395 European Union Law with Francesco Schurr in the 2009-2010 Summer School.

Francesco Schurr, Professor at the University of Liechtenstein, visited with the Faculty and taught LAWS 395 European Union Law with Verena Murschetz in the 2009-2010 Summer School.

Ingeborg Schwenzer, Professor of Private Law at the University of Basel, taught LAWS 397 Comparative Contract Law in the 2009-2010 Summer School. After completing her law studies in Tübingen, Geneva and Freiburg, Professor Schwenzer obtained an LLM summa cum laude from the University of California, Berkeley, and her PhD summa cum laude from the University of Freiburg. Professor Schwenzer is editor of the leading Schlechtriem/Schwenzer CISG commentaries in both German and English, and member of the Advisory Council on the CISG. She has published widely in the areas of comparative law, international commercial law, the law of obligations, as well as family law, and is regularly called upon to act as counsel, expert witness and arbitrator in these fields.

FEBRUARY

Justin Brooks, Professor of Law, taught on exchange from California Western School of Law in the first trimester. Named as one of the Top 100 Lawyers in California by *The Los Angeles Daily Journal*, and one of the top criminal defence attorneys and legal educators in San Diego by *The Daily Transcript*, Professor Justin Brooks is the Director of the California Innocence Project, the Institute for Criminal Defense Advocacy, and California Western's LLM in Trial Advocacy Specializing in Federal Criminal Law. While teaching at California Western, Professor Brooks has served as counsel on several high profile cases that have resulted in exonerations of inmates who were wrongfully convicted.

Barbara Cox, Clara Shortridge Foltz Professor of Law, taught on exchange from California Western School of Law for the first trimester. Professor Cox is an American national authority on sexual orientation and the law, and women and the law. She has written numerous articles on interstate recognition of marriage and civil unions of same-sex couples. As a commissioner on the Madison Equal Opportunities Commission in Wisconsin, Professor Cox helped draft one of the earliest domestic partnership ordinances in the country. She has published articles on obtaining recognition for alternative families in journals such as the *National Journal of Sexual Orientation Law* and the *Southern California Review of Law and Women's Studies*.

MARCH

William G (Bill) Buss, O.K. Patton Professor from The University of Iowa College of Law gave a public lecture during his stay entitled "Sovereign Immunity in Australia and the United States: Does Royalty Matter?"

Michael Coyle, Professor in the Law Faculty at the University of Western Ontario, visited while on sabbatical. Professor Coyle's primary areas of research interest relate to aboriginal rights and dispute resolution theory.

Richard Gaskins holds the Proskauer Chair in Law and Social Welfare at Brandeis University. Professor Gaskins' is a regular visitor to our Law Faculty. His areas of research interest are American legal culture, legal rhetoric, environmental policy, law, social policy, and philosophy.

Kerry Hunter, Professor, American Political Culture, Political Philosophy, and Constitutional Law at The College of Idaho visited for a short time in March.

Daniel Meagher, Senior Lecturer in the School of Law at Deakin University, visited for a few months during his sabbatical. Daniel's areas of research are Constitutional Law, Legal Philosophy, Human Rights.

Dr Luigi Palombi visited from the Centre for Governance of Knowledge and Development at The Australian National University. Dr Palombi's areas of expertise and research interest are biotechnology patents in Australia, the European Union and the United States of America.

Toshifumi Sowa, Professor of Public Law of Kansei Gakuin University Law school in Kobe City, visited while exploring his research interest in environmental law, especially participation process of resource consent and the post- bureaucratic revolution in NZ.

APRIL

Albert Chen, the Chan Professor in Constitutional Law in the Department of Law, The University of Hong Kong, visited briefly and gave a Public Lecture entitled "One Country, Two Systems": Autonomy, the Common Law, and Human Rights in Hong Kong After the 1997 Handover.

David G Duff, Professor and Director, National Centre for Business Law at The University of British Columbia visited with the Faculty briefly and gave a public lecture on "Carbon Taxation versus Cap and Trade".

Dr Mary Liston presented two staff seminars on "Putting the Rule of Law into Practice: The Crown's Duty to Consult and Accommodate in Canadian Aboriginal Law" and "The Rule of Law Through the Looking Glass". Dr Liston is Assistant Professor in Law at the University of British Columbia.

MAY

Professor Graeme Austin, Honorary Fellow in the Law Faculty, the J Byron McCormick Professor of Law the University of Arizona College of Law visited again briefly during May.

Professor Malcolm Gammie QC, Research Director of the Tax Law Review Committee at Institute for Fiscal Studies, Professor at the University of Leiden, was in Wellington to give evidence in the High Court and visiting with the Faculty during this time.

Peter Strauss, Betts Professor of Law at Columbia University Law School. Professor Strauss gave a public lecture entitled "Possible Controls Over the Bending of Regulatory Science".

Mark Hickford from Crown Law is with the Law Faculty until December whilst on a period of study leave.

Mary Boyce visited while she worked on the Māori Legal Project with Māmari Stephens.

JULY

Professor Yujun Feng was the Dan Chan Fellow 2009. During his visit he gave a public seminar entitled "The Interplay of Power, Rights and Interests: An Economic and Legal Analysis of Urban Housing (Demolition and Relocation) in China".

Dr Jens Scherpe, Lecturer, University of Cambridge Fellow, Gonville and Caius College, gave a staff seminar during his visit entitled "Cohabitation, gay marriages, registered partnerships and law – European perspectives".

Professor Andrew Simester, National University of Singapore Fellow, Wolfson College Cambridge visited and gave a public lecture "Moralism, paternalism and the Criminal Law".

AUGUST

Phillip Joseph, Professor at Canterbury University Law Faculty, visited briefly.

Colin Picker, The Daniel L. Brenner/UMKC Scholar & Professor of Law at the University of Missouri – Kansas City School of Law, visited and gave a public lecture entitled "Comparative Perspectives on Public International Law and International Trade Law".

SEPTEMBER

Dame Hazel Genn was the New Zealand Law Foundation 2009 Distinguished Visiting Fellow. During her visit with the Faculty she gave a staff seminar: "Paths to Justice – access to justice and the legal needs of citizens" and a public lecture "Civil Justice and the role of ADR".

OCTOBER

Peter Van den Bossche, Professor at the University of Maastricht and incoming member of the WTO Appellate Body, visited and gave the keynote address at the NZCIEL, "Trade Agreements: Where Do We Go From Here?" Conference: "What To Do When Disagreement Strikes? The Complexity of Dispute Settlement under Trade Agreements".

Dr Tracey Epps, of the Faculty of Law, University of Otago, is visiting the Faculty.

Jane Ginsburg, Morton L. Janklow Professor of Literary and Artistic Property Law and Co-Director, Kernochan Center for Law, Media and the Arts, Columbia Law School, New York, visited as the keynote speaker for the NZCIEL Symposium at Law School. Her address was entitled "The Copyright Future: Authors, Owners, Orphans, Users, Repeat Infringers".

NOVEMBER

David Mullan, Professor Emeritus, Faculty of Law, Queen's University, is presenting the annual Robin Cooke Lecture entitled "Judicial Review of the Executive: Principled Exasperation". Professor Mullan is also teaching in the 2009-2010 Summer School – LAWS 320 **Advanced Public Law** – in the period before Christmas.

Staff appointments and awards

Gordon Anderson was awarded a MacCormick Fellowship by the Law School at Edinburgh University for 2010.

Mark Bennet was appointed as a Lecturer.

Joel Cólon-Rios was appointed as Lecturer.

Richard Boast was promoted to a Professorship – *see page 2*.

Alberto Costi was promoted to Associate Professor.

Susy Frankel was appointed Chair of the Copyright Tribunal for five years.

Dean Knight was awarded a Canadian Studies 'Understanding Canada' Faculty Research Program Award to undertake four weeks of funded research in Canada. He researched and will be writing about the recent Supreme Court of Canada decision on standards of review in administrative law (*Dunsmuir v New Brunswick*) and will largely spend his time in Vancouver and Toronto.

Nessa Lynch received confirmation that her doctorate has been accepted.

David McLachlan's recent articles, "The 'Drastic' Remedy of Rectification for Unilateral Mistake" (2008) 124 LQR 608 and "Contract Interpretation: What Is It About?" (2009) 31 Syd L Rev 5, were both cited by Lord Hoffmann in his final House of Lords' judgment delivered on 1 July 2009 (*Chartbrook Ltd v Persimmon Homes Ltd* [2009] 3 WLR 267), a rare distinction for a New Zealand academic.

Geoff McLay and Christopher Murray (student editor-in-chief of the *VUW Law Review*) are two of the three named authors of New Zealand's first style guide for legal writing.

Caroline Sawyer was appointed as a Senior Lecturer.

Paul Scott was appointed as a Senior Lecturer.

Adjunct Lecturer **Peter Spiller** was appointed a District Court judge.

John Prebble *was made a Fellow of the Law and Economics Association of New Zealand; he was also appointed to a small, high-level working group of experts to advise the Treasury and Inland revenue on tax policy.*

Student Activities 2009

UNIVERSITY LAW STUDENTS' SOCIETY

By Amelia Keene

VUWLSS has been blessed with a fantastic team of people this year. We took over in November 2008 with grand visions of what the society could do: we wanted a dynamic society that increased the educational and social opportunities of Victoria's law students and increased students' engagement with VUWLSS; we wanted everyone to know who we were and what we did; we wanted to be more accessible to students.

Engagement

One of the biggest challenges that VUWLSS faced was an inability to directly get in contact with our members. Although we represent all law students, we had no way to get in touch with any of them, except through postering and accosting people in the Common Room. As a consequence, we ran a membership drive at the start of the year, where we asked for email addresses and entered them into our database. Simpson Grierson sponsored the membership packs and wall planners.

We amassed around 400 emails, which wasn't a bad start and meant that we had a good base of people that we could let know about our events. The resurrection of the VUWLSS website also helped us communicate better with law students, as the new format was so easy to navigate that I found that I could update it myself, despite being pretty backwards, technologically speaking. Check out the site: **www.vuwlss.org.nz**, proudly sponsored by the College of Law.

Educational Opportunities

Another theme of the VUWLSS vision was to increase the educational opportunities for law students. Educational Officers, Nick Chapman and Polly Higbee, have been absolutely fantastic this year. They were very active at Faculty meetings and slogged through about 500 responses to a survey that we ran on the LLB Review. From these submissions they created a comprehensive and detailed submission to Faculty on all aspects of the review that pertained to students. This is achievement no other LSS has managed in the past few years. This meant that we were truly able to represent students at a Faculty level and make a real difference to the shape of the LLB degree in the longer term.

We also ran a Speaker Series throughout the year, largely the brain-child of Vice-President, Sam McMullan. LSS was able to pull in some really interesting speakers, including the entertaining Helen Cull QC, who ripped into the Evidence Rules in the context of the final Bain trial; Kate Radka from Bell Gully "Climate Change and Law"; Bill Hastings "Censorship in New Zealand"; Brad Kidd from Chapman Tripp "So What is this GEC?" Many other interesting and enlightening speakers spoke on topics that law students might otherwise have no opportunity to hear about.

One of the highlights of the year for me, personally, was organising a successful Women in Law Evening, hosted by Chapman Tripp. Linda Clark chaired a panel of highly successful female lawyers: Justice Ellen France from the Court of Appeal; Professor Susy Frankel from the Law School; Lianne Dalziel, a Member of Parliament; Treasury Solicitor Jane Meares and Chapman Tripp Partner Brigid McArthur.

The topic was "That the glass ceiling has shattered for female lawyers". The panellists had very different views, which made for an entertaining evening with plenty of audience interaction. If a conclusion was reached, it was that women can get through the glass ceiling, but the many peculiar pressures that females face, child-bearing and family-raising in particular, mean that they have to be determined if they want to get through.

The other theme was the importance of mentoring for young female law students, something the VUWLSS provides in the form of the Kensington Swan Mentoring Programme, which pairs up young male and female law students with a more senior student.

Another highlight was the Right Honourable Sir Geoffrey Palmer accepting our invitation to become Patron of the Society. We invited him to give the Inaugural Patron's Lecture, which we hope will become an annual event to which students, sponsors and friends of the LSS can be invited. Thanks to Nick Chapman for all his hard work putting this together.

Finally, thanks to Kensington Swan, Minter Ellison Rudd Watts, Russell McVeagh and Buddle Findlay for their continued and generous support for the law student competitions and thanks to Jess Braithwaite and Selma Kafedzic for organising them. Victoria was particularly successful in Australia this year, and special mention should go to Yogesh Patel, who won the Witness Examination Competition in both Australia and New Zealand, where he put in a stellar performance on a difficult problem involving piracy and terrorism.

Social Opportunities

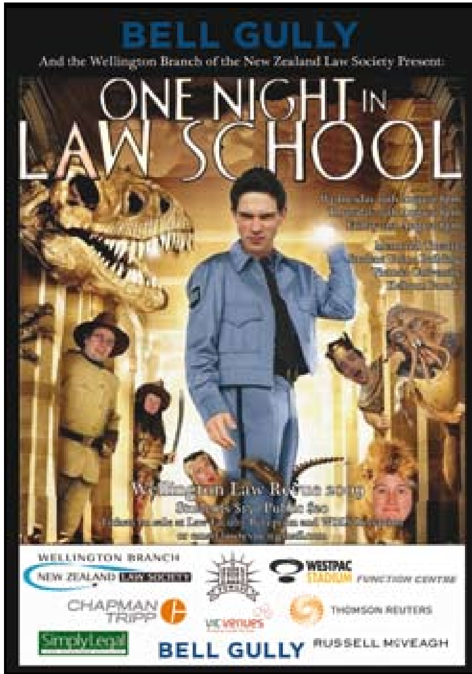
Where do I start? Jonny Osborne and Benji Crossley have been absolute legends this year. As well as the regular assortment of LSS social events: Chapman Tripp O-Week; Bell Gully Cricket Match; the Brookers Online Law Ball (which was in fact at Shed 5, although the title may suggest that we went the way of the recession and had an online virtual ball); the Baldwins Quiz Night and the IPLS Leavers' Dinner.

They also took the initiative to organise a series of extra events, from the Cocktail Night at the end of the midterm break, to more informal cricket games up and down the hallway (when Pauline wasn't looking), out on the grass, in the courtyard... anywhere with enough room to bowl a yorker.

NZLSA Conference

Victoria hosted the New Zealand Law Students' Association Conference this year, and Anna Reid did a magnificent job organising it. Highlights included an Educational Forum on the topic "That Citizens Initiated Referenda Should be Illegal"and the final night dinner, hosted by Chris Finlayson at Parliament, where the Solicitor-General spoke on the importance of dissent. See page 22.

I've been absolutely blessed with an amazing team of people on the Executive this year, which has made the job of President much easier than expected. Thanks again to all of you. Final thanks as well to everyone who has supported LSS in the many ways this year. It's been a blast!



ONE NIGHT IN LAW SCHOOL

By Greg Robins

Ever wondered what would happen if the Treaty of Waitangi was written in colossal squid ink? Or have you ever thought that Judas and a villain named Roger Kerr-Douglas-Myers should try their hand at a Bollywood dance? Have you ever asked yourself "how big is the sun"? If so, then you should have been at the 2009 Wellington Law Revue!

One Night in Law School – the tenth annual Wellington Law Revue– was a fun-filled theatrical, singing and dancing extravaganza performed in front of capacity crowds over three nights in August.

The plot was simple: the existence of a sunset clause in the Treaty has been discovered by eminent scholar, Bichard Roast, and it is eventually found in the stomach of Te Papa's Colossal Squid by four students from a local wananga. But the Business Roundtable is on their tracks – only to be foiled by Napoleon and his French posse.

To complement the easily resolvable plot, the cast threw in a few skits along the way. Nothing was safe: Tony Veitch, John Key, Joe Karam and even the endangered partial defence of provocation took a hearty beating. On the surreal front, R2D2 mingled with Megatron, gay elves frolicked with John Banks, and Elizabeth Bennet from *Pride and Prejudice* brought new meaning to the phrase "period drama".

But what about the cast, I hear you ask? This year's incredible performers included a full range of law students – they even accepted some born in *Auckland* – as well as lawyers, a designer, an architecture student, a journalist and several recovering alcoholics/public servants. For all those involved, the many weeks of rehearsals and pressure of putting on a show of a very high standard will be something to remember for the rest of their days. Or at least until the next show begins.

The Revue would not have been possible without the generous support of a great number of people, including the dedicated and talented cast and crew – not to mention their forgiving and patient friends, family and flatmates.

Crucially, the Revue would not have been possible without being underwritten by the Wellington Branch of the New Zealand Law Society and without the support of various sponsors. The principal sponsor of the 2009 Law Revue was Bell Gully and other sponsors included Chapman Tripp, Westpac Stadium: Function Centre, Simply Legal, Thomson Reuters, Vic Venues and Russell McVeagh.

The generous support of these sponsors as well as the Victoria University Law Students' Society and the enthusiastic, theatre-going public ensured its success.

One Night in Law School was held at Victoria University's Memorial Theatre on 19, 20 and 21 August 2009. All readers with a predilection for acting, dancing or singing, and who are willing to make fun of themselves and others, should keep an eye out for next year's roll call.

HONOURS STUDENT HONOURED

One of our Honours students, **Redmond Kirwan-Jones**, attended a model United Nations conference at The Hague, the purpose of which was to simulate the General Assembly legislative processes. He was one of 16 delegates from New Zealand universities, out of a total number of delegates of approximately 2,500. He received one of only five awards given out to the 300 members of his particular committee.

A WINNING JOYNT SCROLL TEAM

Law students **Stephen Whittington**, **Seb Templeton** and **Ella Edginton** won the Joynt Scroll at the New Zealand Universities Prepared Debating Championships – the fourth year in a row Victoria has won it.

FACULTY vs STUDENTS MATCH REVIVED

By Jamie Eng

IN SUMMERTIME, VILLAGE CRICKET IS THE DELIGHT OF EVERYONE. The village of Wellington is not unlike the village of Lintz in County Durham – they have their own ground, where the young men play and the old men watch. (Well, we are not discriminating for this event). Anderson Park is its name, where the outfield is kept short. It has a good club house for the players and seats for the onlookers to enjoy a tipple and a laugh.

One of the peculiarities of the Law School is the apparent correlation between love of the law and love of cricket. While a number of lecturers are fond of bringing cricket into the lecture theatre – Bill Atkin has been known to bring his childhood bat and a tennis ball in to the Torts class to illustrate various points of law – the passion for the game obviously crosses generational boundaries, with many law students being avid followers or players themselves.

In the spirit of this shared enthusiasm, the Law Students' Society has recently revived the Faculty vs Students annual match. On the afternoon of 31 March 2009, the aptly named Jackson Trophy (*Miller v Jackson* [1977] QB 966 is a case with which every law graduate should be familiar) was contested by Faculty and student teams at Anderson Park, with generous sponsorship from Bell Gully.

Losing the toss and fielding first, the student team came out with some sharp bowling. All was not bleak for the Faculty, however, with Bill Atkin battling well to anchor the innings while batsmen at the other end dropped like flies. Despite all too brief a period at the crease, Dan Meagher – a visiting fellow to the Faculty, and an Australian – also provided something for the staff to cheer about with a glorious lofted drive over the bowler's head for six. Nevertheless, the students chased down the total with ease, recording a resounding victory after suffering defeat in 2008.

Beers and a barbeque on the clubhouse deck completed the successful event for spectators as well as players.

Green MP Sue Bradford and Guyon Espiner and law students at the Forum

NEW ZEALAND LAW STUDENTS' ASSOCIATION'S ANNUAL CONFERENCE

By Anna Reid

The recent New Zealand Law Students' Association's Annual Conference acted not only as the national finals for this year's law competitions but also presented an interesting educational opportunity in the form of the Brookers Online Education Forum. This year's forum consisted of a panel discussion on the topical tongue-in-cheek question of "Should a referendum as part of good democracy be a criminal offence in New Zealand?"

The panel itself consisted of Green MP Sue Bradford, the architect of the recent section 59 legislation, National MP Chester Borrows, chairman of the justice and electoral select committee, TVNZ political commentator Guyon Espiner and Russell McVeagh public lawyer Henry Clayton.

The discussion was thoughtful and interesting. It was generally accepted that there must be some way in which citizens should be able to be heard and to exercise their basic rights of democracy and participation. However, the more central question was whether referenda was the most effective means of doing so and what limits or changes could be introduced to make direct democracy valuable and successful. Several possibilities were raised both from the panel and members of the audience. Amongst these were giving greater power to the Clerk of the House to amend questions which are ambiguous, leading or confusing (the subject of a private member's bill from Ms Bradford), creating a high threshold at which point results would be binding on the government or limiting referenda subjects to those which are of a fundamental or constitutional nature.

It was agreed that what is important is that members of our society are not given some false hope of direct democracy, only to be left disillusioned at a later point in time. However, this must be balanced with the need to recognise the rights of minorities and not to devalue the role of political leadership.

Other highlights of the week included VUW Faculty Opening Dinner which was held at the Greenman on Victoria Street where members of the Faculty welcomed delegates to the Conference. The Final Night Dinner was held at the Grand Hall in Parliament, hosted by Chris Finlayson with guests of honour including Dr David Collins QC.

Cumberland Lodge

COMMONWEALTH SCHOLARSHIPS' 50TH BIRTHDAY CELEBRATIONS AT WINDSOR GREAT PARK

Law School alumnus and Commonwealth Scholarship holder Bevan Marten, currently completing his LLM at Cambridge, was there:

Over a weekend in March I attended a conference at Cumberland Lodge in Windsor Great Park as part of the 50th birthday celebrations for the Commonwealth Scholarships programme.

There were about 50 of us from around the Commonwealth, based at various UK universities, all staying in the rather grand Lodge. The park itself is enormous, and has remained largely untouched for centuries. There are lots of deer and other wildlife around, along with joggers, cyclists and horse riders, all leading towards the Long Walk to Windsor Castle. It is open to the public, but there are lots of little houses dotted around where retired members of the Queen's household live. Not a bad place to retire!

The highlight on Saturday was borrowing some bikes and heading off with some Australian pals through the park to Windsor Castle. We could not get in as it was closed, but the weather was absolutely perfect for an evening ride and had we been hit by any cars I can assure you they would have been very, very expensive ones. The whole Windsor area appears to be awash with money.

However, Sunday became a lot more exciting as we were all invited to attend the Mothering Sunday service at the Royal Chapel, with the Queen and Duke in attendance. As there were so many of us, and it was a well-attended service, we had to stand outside by the West Door which they opened specially for us. As it was a small door, many of us got bored and wandered off to sit on the benches that surrounded the nearby trees.

It was a lovely day to sit outside and this way a few of us saw the Queen arrive (driven by the Duke in his Landrover) and head into the chapel.

Part way through the service some very nervous five-year-olds from the Royal School in their little green uniforms sang (well, some managed to sing) to a jazzy keyboard accompaniment, which was extremely cute.

Then a nice old Scottish lady who was organising the seating gave me, Simon and Jason a hint: "Stand over there, dearies, and the Queen will come out and talk to you". So we did, and sure enough the Queen and the Duke emerged from the church (first of course, because she is the Queen) and she came over and exchanged some pleasantries with us: "It's a shame you couldn't all attend the service" and "Did you know each other before you came here?".

Then the Duke came over to me and asked where I was from: "Wellington, New Zealand", and then turned to Jo beside me: "Suva, Fiji" to which he replied: "Well at least you can all speak English". I agreed that this was a unifying factor...

This turned out to be the best "royal comment" of the day so Jo and I felt very lucky to have been able to comprehend it.

The Queen very generously spent some time greeting all the scholars so there were some extremely cheerful students wandering back through the park that afternoon!

Combined with two nights of "open bar" (single malts included) and some very good food, the Cumberland Lodge experience was the best Commonwealth Scholars' event I have attended so far and a lifetime memory for all involved (except the students who chose not to attend the service and to whom we bragged incessantly until home time).

STUDENT SUCCESS

This year the Faculty was represented at the ALSA Conference by:

- **Zoe Lawton** and **Kate Harrison-Price** (Negotiation)
- **Genevieve Taylor, Kathy Scott Dowell** and **Paul Smith** (Mooting);
- **Yogesh Patel** (Witness Examination); and
- **Jordan Boyd** and **Adam Edwards** (Client Interviewing).

The ALSA Conference brings together some 450 law students from roughly 33 universities across Australasia. This year New Zealand performed exceptionally well – particularly, Victoria.

The Victoria Mooting team was placed within the top eight, its Client Interviewing team was runner-up, and our Witness Examiner won.

Yogesh Patel won a similar competition in Australia earlier in the year, competing against many top Australian teams.

Obituaries 2009

PAUL DAMIEN SHANAHAN (1942-2008)

When Paul Shanahan was born in Wellington on 16 January 1942, Japanese troops, many on bikes and others in collapsible boats, were streaming down the Malay Peninsula towards Singapore which was surrendered to General Yamashita on 15 February 1942.

By then Paul's father, Foss Shanahan, a 1936 LLM graduate from Victoria University was Assistant Secretary of the War Cabinet and was soon to be an original member of the fledgling New Zealand Department of External Affairs. Foss' first overseas posting, after being Secretary to the Cabinet, was as Commissioner and then High Commissioner in Singapore with accreditation to Malaya and Thailand.

The family moved to Ottawa, with Foss' appointment as High Commissioner to Canada and Permanent Representative to the United Nations in New York until 1961.

It was at the University of Ottawa that Paul began his university studies, completing a BA in philosophy, history and economics, and developing admirable fluency in the French language.

On his return to New Zealand in 1963 he undertook legal studies while working in the Economic and Legal divisions of Treasury and specializing in external trade relations, a field which was to dominate his working life for almost all of the next 40 years.

In 1963, the General Agreement on Tariffs and Trade (GATT) was only 15 years old and the Kennedy Round of negotiations within that body, the first attempt to deal comprehensively with the problems of trade in agriculture, was getting underway.

After 10 years in Treasury and completing an LLM degree at Victoria and being admitted as a barrister and solicitor, Paul was seconded to the GATT Secretariat from 1973 to 1977 for the Tokyo Round negotiations on agriculture.

By now married to Helen Falvey and with a growing family, he returned to Foreign Affairs in Wellington and served as deputy and acting high commissioner to Papua New Guinea.

But the tug of Geneva and agricultural negotiations won out over his hankering for a back country farm and life in New Zealand, and for 20 years from 1984 he was a senior member of the Secretariat of GATT and the World Trade Organisation, in the Agriculture and Commodities Division.

Among his contributions in that Division were servicing the negotiations, particularly in the Uruguay Round and the more recent Doha Round, and in assisting dispute resolution.

Such contributions by senior officials are, in the nature of things, largely hidden from public sight. But some important testimony is available. According to Ted Woodfield, a senior New Zealand trade commissioner and one time High Commissioner to Australia, the success of the Uruguay Round "rests in large part on the work of Paul and his colleagues in the Secretariat.

We in New Zealand, as well as other agricultural exporting countries, owe him a considerable debt". *The London Times* puts the matter more generally, lauding the role of the Dutch chair of the group on agricultural trade and Paul as its secretary in bridging the differences in members' negotiating positions, with much of the final legal agreement being drafted by Paul himself.

In the area of dispute settlement, Paul's knowledge and skill facilitated GATT and WTO panels to make rulings in a number of land mark cases relating to agricultural trade, such as the US complaint over the EC oilseed regime (with over $2 billion at stake) and Brazil's complaint about US cotton subsidies.

With all that talent came great charm and great friendships, with his family and professional colleagues and others as diverse as Mother Teresa in Port Morseby and Fidel Castro in Havana.

On his retirement Paul provided pro bono advice to a number of developing countries and lectured on WTO matters.

Paul is survived by his wife, five children, six grand children, three brothers and a sister.

Paul Shanahan's commitment to the law and to public service, internationally as well as nationally, matches that of his father; and his career demonstrates yet again the range of opportunities that continue to arise, in many different forms and in many different places, for law graduates from Victoria, as from other New Zealand universities.

Judge Sir Kenneth Keith
LLM (VUW) 1964, Hon LLD 1992
Sources: Dominion Post *and* Times of London *obituaries.*

MARCUS JOHN QUENTIN POOLE (1925-2009)

As the second youngest in a family of eight children, Marcus John Quentin Poole (usually known as "Mark") grew up in Khandallah, Wellington. On entering Wellington College, Mark's intention was to follow the lead of his older brothers into the Navy. But that career was abruptly closed when during a demonstration in the Chemistry class an explosion completely blinded Mark in his left eye. The eye had to be removed and replaced by an eye patch which gave Mark a rakish appearance.

That disaster introduced Mark to the nature and extent of legal rights and duties, when the Board of Governors of Wellington College relied, as they considered they were entitled to do, upon immunity from suit then available to the Crown and, at the time, to the school. Notwithstanding the legal defences then available, the Crown eventually made a payment ex gratia to Mark, due in no small measure to the support offered by Peter Fraser, the Minister of Education at the time.

Mark decided to study Law. When he entered Victoria University College in 1942, he was only one of eight entrants to the Law School. During Mark's years as a student, there were never more than 32 fellow students in his classes. Vacations were a period of work, Mark being "manpowered" into freezing works over the long vacation. Like nearly all law students at the time, Mark worked as a Law Clerk for a firm in town, being employed by Morison Spratt & Taylor, a firm which had a very strong practice in Māori Land Law and in Commercial Law. The founder of the firm, C B Morison KC, was the author of Morison "Company Law", and Campbell Spratt was the author of "The Law of Bankruptcy".

After some years as a Law Clerk, Mark was invited to become a Judge's Associate to Mr Justice Fair of the (then) Supreme Court. Mark was one of the last male Law Clerks or "Judge's Associates", as they were then known. In that capacity he was required to take shorthand and to type notes of evidence at trials. Those who saw him sitting on the Bench beside the Judge could see Mark typing desperately to keep up with the oral evidence of witnesses.

In 1947 Mark was admitted to the Bar by Mr Justice Fair on the motion of Mr F C Spratt. In the same year Mark completed his Masters degree in Law, specialising in Māori Land Law, which had begun with his experience as a Law Clerk in Morison Spratt & Taylor and which continued as a significant part of his legal practice.

On leaving Wellington, Mark decided to move to Dannevirke to work for Percy Dorrington, who enjoyed a considerable practice in Māori Land Law. After two years in employment, Mark entered into partnership with Percy Dorrington in 1950. He quickly acquired a solid reputation, not only in general legal practice but also in Māori Land Law. Shortly after his admission as a partner, Mark was involved as junior to Percy Dorrington in litigation in the (then) Supreme Court before Mr Justice K B Gresson in Palmerston North. During the trial, Percy Dorrington became ill, and died shortly afterwards. Mark carried on with the trial, greatly impressing the Judge who in his judgment paid a tribute to the way in which Mark had continued with the trial on his own.

Not surprisingly, Mark's mana grew. His expertise in Māori Land Law was taken for granted: his knowledge of local Māori families (whakapapa) was detailed and extensive. It was no surprise when, in the late 1970s, Mark was appointed to the Royal Commission on Māori Land Courts chaired by Sir Thaddeus McCarthy and Dr Rangi Metekingi.

With his wide reputation as an expert in Māori Land Law, Mark enjoyed a wide practice in various parts of New Zealand. Where some question of principle arose, he was indefatigable in following it to a satisfactory conclusion for his client. He had an acute understanding of Judges in the Māori Land Court and of other lawyers practising in the same area.

Mark had a very strong sense of community obligation. He was heavily involved in Local Body politics, serving as Deputy Mayor and Mayor of Dannevirke, and on various public bodies. His whimsical sense of humour gave much pleasure to the public and his friends, especially when, as sometimes happened in Local Body politics, he was being opposed by a fellow practitioner.

He made a remarkable contribution to the work of the Anglican Church at various levels, becoming a lay Canon and Bishop's Warden. His interests were not narrowly denominational, and during the years of discussion and debate on a plan of organic union of several churches, Mark played a very significant part in dialogue with other denominational bodies working towards union. Within the Anglican Church Mark served on many committees and tribunals,

even appearing as counsel for the church in a case before Mr Justice Ongley in the (then) Supreme Court. Although he was vitally interested in the role of women in the Anglican Church, he did not sit on the special statutory Appellate Tribunal to hear an appeal that a Diocesan decision to allow women to be ordained to the Priesthood was contrary to the Canons of the Anglican Church.

Mark was a family man who took great pride in the achievement of his children and grandchildren. He actually moved the admission to the Bar of his daughter, Nicola Roberts (now a partner in Mark's old firm), and more recently attended the admission of his granddaughter (now in Sydney) and of his grandson practising in Auckland.

On matters of principle, Mark and his wife felt so strongly about the 1981 Springbok Tour that he was an active opponent and, contrary to his great respect for the law, he found himself demonstrating against the law. Mark agreed with the Psalmist's prayer: "For all who are mistreated, the Lord brings justice."

George Barton QC
LLM (VUW) 1953, Hon LLD 1987

JOHN GIBSON QC (1936-2009)

John Gibson made his mark as a cricketer, in the law profession, and as a collector.

After passing through his school years at Whanganui Collegiate with distinction, John took up law. In his early days, he worked under that much admired lawyer, Roy Stacey. Even as a young man, John showed judgment and strength of character by not trying to adopt Roy's unique courtroom style. There was nothing flamboyant about John's advocacy. He was a logical legal thinker, he gnawed away at problems. He was ever conscious of his professional obligations, his duty to his client, his duty to the court; concepts he would have heard Roy Stacey stress.

John established himself as a leading criminal defence lawyer; but after he left his firm to practise as a barrister sole, he became an acknowledged specialist in matrimonial cases, particularly matrimonial property. He continued his interest in criminal law as a member of the International Criminal Bar Association where he was a valued contributor. Although proficient in a wide range of court work, in matrimonial cases he was at the very top of the field. From the 1970's on, his name featured in many significant Court of Appeal decisions. He was at the bar for some 30 years becoming one of the country's most senior Queen's Counsel. His services were in demand on Law Society and law-related committees and tribunals.

As a practising lawyer John worked hard and conscientiously for those who consulted him and never more so than when he believed the client had suffered injustice. In court he conducted himself with exemplary courtesy. One of the qualities Judges value most in lawyers is reliability, and in John's case Judges knew they could rely on him completely. He was, in short, a true professional. As a colleague he was ever affable and cordial; a pleasure to deal with. In all these respects he was a role model for any young counsel.

Beneath John's professional exterior lurked an impish sense of humour. For a few years we had chambers in the same building. One day when my tenancy was due for renewal the landlord called and proposed what I thought was a modest increase in the rental, to which I agreed. Soon afterwards John's head appeared around my door. Did you realise why the landlord came to you first, he asked. I had not put my mind to that. Because you're the softest touch, said John. Next time refer them to me. All said in John's ever pleasant way. I remember a case where John's opponent commenced an aggressive attack on his submissions. There were phrases like "as Mr Gibson ought to know..", "as my learned friend seems to have overlooked..", that kind of thing. John was sitting directly in front of opposing counsel and after a few such thrusts, he bowed his head and put his hands up as if to ward off blows. It was such a spontaneously funny gesture that John's opponent had to laugh and so did the Judge. There was a pause and what might have developed into an unpleasant confrontation was defused.

Outside the legal world, John was best known for his career in cricket. As a player in Wellington's senior grade, he was a skilled bat and an astute captain. Writing in *The Dominion Post*, the authoritative cricket historian Don Neely described him as an elegant batsman who scored many centuries. Later, he became a successful selector and manager of Wellington representative teams. Mr Neely said he was a much loved figure among his players, with his dry wit, worldly experience, quick coloured phrases and sage advice, which ensured that laughter and enjoyment were constant companions of his teams. John's contribution to Wellington cricket continued when he served as President from 2001 to 2003.

His friends also knew John as an avid collector, particularly of military decorations and the like, and of model soldiers. He was credited with having one of the finest New Zealand collections of this kind. He conducted correspondence and formed friendships with leading authorities and collectors in New Zealand and overseas.

John's final years were difficult but his sense of fun did not entirely desert him. Once when we had had a good chat about events and people in the distant past, as I left I said "good memories, John". John thought for a moment and said "yes, even if I've forgotten most of them". He was a person of great integrity, a credit to his profession, a good colleague and friend.

Thomas Eichelbaum
LLB (VUW) 1954, Hon LLD 1998
Sources: Brian Brooks & Philip O'Shea (eulogies at Old St Paul's, Wellington, 24 July 2009); Don Neely.

Alumni Achievements 2009

Chief Family Court Judge **Peter Boshier** *LLB Hons 1975* was one of a "Distinguished Alumni" group honoured by the University.

Rebecca Ellis *LLB 1987* was appointed a High Court judge, to sit in Auckland.

David Gascoigne *LLM 1962* was knighted in the Queen's Birthday Honours and has also been appointed Judicial Conduct Commissioner. Also knighted were: David Carruthers *LLM 1968;* Eddie Durie *Hon LLD 1990;* Tom Gault *LLM 1963;* Ted Thomas *LLD 2009;* Peter Trapski *LLB 1959.*

Arjun Harindranath *LLB 2008* was a judge at the ICJ Mooting Competition which was held in Russia this year.

Jack Hodder *LLB (Hons) 1976,* **Jan McCartney** *LLB 1979* **and Geoffrey Palmer** *LLD 2002, LLB 1966* were amongst the first (and last) "Senior Counsel" titles to be awarded last year.

Simon Kellet *LLB (Hons) 2005* received a first for his LLM at Cambridge.

Retired High Court judge **John Laurenson** *LLB 1961* received a Companion of the New Zealand Order of Merit in this year's New Year Honours list.

Former District Court Judge **Ian Borrin** *LLB 1958 had a Law Library room named after him in recognition of his generous support of the* Victoria University of Wellington Law Review.

The reunion of the Class of '64', with Guest of Honour Dr George Barton QC (second from left).

Also knighted in the Queen's Birthday Honours were judges **John McGrath**, **Tom Gault** and **David Carruthers**.

Bevan Marten *LLB (Hons) 2006* received a first for his LLM at Cambridge and has been granted a prestigious and valuable scholarship to do his doctorate at the Max Plank institute for Maritime Affairs in Hamburg. He is the first New Zealander to be awarded a scholarship to attend the Research School, which accepts only 12 scholars at a time, and was selected for one position from about 200 applicants from around the world.

Former Dean **Matthew Palmer** *LLB (Hons) 1988* won the JF Northey Book Award for the best legal book (2008) for "The Treaty of Waitangi in New Zealand's Law and Constitution".

Becky Prebble *LLB (Hons) 2006* studied for an LLM at Columbia University and won the Milton B. Conford Prize in Jurisprudence. This prize has a Victoria tradition behind it, because the winner from the previous year was **Charlotte Brown** *LLB (Hons) 2004*, another Vic alum who was studying at Columbia.

Alison Quentin Baxter *Hon LLD 1993* was made a Dame in the Queen's Birthday Honours list.

Jenny Ryan *LLB 2004* graduated from Columbia University with a Master of Laws (LLM) and was named a James Kent Scholar (this is for outstanding academic achievement). She was also named a Morrow Scholar which is for outstanding commitment to advancing equality of LGBT people. She got this award on the basis of her work with the Columbia Law School Sexuality and Gender Law Clinic. Her study at Columbia was largely funded by the Yvonne A.M. Smith Charitable Trust Scholarship (a New Zealand scholarship).

Paula Tesoriero *LLB 2000* was made a Member of the New Zealand Order of Merit for services to cycling. At the Beijing Paralympics, Paula won a gold medal in the 500m time trial and set a world record time.

Douglas White QC *LLM 1972* was appointed to the High Court in Auckland. After graduating, he retained his association with the University, acting as Pro-Chancellor and Chancellor for nine years. He was appointed QC in 1988. His principal area of practice has been civil litigation, with an emphasis on administrative, commercial and taxation law.

Research Centres and Events 2009

EVENTS 2009:
New Zealand Centre for Public Law

JANUARY/FEBRUARY

THE TREATY DEBATE SERIES

Organised in conjunction with Te Papa

Fast Forward (1):
The Place of Māori in Economic Development
Robert McLeod, Chairman of the Business Roundtable (NZBR), and Roger Kerr, Executive Director of the NZBR:

Fast Forward (2):
The Role of Māori in Parliament and the future of the Māori seats
Professor Philip Joseph (University of Canterbury) and Derek Fox (Editor, Mana magazine):

FEBRUARY

PUBLIC SEMINAR
The Treaty of Lisbon – Chances and Risks for the future of the European Union in the World
Speakers: Professor Dr Verena Murschetz, University of Innsbruck and Professor Dr Francesco Schurr, University of Innsbruck
Organised in conjunction with the New Zealand Association for Comparative Law

PUBLIC LECTURE
Developments in Public Law: A UK View
The Rt Hon the Baroness Scotland QC, Attorney General for England, Wales & Northern Ireland

MARCH

PUBLIC LECTURES
Sovereign Immunity is Australia and the United States: Does Royalty Matter?
Professor William Buss, University of Iowa

150 Years since the Battle of Solferino: Current Implications for Humaniterian Law
Judge Kenneth Keith, International Court of Justice
Organised in conjunction with the International Law Association and the New Zealand Red Cross

Dulce Piacentini: Human Rights and Interculturalism
Speakers: Senior Lecturers Petra Butler and Claudia Geiringer, Victoria University of Wellington

APRIL

PUBLIC LECTURES
Power, Justice or Partnership? Assessing the Treaty Claims Processes in Canada and New Zealand
Michael Coyle, University of Western Ontario

Colonialism and International Law: Buffering the Aftershocks
Professor Dr Jorn Axel Kammerer, Bucerius Law School, (Hamburg)

Carbon Taxation versus Cap and Trade
Professor David Duff, University of British Columbia
Organised in conjunction with the Institute of Policy Studies

One Country, Two Systems: Autonomy, the Common law, and Human Rights in Hong Kong after the 1997 Handover
Professor Albert Chen
Organised in conjunction with the International Law Association

MAY

PUBLIC LECTURE
Possible Controls Over the Bending of Inquisitory Science
Professor Peter Strauss, Columbia Law School

PUBLIC OFFICE HOLDERS LECTURE SERIES
The Courts and the Rule of Law
Hon Chris Finlayson, Attorney General

JUNE

PUBLIC LECTURE
Taking control of the final frontier: regulating and enforcing rights to living resources on New Zealand's extended continental shelf
Senior Lecturer Joanna Mossop, Victoria University of Wellington

PUBLIC SEMINAR
The Significance of Al-kateb v Godwin for the Australian Bill of Rights Debate
Dan Meagher

JULY

PUBLIC LECTURES
The Evolution of Public Law Practice in New Zealand in the Last 15 Years: Impact on the branches of government and academia, and future developments
Mai Chen, Chen Palmer

Kia mau ki ti aka matua; kei mau kit e aka tāepa Cling to the main vine, not to the loose one: A principled approach to the constitutional future of the Treaty of Waitangi
Carwyn Jones, Victoria University of Wellington

Moralism, paternalism & the Criminal Law
Professor Andrew Simester, University of Singapore

CONFERENCE
The Future of Multilateralism in a Plural World
Annual Conference of the Australian and New Zealand Society of International Law
Organised in conjunction with the Ministry of Foreign Affairs and Trade and Oxford University Press

EVENTS 2009: New Zealand Centre of International Economic Law

MARCH

PUBLIC LECTURE
Patently Non-Obvious: Empirical Studies on the Hindsight Bias and KSR v. Teleflex
Greg Mandel

APRIL

PUBLIC LECTURE
To What Extent Should National Security Interests Override Privacy Interests in a Post 9/11 World?
Cynthia Laberge, InternetNZ Senior Research Fellow in Cyberlaw 2008

JUNE

COLLOQUIUM
How New Zealand Negotiates Trade Agreements
Speakers: A diverse range from business and government including MFAT, MED, MAF, the Ministry of Fisheries and the New Zealand Customs Service.

JULY:

PUBLIC LECTURE
The Rule of Law and the WTO
Professor Yasuhei Taniguchi

AUGUST

PUBLIC LECTURES
Recent Trends in EC and US Competition Law
John Cook
Comparative Perspectives on Public International Law & International Trade Law
Professor Colin Picker, University of Missouri

OCTOBER

PUBLIC LECTURE
The Danger of Software Patents
Richard Stallman

CONFERENCE
Trade Agreements: Where Do We Go From Here?
Keynote Speaker: Professor Peter Van den Bossche, University of Maastricht

SYMPOSIUM
The Copyright Future: Authors, Owners, Orphans, Users and Repeat Infringers
Keynote Speaker: Professor Jane Ginsburg, Columbia Law School

EVENTS 2009: Faculty of Law

MAY

LAUNCH
Special VUWLR issue
A special issue in honour of Professor Anthony Angelo, recognising his contribution to the Faculty, the wider university, and the local, Pacific and international legal communities. Edited by Dr Geoff McLay

JUNE

LAUNCH
The first stage of The Legal Māori Project

JULY

PUBLIC LECTURE
The Interplay of Power, Rights and Interests: An Economic and Legal Analysis of Urban Housing (Demolition and Relocation) in China
Yujun Feng, Dan Chan Fellow

AUGUST

PUBLIC LECTURES
The Developing English Law of Privacy
Lord Robert Walker of Gestingthorpe

Human Rights Protection in Europe
Professor Jonathan Black-Branch, Oxford University
Organised in conjunction with the International Law Association and the Association for Comparative Law

CONFERENCE
Human Rights and the Military: A Duty to Protect?
Organised in conjunction with the Armed Forces Law Association of New Zealand; University of Canterbury

SEPTEMBER

SYMPOSIUM
New Zealand Law, Literature and Visual Media

BEEBY COLLOQUIUM
The Hague Conference on Private International Law: A Global Institution Relevant to New Zealand
Dr Christophe Bernasconi
Organised in conjunction with the Ministry of Foreign Affairs and Trade and the International Law Association (NZ)

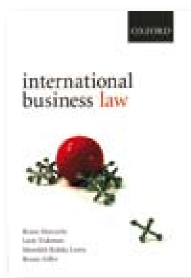
PUBLIC LECTURE
Civil justice reform and the role of ADR
Dame Hazel Genn, New Zealand Law Foundation 2009 Distiguished Visiting Fellow

DECEMBER

ROBIN COOKE LECTURE
Judicial Review of the Executive: Principled Exasperation
David Mullan, Professor Emeritus, Queen's University

CONFERENCE
Lands and Peoples In History and Law
Annual Australia and New Zealand Law and History Society conference

Faculty Publications 2009



INTERNATIONAL BUSINESS LAW

Bryan Mercurio, Leon Trakman, Meredith Kolsky Lewis, Bruno Zeller
Oxford University Press

International Business Law is a text book. It provides thorough coverage of the major legal issues affecting Australian businesses involved in international trade, enabling students to understand both the law itself and its applications. The authors have combined a range of case extracts and other materials with incisive commentary to create a student-friendly textbook that is Australian-specific, but with international applications.

Key features include: Case studies and examples to illustrate practical applications of the law; study questions and hypothetical settings in each chapter to assist understanding the subject area. The book provides background information and commentary while challenging students to understand case law and its principles.

Meredith Kolsky-Lewis is a Senior Lecturer in Law at Victoria University of Wellington.

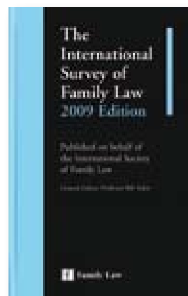
RELATIONSHIP PROPERTY IN NEW ZEALAND (2ND EDITION)

Bill Atkin & Wendy Palmer
LexisNexis 2009

The second edition of *Relationship Property in New Zealand* analyses the impact of the highly significant 2001 law reform package in the light of hundreds of cases, including the Court of Appeal decisions in *X v X* and *Nation v Nation.*

In critiquing how well the changes are operating, the book provides a unique tool for judges, lawyers, policymakers and students alike. Every key change, including the new economic disparity provisions and the new provisions relating to trusts and de facto relationships, is examined and assessed against its policy intent.

Bill Atkin is Professor of Law at Victoria University of Wellington and is a specialist in the field of family law.

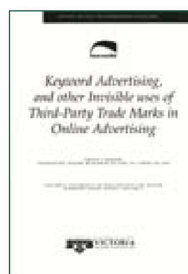


THE INTERNATIONAL SURVEY OF FAMILY LAW (2009 EDITION)

General Editor Bill Atkin
Family Law, a publishing imprint of Jordan Publishing Limited

The International Survey of Family Law is an annual review of developments in family law across the world. The 2009 edition covers developments in 25 countries written by leading academics and family law experts. Each article is accompanied by a French language abstract.

The 2009 Review begins with a round-up of the major developments in the international arena, and is followed by contributions from a diverse selection of countries where there have been important developments, including: The faces of the full court – family law in Australia; The Bahamas Child Protection Act; New developments and expansion of relationships covered by Norwegian law; What has a decade of devolution done for Scots family law; Poverty, welfare and the family – South Africa's miracle transition at risk; and "Is it well with the child?" – Custody of children in South Pacific States.



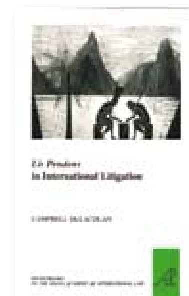
KEYWORD ADVERTISING, AND OTHER INVISIBLE USES OF THIRD-PARTY TRADE MARKS IN ONLINE ADVERTISING

Philip Greene, InternetNZ Senior Research Fellow in Cyberlaw 2007
Monograph, Faculty of Law, Victoria University of Wellington

Philip Greene's monograph shows there are almost no cases on this topic in New Zealand, but the issues are of importance to New Zealand trade mark owners and traders. Those trade mark owners and traders cannot be sure of what the outcome of any dispute over trade mark use in online advertising might be. Therefore this overview of what outcomes are likely in disputes in New Zealand, based on overseas experience, is invaluable.

Philip Greene was appointed, in 2007, as the second InternetNZ Senior Research Fellow in Cyberlaw at the Faculty of Law, Victoria University of Wellington. InternetNZ, the not-for-profit organisation that fosters co-ordinated and co-operative development of the Internet in New Zealand, sponsors this fellowship. The fellow is based at the Faculty of Law.

The main aim of this joint venture fellowship, between InternetNZ and the Faculty of Law, is to produce research on internet related legal subjects to enhance New Zealand's understanding of legal issues as the relate to the internet and related technology.



LIS PENDENS IN INTERNATIONAL LITIGATION

Campbell McLachlan
Martinus Nijhoff Publishers

What legal principles apply when courts in different jurisdictions are simultaneously seised with the same dispute? This question – of international lis pendens – has long been controversial. But it has taken on new and urgent importance in our age. Globalisation has driven an unprecedented rise in forum shopping between international courts and a proliferation of new international tribunals. Problems of litispendence have spawned some of the most dramatic litigation of modern times – from anti-suit injunction battles in commercial disputes, to the appeals of prisoners on death row to international human rights tribunals.

The way we respond to this challenge has profound theoretical implications for the interaction of legal systems in today's pluralistic world. In this wide-ranging survey, McLachlan analyses the problems of parallel litigation – in private and public international law and international arbitration. He argues that we need to develop a more sophisticated set of rules of conflict of litigations, guided by a cosmopolitan conception of the rule of law.

VUW Law Review

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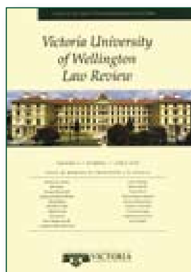
Issue in Honour of Professor AH Angelo



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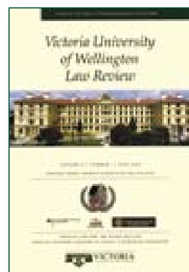

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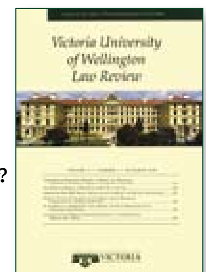

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