

JuristDiction

Sydney Law School Faculty and Alumni Journal * Issue 2 2009

OPENING CELEBRATIONS

The New Law Building

HONORARY AWARDS
DISTINGUISHED SPEAKERS
PROGRAM – REVIEW
ALUMNI ACHIEVERS:
HIS HON JUDGE JOHN NORTH



The
University
of Sydney



Sydney
Law School



JuristDiction

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

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

ALUMNI NEWS AND ENQUIRIES

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CONTENTS

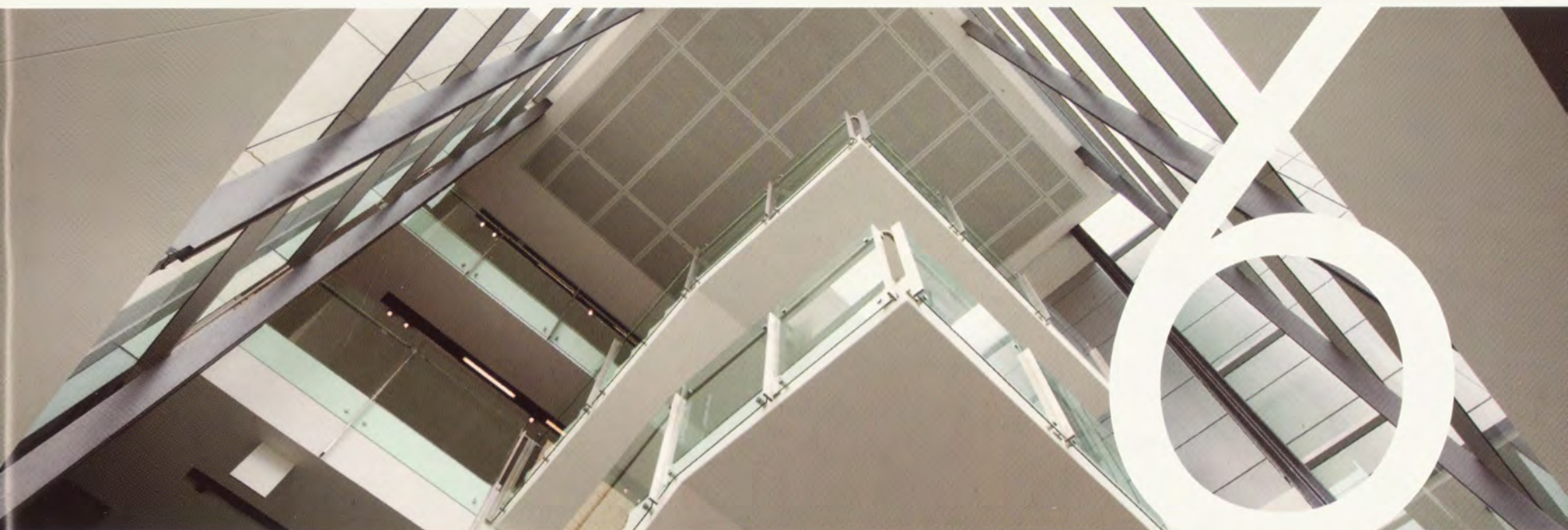
ISSUE 02/09



The
University
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Sydney
Law School



4
DEAN'S MESSAGE
Professor Gillian Triggs

10
CELEBRATE THE FUTURE

21
RECENT APPOINTMENTS

22
2009 PRIZE GIVING CEREMONY

26
ALUMNI NEWS

27
RECENT PUBLICATIONS



FEATURES

HONORARY AWARDS

5 The University of Sydney recognises The Hon Justice Arthur Robert Emmett and Mr Bruce McWilliam

OPENING CELEBRATIONS

6 Sydney Law School opens the doors to the New Law Building on Camperdown campus

DISTINGUISHED SPEAKERS PROGRAM

11 Academic staff of the Sydney Law School review a selection of distinguished guest lectures

ALUMNI ACHIEVERS

24 His Hon Judge John North sworn into the NSW District Court

P6 and 11 feature images (this page)
by John Gollings.

DEAN'S MESSAGE

PROFESSOR GILLIAN TRIGGS



The relocation of the Law School to our beautiful, light filled building on campus in February this year confirms that good architecture can transform behaviour. Over the last six months, our new environment has stimulated a significant increase in activity – not just through our Distinguished Speakers Program but also through the activities of SULS in expanding the moot program and services to students. In short, the building is helping us to create a truly global law school that makes a difference.

Striking and exciting though this building is, however, we know that the heart of the law school lies in its community of scholars, our students and its close relations with the practicing profession. One of the concerns we have had about the move away from Phillip Street has been that city-based lawyers might be disinclined to take the 15 minute trip to Camperdown. We have been pleased that our public lectures program and the ease of parking at the New Law Building have seen the continued support of the profession. We are conducting many of our post-graduate units from the old law school, ensuring that we continue to serve the needs of the down town profession.

Soon after his return to the University, our new Vice Chancellor, Dr Michael Spence, asked me somewhat provocatively: will the law school in the new building be more than 'old wine in new bottles'. My answer? Certainly we will! But Michael's challenge does raise some vital questions; what are the aims of modern legal education, and what is it that makes for excellence in our research and teaching? When the construction site was officially launched by the Chief Justice, James Spigelman, the words of the US Chief Justice Cardozo were adopted: 'the Law like the traveller, must

prepare for the morrow.' These words aptly state our objectives today.

Internationalisation

Our aim is to prepare our graduates for legal practice in a 21st century transnational and international environment, allowing them to move with confidence across many jurisdictional boundaries and to draw upon international and comparative law to provide answers to the interconnected global problems of today such as climate change, poverty, trade regulation, pandemics and the mass movements of peoples.

Clinical legal education and social justice programs

Students often arrive at law school with the desire to 'save the world' and ensure that a rule of law approach underpins social justice. We hope to keep this light burning by giving students a clinical experience through our new Social Justice Program and to encourage our graduates to give time to pro bono work throughout their professional careers. I am pleased to announce that we have recently appointed Dr Peter Cashman as the inaugural Professor in Law and Social Justice and that the Senate has authorised me to name this Chair in memory of our former Chancellor Kim Santow.

Generic legal skills

Another of our objectives is to encourage critical legal thinking and to use law as a tool in effective problem solving. While we teach the 'Priestly 11' core legal subjects, of lasting value are an understanding of the fundamental principles of the common law and the skills of analysis and creative thinking, the ability to use law ethically as a means of finding solutions and to argue persuasively and objectively.

With these goals of legal excellence in mind I can think of no more exciting time to be studying law.

There are, nonetheless, many challenges that we face as a law school. How do we ensure fair access to legal education while maintaining our very high standards for admission? How do we ensure our fruitful contacts with the down town profession do not diminish with the move to the Camperdown campus? What are the implications of the 'Americanisation' of Australian legal education when 13 or so of the 31 law schools in Australia now offer a JD degree rather than, or as well as, the traditional LLB? How do we ensure the best quality research and teaching when governments contribute less and less to the real costs of legal education? How too will we adapt to the need to meet both professional and generalist demands? This wonderful building and advanced technology will, I am sure, help us respond to these challenges.

We have recently reinvigorated the Law Foundation as the public face of the Law School under the Chairmanship of Bruce McWilliam, with our Patron Sir Lawrence Street. I do hope that you will support our efforts over the coming years.

Best wishes,

Professor Gillian Triggs
Dean, Faculty of Law

QUEEN'S BIRTHDAY HONOURS

Congratulations to the following alumni who received a 2009 Queen's Birthday Honour.

Mr Graham Bradley, AM
BA '72, LLB '72

Member of the Order of Australia for service to business, and to the community as a supporter of medical research and arts organisations.

Mr Robert Bruce, OAM
LLB '64

Medal of the Order of Australia for service to the community, particularly through the Rotary Charity Regatta.

Mr Alan Hemmingway, CSC
BA '75, LLB '77

Conspicuous Service Cross for outstanding achievement as an operations and international law expert.

The Hon Mr David Hodgson, AO
BA '59, LLB '62

Officer of the Order of Australia for service to the judiciary and to the law, particularly through the Supreme Court of NSW.

Mr Paul McClintock, AO
BA '71, LLB '74

Officer of the Order of Australia for service to business through leadership and management roles in the areas of finance and health, to Australian-Malaysian relations, and to public policy development.

Emeritus Professor Warren Pengilley, AM
BA '60, LLB '63

Member of the Order of Australia for service to the law as a practitioner, regulator, academic and commentator in the areas of trade practices and franchising.

Mr Kenneth Youdale, OAM
LLB '50

Medal of the Order of Australia for service to the community, particularly through support for people affected by thalidomide, and their families.

HONORARY AWARDS

THE SYDNEY LAW SCHOOL WARMLY CONGRATULATES DISTINGUISHED ALUMNI, THE HON JUSTICE ARTHUR ROBERT EMMETT AND MR BRUCE McWILLIAM, ON THE CONFERRAL OF UNIVERSITY OF SYDNEY HONORARY AWARDS AT THE FACULTY OF LAW GRADUATION CEREMONY ON 22 MAY 2009.

Justice Emmett was awarded the degree of Doctor of Law (*honoris causa*) for his long and distinguished service to the University in the teaching of law, particularly of Roman law, and for the example he has given as an alumnus of the Sydney Law School.



Now a senior judge of the Federal Court of Australia, Justice Emmett had an accomplished career as a solicitor for 11 years and was a member of the New South Wales Bar for 19 years. It was at the Bar in 1987 that Justice Emmett was one of the counsel in the last Australian appeal to the Judicial Committee of the Privy Council in *Austin v Keele* (1987) 61 ALJR 605.

Justice Emmett's fascination with Roman law and its influence in the legal traditions of civil law countries has ensured that this subject has continued to enrich the curriculum offered by the law school. Since he began teaching the subject in 1980, many students have flourished under his tutelage.

In his address to graduates, Justice Emmett exhorted graduating students to go out into the world and make use of their degrees, abiding by the three commandments of the law formulated by Ulpian, a great classical jurist:

Honeste vivere, alterum non laedere, suum cuique tribuere.

That is to say: 'Live honourably, harm no one, give everyone their due'.

Bruce McWilliam was awarded the title of Honorary Fellow of the University for his loyal and active membership of the University community, participation in alumni activities, advice to the Dean and promotion of the interests and advancement of the law school.



Bruce is Commercial Director of the Seven television network and is on the board of directors of Seven Network Ltd. His career in the television industry spans Australia, London, Germany and the US and follows a successful commercial law career.

He is a passionate supporter of community causes he cares about, and has been a great advocate for the law school's relocation to the Camperdown campus. In his address to graduates, Bruce said, 'the fact that the University has devoted so much to creating such an amazing law faculty building shows the importance that it places on legal studies'.

Bruce urged students to carry on the standards set by previous distinguished alumni and also to mentor younger colleagues, taking the time to 'give something back, to the University and to the wider community, as so many of those who have gone before you have so demonstrably done'.

NEW LAW BUILDING OPENING CELEBRATIONS

GALA RECEPTION

THURSDAY 30 APRIL 2009

**'The law school is not
words on paper;
it is people relating to
each other, teachers
and students'**

Governor-General Quentin Bryce

After nearly 120 years downtown, the Sydney Law School celebrated its historic move to the heart of the University of Sydney's Camperdown Campus with a gala reception that assembled hundreds of supporters and friends of the law school from all echelons of the legal, government and University communities.

The sense of excitement was palpable as guests were welcomed to be part of a new era for the Sydney Law School. The atmosphere was heightened by the sense of dynamism and openness that is integral to the architecture of the building, which was designed by Francis-Jones Morehen Thorp.

The official address was given by Chief Justice James Spigelman who reflected that the 'relocation serves the interests of the profession, of the University and of the broader community they both serve', emphasising the importance of broadening intellectual horizons through greater engagement with other spheres of discourse.

The building was officially launched by Governor-General Quentin Bryce and Attorney-General Robert McClelland.

In her welcome address Professor Gillian Triggs, Dean of the Sydney Law School, said that the building's 'state of the art new facilities, alive with daunting technology, will enable us to achieve our aims of being a global law school, offering exceptional legal education. In short, the building will help us to create a law school that makes a difference.'

Guests were also treated to reflections from Vice-Chancellor Dr Michael Spence and University of Sydney Chancellor, Her Excellency Marie Bashir, and a highly entertaining performance from the NSW Bar and Law School Choir.



Professor Gillian Triggs, Dean of the Sydney Law School, gives her welcome address.



May Samali, President, Sydney University Law Society.



The NSW Bar and Law School Choir.



Speakers from left to right: Chief Justice James Spigelman; Dr Michael Spence, Vice Chancellor, University of Sydney; Governor Marie Bashir, Chancellor, University of Sydney; Governor-General Quentin Bryce; The Hon Robert McClelland MP, Attorney-General; Professor Gillian Triggs, Dean, Sydney Law School.



L-R: Professor Gillian Triggs, Dr Michael Spence, Governor-General Quentin Bryce and Richard Francis-Jones.



Members of the Sydney University Law Society Executive Committee.

We wish to thank all donors to the Sydney Law School Building Fund, and in particular Principal Supporters: Allens Arthur Robinson, Clayton Utz, Freehills, Macquarie Group Foundation and The Turnbull Foundation.

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Staff and students are deeply grateful for every gift from these and many other donors to the Sydney Law School Building Fund, scholarships and prizes, research and teaching, and other Faculty projects.

NEW LAW BUILDING OPENING CELEBRATIONS

SULS Sausage Sizzle.



OPEN DAY

THURSDAY 30 APRIL 2009

On 30 April 2009 the doors of the New Law Building opened to over 1500 alumni, law professionals, members of the University community, and passers-by all curious to explore the latest architectural addition to the University's Camperdown campus.

Visitors caught a rare insider's peek at some of the outstanding features of the Francis-Jones Morehen Thorp-designed and Baulderstone-constructed building. They also enjoyed entertaining and thought-provoking lectures, lively debates and mock trials showcasing the diversity of the law and its application in everyday life. Among the many highlights of the program were a climate change debate moderated by Adam Spencer, a talkback session on the death penalty in Asia and a hypothetical on issues of law and genetics.

Contemporary legal issues were brought to life with exhibitions and displays. A highlight of these was a multimedia and art exhibition with Boomgate Gallery (Long Bay Correctional Complex) bringing together the art, poetry and music of inmates and drawing attention to the issue of rising prison populations.

Guided tours, movie screenings, improvised theatre and live music ensured there was something for everyone.

The Open Day kicked off broader celebrations that concluded with a glittering reception where the building was officially launched by the Governor-General Quentin Bryce and Attorney-General Robert McClelland.



Dr. Murray Lee – Speakers Corner.



Moot Court and Dispute Resolution Centre.



In Conversation Panel Debate – State Building.



One of the many seminars.



Sydney Law School student Carmen Culina in costume with Baulderstone representatives.



Exhibition – Imprisoned: Whose responsibility?



The Reflection Lounge.



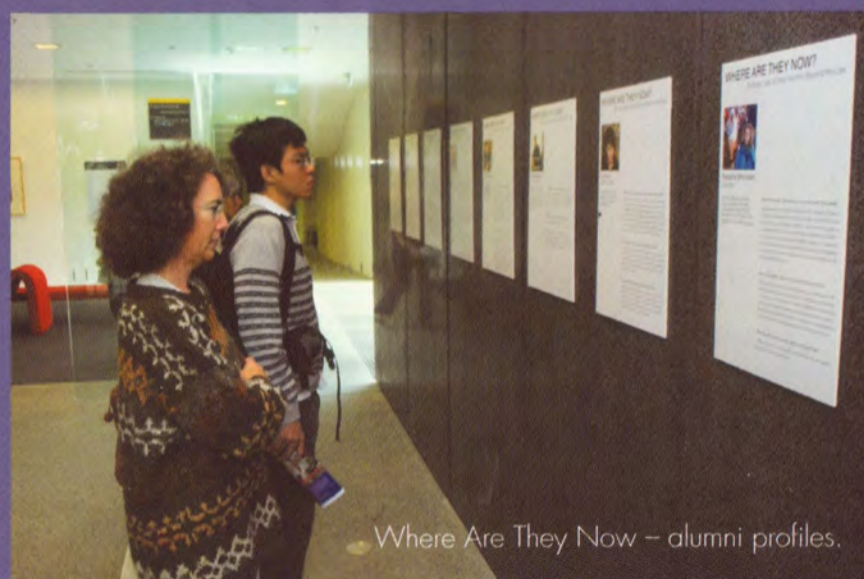
FJMT photographic display.



Adam Spencer – moderator for the Climate Change debate.



The Death Penalty in Asia talkback session.



Where Are They Now – alumni profiles.



Centre displays.



CELEBRATE THE FUTURE

**In changing times, legal knowledge
is more important than ever.**

To deal with the urgent challenges our world faces – from climate change to financial regulation to finding a balance between international security and human freedom – we need experts who can understand the complex legal issues involved and craft workable solutions.

At Sydney Law School, our goal is to produce legal graduates and scholars who can tackle the pressing concerns that confront society in the 21st century. Our academics are leaders in their disciplines, providing the clear thinking needed to frame new carbon trading laws, protect refugees, regulate global finance and help address a host of other economic, social and environmental issues.

Meanwhile, they are providing an inspiring education to our talented students, equipping them with the skills of problem solving and advocacy required to contribute as influential lawyers, business executives, community leaders and citizens.

And because we live in a world where legal services are increasingly globalised, it has become a central plank of our mission to create law school graduates with the ability to move flexibly across national borders and navigate different legal systems.

The stakes are high – no less than the future of the world and Australia's place within it – which is why we are dedicated to expanding and enhancing the law school's rich program of world-class research and education. But we will need the loyal support of our alumni and friends to achieve our goals.

That is why we invite you to celebrate Sydney Law School's historic move into its

remarkable building on the University of Sydney's Camperdown campus by making an investment in our fresh ideas and new talent. Your gift, pledge or bequest indication will make a real difference, as we embark upon the next exciting stage of our journey.

Thank you.

**Invest in change with a gift to one of
our priority areas:**

Research

Help our world-class academics to seek and find solutions across a diverse spectrum of issues. Whaling, deforestation, child protection and tax reform in developing nations are just a few of the areas we are currently focused on. By supporting an area that matters greatly to you, you can expand the impact of our research and help attract talented new scholars to our staff. Your support will also boost the faculty's international reputation and enrich our teaching, because a truly great law school is research-driven.

Social Justice Program

In response to rising demand from students, the legal profession and academic staff for clinical legal education as an integral part of a law degree, we must offer students the opportunity to experience pro bono and practical legal work. Building upon our existing external placement program, students will work under supervision with groups such as the Public Interest Law Clearing House, the Refugee Advice and Casework Service and Legal Aid to gain insight into the realities of legal practice. To establish and grow this important program we urgently need your support.

Scholarships

Give back to the school that launched your own career by helping us continue our 150-year tradition of educating graduates who make a difference – as Prime Ministers, Chief Justices, human rights advocates, and countless other leadership roles. With a gift to scholarships you can help us continue to attract the best and brightest students. You can also give a talented student who is financially or otherwise disadvantaged the opportunity to realise their full potential by studying at Sydney Law School. We also have an urgent need to increase support for post graduate students, the next generation of leaders.

Facilities

With the strong support of our alumni and friends, we have created a state-of-the-art new home for Sydney Law School at the heart of the University's historic Camperdown campus. Equipped with purpose-built teaching spaces, a new law library and an electronic moot court, it is a platform for us to consolidate our position as one of the world's leading law schools. We require ongoing investment to maintain the building and provide the leading-edge technology required for a 21st century legal education. Your gift will help secure the physical foundation for its future success.

For more information

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SYDNEY LAW SCHOOL DISTINGUISHED SPEAKERS PROGRAM 09



In 2009 the Sydney Law School embarked on an exciting phase, relocating to its new light-filled and elegant building on the University's Camperdown Campus. To mark this relocation, the School is privileged to host eminent law professionals and academics from around the world as part of our Distinguished Speakers Program.

The program has offered students and visitors the opportunity to engage with the law in inspiring, purpose-built spaces.

In this special feature, Sydney Law School academics review just some of the thought provoking, inspiring and at times controversial lectures in the program.



CURRENT ISSUES IN INTERNATIONAL COMMERCIAL ARBITRATION 4 MAY 2009

PROFESSOR JAMES CRAWFORD SC LLD FBA
WHEWELL PROFESSOR OF INTERNATIONAL LAW,
UNIVERSITY OF CAMBRIDGE

It was a special feature of the launch of the New Law Building that our former Dean, Professor James Crawford, SC LLD, was able to join us from the University of Cambridge where he is the Director of the Lauterpacht Centre for International Law. On 4 May 2009, Professor Crawford gave a paper as part of the Distinguished Speakers Program entitled 'Developments in International Commercial Arbitration: The regulatory framework'.

In his lecture, Professor Crawford considered the current efforts by the Commonwealth Attorney-General's office to review the *International Arbitration Act 1974* (Cth) which gives effect to the regulatory framework established by the *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958*, and the *UNCITRAL Model Law and Arbitration Rules*. The work of the UNCITRAL Working Group to reform the 1976 UNCITRAL Arbitration Rules was also considered. The potential for updating the Rules to reflect current arbitral practice was analysed in the international context of subject-matter jurisdiction, the writing requirement, applicable law, defences, counter-claims

and set-offs, joinder, provisional measures, confidentiality and privacy and the role of the Permanent Court of Arbitration as a default authority. Professor Crawford's professional experience of international arbitration informed his support for certain reform proposals, including recognition that absolute confidentiality may not be either desirable or achievable.

While acknowledging the views of one commentator that the 'process is unbelievably tedious', Professor Crawford concluded that the reform efforts are useful, though modest in scope. He made the valuable point that, as multilateral conventions are, in practice, almost impossible to amend, optional rules and model laws such as those developed by UNCITRAL can achieve international legislative reform in an incremental and palatable way.

The outcomes of the efforts by UNCITRAL and Commonwealth Attorney-General's Department to review and amend the Rules remain to be determined. Professor Crawford surveyed the central matters under review and provided an informed commentary on the proposals for reform.

ACADEMIC REVIEWER Professor Gillian Triggs



Gillian Triggs is the Dean of the Faculty of Law, University of Sydney. She is a Public International Lawyer and a former Director of the British Institute of International and Comparative Law, and General Editor of the *International and Comparative Law Quarterly*. Gillian has published on territorial and maritime sovereignty, jurisdiction, energy and resources law, WTO and international criminal law. Her most recent books are *International Law: Contemporary Principles and Practices 2006* and *International Frontiers and Boundaries 2008* (with Prescott).

Gillian was admitted to practice as a Barrister and Solicitor in 1969 and has maintained an international commercial legal practice with Mallesons Stephen Jaques and at the Victorian Bar for over 40 years.

Turbulence in the international community has continued well into the 21st century. In the face of ongoing conflicts is the challenge to establish internationally accepted principles of human rights, humanitarian law and criminal law. The Sydney Centre for International Law has encouraged discourses in different realms of international law, inviting distinguished speakers from around the world to share their insights and experiences with Australian academics and students.



JUDGING IN THE INTERNATIONAL COURT OF JUSTICE AND OTHER NATIONAL AND INTERNATIONAL COURTS AND TRIBUNALS 7 APRIL 2009

SIR KENNETH KEITH ONZ KBE QC
JUDGE OF THE INTERNATIONAL COURT OF JUSTICE

To deliver the first lecture for the centre as part of the Distinguished Speakers Program, the centre was greatly honoured to host Sir Kenneth Keith ONZ KBE QC.

Sir Kenneth Keith has made an impressive contribution to law reform, academia and the judiciary. He has served on more than 10 international courts and tribunals, including the Court of Appeal and Supreme Court of New Zealand and the Judicial Committee of the Privy Council. Since 2006, Sir Keith has served as a judge of the International Court of Justice in The Hague.

In his lecture 'Judging in the International Court of Justice and Other National and International Courts and Tribunals' Sir Keith shared the insights of a remarkable career, exploring the 'who, how and what' of the International Court

of Justice. That is, who is elected to the court, how decisions are reached, and what is their subject matter.

On the composition of the International Court of Justice, Sir Keith remarked: 'plainly, there are great differences of background, of legal education, legal traditions ... and views of the judicial process'. It is clear that these differences make for 'intense interaction among the judges' in the drafting of judgments. As Sir Keith noted 'some of the debate is of extraordinarily high quality ... some of it is about 'first' and 'firstly' and split infinitives'.

The late Sir Robert Jennings, who served as President of the ICJ from 1991 to 1994, described the judicial decision-making process as 'ecumenical'. As Sir Keith elaborated, 'ecumenical' in the fullest sense describes a

process 'belonging to the whole world'. In his view, this is apposite to the 'very collective operation' of judgment drafting in the ICJ.

Sir Keith also spoke of the concerns of fragmentation and proliferation resulting from the development of specialist international courts and tribunals. In his view, international disputes that cannot be settled in other ways 'can now be settled by international tribunals. This is to be applauded'. The fear of fragmentation and proliferation is 'vastly overstated'.

He continued, 'we just need to keep learning from one another and we need to keep meeting in the kind of ways that we do and reading one another's judgments and reflecting on them'.



AN AUSTRALIAN BILL OF RIGHTS? LEARNING FROM THE BRITISH EXPERIENCE 8 APRIL 2009

PROFESSOR CONOR GEARTY
PROFESSOR OF HUMAN RIGHTS LAW AND DIRECTOR OF THE CENTRE FOR THE STUDY OF HUMAN RIGHTS, LONDON SCHOOL OF ECONOMICS

The centre was similarly honoured to host Professor Conor Gearty, Professor of Human Rights Law and Director of the Centre for the Study of Human Rights at the London School of Economics. His engaging and entertaining lecture drew on lessons from the British experience of a Human Rights Act – a timely subject considering the National Human Rights Consultation, which is due to report on 31 August 2009.

Professor Gearty acknowledged that he was once a sceptic regarding statutory human rights. However, he was converted by the

careful design of the Act which strikes a 'subtle balance between the respect required of the democratic legislature and the need to develop a human rights perspective on law' and the quality of judicial applications of the Act to date.

The unique political situation in the United Kingdom in the 1980s generated the political will for a Human Rights Act. Professor Gearty explained that 'there was a loss of confidence in the legislative and executive capacity and desire to protect freedom. But there also was great concern about the judiciary's capacity to

protect freedom ... it was actually precipitated by the perception that the courts had colluded in some of the excesses of the Thatcher administration.'

As for the success of a Bill of Rights in Australia, Professor Gearty offered lessons from the British experience. In particular he noted the 'need to embed the language of human rights in the culture'. Explaining of the language of human rights, 'all the evidence is that it facilitates good decision-making, it improves public policy ... and it is the most ethical language that we have'.



ISRAEL'S WAR IN GAZA AND INTERNATIONAL LAW

15 APRIL 2009

PROFESSOR YUVAL SHANY

HEBREW UNIVERSITY OF JERUSALEM

It is unusual to find someone prepared to dismiss their own craft. But Dr Yuval Shany, the Hersch Lauterpacht Chair in Public International Law at the Hebrew University of Jerusalem did just that on 15 April in his lecture, 'Israel's War in Gaza and International Law' accepting that 'international law delivers less than it actually offers'.

The traditional tilt in analysis of the issue of Israel within Gaza is toward describing Israeli action as fundamentally violating international law. However, for Dr Shany, debating Israel's actions in Gaza is itself 'hopelessly limited by the vague nature of international principles'.

A situation such as Gaza highlights the difficulties of international law aptly. Applying proportionality to an attack by Israel that is in response to few casualties but 8 years of disturbance is an impossible exercise. Dr Shany queries, 'where do we draw the line?' Balancing military advantages with collateral damage

cannot be the mathematic equation it purports to be. How does one quantify the unquantifiable?

Ruefully noting 'I have more questions than answers to give you', Dr Shany suggested that we are asking the wrong questions. International lawyers have sought to answer whether the barrage of Qassam rockets shot at Israel constituted an armed attack that justified an invasion of Gaza. But for Dr Shany, these 'yes' or 'no' questions promote a sterile discussion, and attempt understanding of a complex issue within a virtual reality.

'I fear that the current state of affairs is an indication that the Israeli Defence Force has not fully internalised the need to seriously abide by the law', Dr Shany explained. 'I believe that Israel, like any other nation, has a legal, moral and political imperative to abide by the rules and principles of international law.'

By bringing international lawyers together from all over the world, the Distinguished Speakers Program actively contributes to discourse and discussion on topical and significant issues in the world today. And in international law more than any other area, as highlighted by Sir Kenneth Keith, it is essential for nations to share their experiences to move forward with a collective framework.

The Distinguished Speakers Program will also include presentations from Professor Martti Koskeniemi on International Law and State Power and a former Chair of the appellate body of the WTO, Professor Yasuhei Taniguchi.



ACADEMIC REVIEWER

Dr Ben Saul

Ben Saul is Director of the Sydney Centre for International Law and Coordinator of the Master of International Law Program at the Sydney Law School.



Ben specialises in public international law, particularly anti-terrorism law, humanitarian law, international criminal law and human rights law.

Ben has published widely in international law journals and is Editor in Chief of the *Australian International Law Journal*. He has delivered lectures, seminars and conference papers in Australia and overseas, and given evidence to numerous parliamentary and law reform inquiries. He is active in public debates about terrorism, sedition, torture, refugees and human rights.



**SYDNEY CENTRE
FOR INTERNATIONAL LAW**
FACULTY OF LAW, UNIVERSITY OF SYDNEY

The Sydney Centre for International Law was established in 2003 as a centre of excellence in research and teaching in international law, and aims to provide a fresh focus for international legal research and practice in Australia. The Sydney Centre operates within the University of Sydney's Faculty of Law and builds upon the faculty's well-recognised history of research, scholarship and teaching in international law.

Further information:

www.law.usyd.edu.au/scil



THE NEW EUROPEAN PRIVATE INTERNATIONAL LAW OF OBLIGATIONS: MARVEL OR MONSTROSITY?

20 APRIL 2009

ANDREW DICKINSON

CONSULTANT TO CLIFFORD CHANCE LLP, AND VISITING FELLOW AT THE BRITISH INSTITUTE OF INTERNATIONAL AND COMPARATIVE LAW



The focus on the transnational dimension of law is a distinctive feature of the Sydney Law School LLB program. Fittingly, Sydney Law School has hosted a number of visiting private international law scholars over the years, most recently Andrew Dickinson, a leading English practitioner and scholar.

Andrew is a consultant to Clifford Chance LLP, Visiting Fellow at the British Institute of International and Comparative Law and a member of the UK Ministry of Justice's private international law committee. Andrew is also a widely published scholar whose most recent major work, published by Oxford University Press in 2008, is *The Rome II Regulation: The Law Applicable to Non-Contractual Obligations*.

On 20 April Andrew delivered a stimulating and enlightening lecture as part of the Sydney Law School Distinguished Speakers Program 2009. The lecture, titled 'The New European Private International Law of Obligations: Marvel or Monstrosity?', considered the new regime of choice of law rules for tort and other non-contractual obligations (the Rome II Regulation) adopted by the European Parliament and the Council of the European Union, which entered into force in all member states of the European Union except Denmark on 11 January 2009.

In his lecture, Andrew focused on choice of law in tort observing that, as a result of the decisions of the High Court in *John Pfeiffer v Rogerson* in 2000 and *Regie Nationale des Usines Renault v Zhang* in 2002, there had been revolutionary change in Australia of a kind different to that in the European Union. In *Rogerson* and *Zhang*, the High

Court abandoned the longstanding double actionability rule derived from the 1870 decision in *Phillips v Eyre* and restated the Australian common law as requiring, without exception, the application of the law of the place where the tort was committed.

By way of comparison with the relatively predictable but inflexible Australian rule, the Rome II Regulation adopts a more complex but less rigid approach to choice of law in tort, and one that is more likely to give effect to reasonable and legitimate party expectations and promote justice in individual cases.

The Rome II Regulation requires the application of the law of the country in which the direct or immediate tort damage occurred, irrespective of where the event giving rise to the damage occurred or where indirect consequences of that event occur. However, if the wrongdoer and the tort victim have a common habitual residence, the law of that country is to be applied. Thus if one New South Wales resident injures another New South Wales resident in an accident while the parties are on a motoring holiday in England, an English court will apply New South Wales law in any tort proceedings by the injured party.

There is a further element of flexibility in the Rome II Regulation. Where it is clear that the tort is 'manifestly more closely connected' with a country other than where the tort damage occurred or the parties' common habitual residence, the law of that country is to be applied.

The Rome II Regulation applies to torts committed within and outside the European Union and makes special provision for torts involving product liability, unfair

competition, environmental damage, infringement of intellectual property rights and industrial action. However, the Rome II Regulation does not apply to defamation or invasion of privacy.

There is much to be learned about the strengths and deficiencies of one's own legal system through the study of comparative law, and in this respect Andrew's lecture was received with great interest.

Andrew Dickinson will return to the Sydney Law School in 2010 to teach a European private international law unit in the postgraduate program.

ACADEMIC REVIEWER

Ross Anderson

Ross Anderson is Associate Dean (Learning and Teaching) at the Sydney Law School and teaches units in International Law, Private International Law, Torts, Torts and Contracts II.



Ross is a longstanding favourite of past and present students, and has been recognised with the prestigious University Excellence in Teaching Award 'in recognition of outstanding contributions to the teaching of the University'.



'DECOUPLING', GOVERNANCE AND THE WORLD FINANCIAL CRISIS

12 JUNE 2009

HENRY HU

ALLAN SHIVERS CHAIR IN THE LAW OF BANKING AND FINANCE, UNIVERSITY OF TEXAS

2009 Ross Parsons Address in Corporate Law

On 12 June, Professor Henry T Hu presented the 2009 Ross Parsons Address in Corporate Law as part of the Distinguished Speakers Program. The address was on the topic, 'Decoupling', Governance and the World Financial Crisis'. Mr Greg Medcraft, Commissioner to the Australian Securities and Investments Commission (ASIC), acted as commentator at the event, which was chaired by Professor Jennifer Hill.

Professor Hu holds the Allan Shivers Chair in the Law of Banking and Finance, University of Texas Law School. He is one of world's leading experts on financial derivatives and has written widely on a range of topics including hedge funds, mutual funds and corporate governance. He has testified before Congress on the role of credit default swaps in the current financial crisis and on the collapse of Long Term Capital Management.

Professor Hu's address was based upon a series of highly influential scholarly articles, which he has co-authored with Professor Bernard Black since 2006, dealing with the phenomenon of 'decoupling' in the debt, equity and hybrid contexts. 'Decoupling' refers to the ability in the modern world of financial innovation to separate, or unbundle, key elements of securities. Equity decoupling describes the unbundling of voting and economic rights attached to shares, which may effectively result in 'empty voting'. As Professor Hu demonstrated in his address, decoupling and empty voting challenge many traditional assumptions in corporate law concerning the behavioural incentives of shareholders. A shareholder with voting rights, but no commensurate economic interest, may no longer have incentives to see the corporation prosper.

Professor Hu has coined the phrase 'empty creditor' to describe the parallel trend in the context of debt financing, where modern financial instruments like credit default swaps allow creditors to detach control rights from economic risk in relation to a debt. In his address, and in an article

in the *Wall Street Journal* entitled 'Empty Creditors and the Crisis' (10 April 2009, A 13), Professor Hu discussed the implications of this trend in AIG's near collapse in September 2008, arguing that, in spite of the fact that AIG owed Goldman Sachs around \$7 billion, Goldman was largely an empty creditor of AIG. As in the context of equity, debt decoupling challenges fundamental assumptions about the behaviour of creditors and their relationship with the debtor company.

The phenomenon of decoupling is part of the broader issue of market integrity, an issue of great current interest to Treasury, ASIC and the Corporations and Markets Advisory Committee (CAMAC). Commissioner Medcraft, who provided commentary on the address, has particular expertise in this area, since he was the co-founder of the American Securitization Forum, an industry group representing around 350 member institutions in America's \$1 trillion securitisation market.

Commissioner Medcraft also placed Professor Hu's address within the framework of current regulatory developments in Australia concerning derivatives and issues of market integrity. He noted that the problems identified by Professor Hu in relation to debt decoupling, and the importance of transparency as a regulatory response, were directly relevant to a range of issues that ASIC is currently considering.

Commissioner Medcraft also discussed a number of international initiatives to strengthen financial markets and investor protection, including the International Organization of Securities Commissions (IOSCO) Task Force on Unregulated Financial Markets and Products. IOSCO has charged this Task Force with finding ways to introduce greater transparency and oversight to segments of the unregulated financial markets. The Task Force is co-chaired by ASIC and the Autorité des Marchés Financiers of France, and its 12 member countries include a number of other leading international regulators, such as the FSA and the SEC.

ACADEMIC REVIEWER

Professor Jennifer Hill

Jennifer Hill is Professor of Corporate Law at Sydney Law School and a Director of the Ross Parsons Centre of Commercial, Corporate and Taxation Law. She is also a Visiting Professor at Vanderbilt Law School (2007-2010), and has previously taught at other US law schools, including University of Texas at Austin (1999), University of Virginia (1998) and Cornell University (1994).



Jennifer is a Research Associate of the European Corporate Governance Institute (ECGI) and a member of the Corporations and Markets Advisory Committee (CAMAC), Legal Subcommittee. Her recent research has focused on executive remuneration, regulatory responses to global corporate scandals, and differences in the balance of power between shareholders and management across common law countries.



Ross Parsons

Centre of Commercial, Corporate and Taxation Law

The objectives of the Ross Parsons Centre are to undertake, promote and support innovative and important scholarship, including teaching, research, consultancy and advocacy in all areas of commercial, corporate and taxation law.

Further information:
www.law.usyd.edu.au/parsons

'It is not the strongest of species which survive, nor the most intelligent, but the ones most responsive to change.'

Charles Darwin



CENTRE FOR HEALTH GOVERNANCE, LAW AND ETHICS ORATION 2009: SHARING CARING IN A TIME OF BUDGET INSUFFICIENCY – IS THERE AN ETHICAL REFORM PARADIGM? 26 MARCH 2009

PETER GARLING SC

COMMISSIONER OF THE SPECIAL COMMISSION OF INQUIRY INTO ACUTE CARE SERVICES IN NSW PUBLIC HOSPITALS

One of the most difficult challenges facing governments in Australia and around the world is to contain rising health costs, while meeting the public's expectations of access and service quality. Eminently familiar with this challenge is Sydney Law School alumnus Peter Garling SC (BA '75, LLB '77). Most recently Mr Garling headed the NSW Government's Special Commission of Inquiry into the NSW public hospital system, which delivered its report in November 2008.

On 26 March, Mr Garling revisited the challenges facing public hospitals when he delivered the 2009 Oration of the Centre for Health Governance, Law and Ethics titled 'Sharing Caring in a Time of Budget Insufficiency: Is there an ethical reform paradigm?'

Mr Garling provided the following sobering figures: at 28 percent, health expenditure is the largest proportion of NSW government spending. This amounts to \$36 million per day, or \$1.5 million per hour. The health needs of an ageing population impose sharp cost pressures on government. On 2009 figures, unless the rate of growth in health system expenditure is curtailed, by 2040

health spending will consume 100 percent of the annual NSW budget.

While expenditure needs to be curtailed, there can be few more ethically- and politically-charged issues than deciding whose health care needs should lose priority, relative to the needs of others, and ultimately to other government priorities. As Mr Garling pointed out, there are alternative solutions, such as raising taxation or charging patients for services received in public hospitals – but these alternatives sacrifice the principles of free and universal access. More feasible is the option of modifying what Australians are able to claim from the public hospital system in the light of budgetary constraints.

An important theme in Mr Garling's oration was that the big questions about health resource allocation themselves constitute a reform process that must be approached in a rational and systematic manner. In Mr Garling's view the key to successful reform lies in 'starting with achievable small steps, and then developing to embrace the larger and more difficult decisions rather than the reverse'.

Special Commission of Inquiry

The Special Commission of Inquiry chaired by Mr Garling delivered its report to government in November 2008. The report made 139 recommendations. Among the recommendations were the proposed establishment of three new independent agencies: a Bureau of Health Information, a NSW Institute for Clinical Education and Training, and a Clinical Innovation and Enhancement Agency. These agencies would join the work of the existing Clinical Excellence Commission in driving culture change and monitoring the performance of the public health care system.

Enablers and impediments to reform

Better information is the first enabler of the reform process. The Garling Commission recommended the establishment of an independent Bureau of Health Information that would systematically measure the performance of service delivery in hospitals, including safety and quality, and patient outcomes. Another important enabler of reform is the development of an agreed process for debating and agreeing on rules for the sharing of resources.



The main impediment to reform, Mr Garling told the audience, is that there is no right answer to the challenge of health resource allocation: 'One is entering the field where economic rationalism comes face to face with individual standards of morality, individual values and a multitude of different perspectives... Should the baby live? And should the grandparents die? There is no single and obvious answer to these questions.'

Four recommendations for reform

Mr Garling outlined four recommendations for reform in his oration. First, he recommended the design and implementation of evidence-based protocols for clinical interventions, as agreed by a broad network of clinicians through a process of consensus. Importantly, these standardised models of care for each disease or typical surgical intervention should be made public, so that the community knows what kind of care they will receive in a public hospital. Mr Garling acknowledged that standardised care models do limit clinician's choice, but he emphasised that standardised medicine does not mean substandard care.

Second, Mr Garling recommended a 25-year plan to guide planning for the capital investment and fixed resources necessary to support the effective implementation of these protocols and models of care. Long term planning avoids the demands of sectional interests and the volatility of the political cycle. Third, Mr Garling pointed to the need for the public to become more involved in their own care, with greater use of living wills and mechanisms for formalising patient choice about the use of the expensive

technology that characterises much end of life care. Finally, Mr Garling proposed the development of a Charter of Patient Rights 'which makes it plain what it is that a patient and their family can expect to receive from the public health care system'.

Pointing to the words of Charles Darwin, nearly 150 years ago, Mr Garling concluded: 'It is not the strongest of species which survive, nor the most intelligent, but the ones most responsive to change.'

Rejoinders

The Garling oration led to lively discussion, chaired by Professor Mary Chiarella from the University's Faculty of Nursing and Midwifery. A trained lawyer and nurse, Professor Chiarella also gave a rejoinder to the oration, proposing a Clinicians and Community Council as a possible structure for re-engaging clinicians (and not just doctors) in the challenge of tackling resource allocation issues. Dr Mark Ragg, a journalist and health communications consultant, also responded to Mr Garling's address, pointing to the need for resource allocation decisions to confront the relative priority of prevention versus clinical care, and not just the distribution of acute care services.

ACADEMIC REVIEWER

Professor Roger Magnusson

Roger Magnusson is Professor of Health Law & Governance at Sydney Law School and is a member of the Centre for Health Governance, Law & Ethics. He is currently the Associate Dean (Postgraduate Coursework). He teaches in the areas of medical law, public health law, media law, and banking and financial instruments. Roger has written extensively in the fields of public health law and medical law, most recently on regulatory approaches to the prevention of obesity and non-communicable disease.



Centre for
Health Governance
Law & Ethics

The HGLE Oration is one of a number of conferences, orations and seminars that the Centre for Health Governance, Law & Ethics hosts each year, to reach out to the community and to engage with current issues.

Sydney Law School offers a popular Master of Health Law (MHL), a Graduate Diploma in Health Law, and a Graduate Diploma in Public Health Law that is available to law graduates, health professionals, and other approved applicants.

Further information:

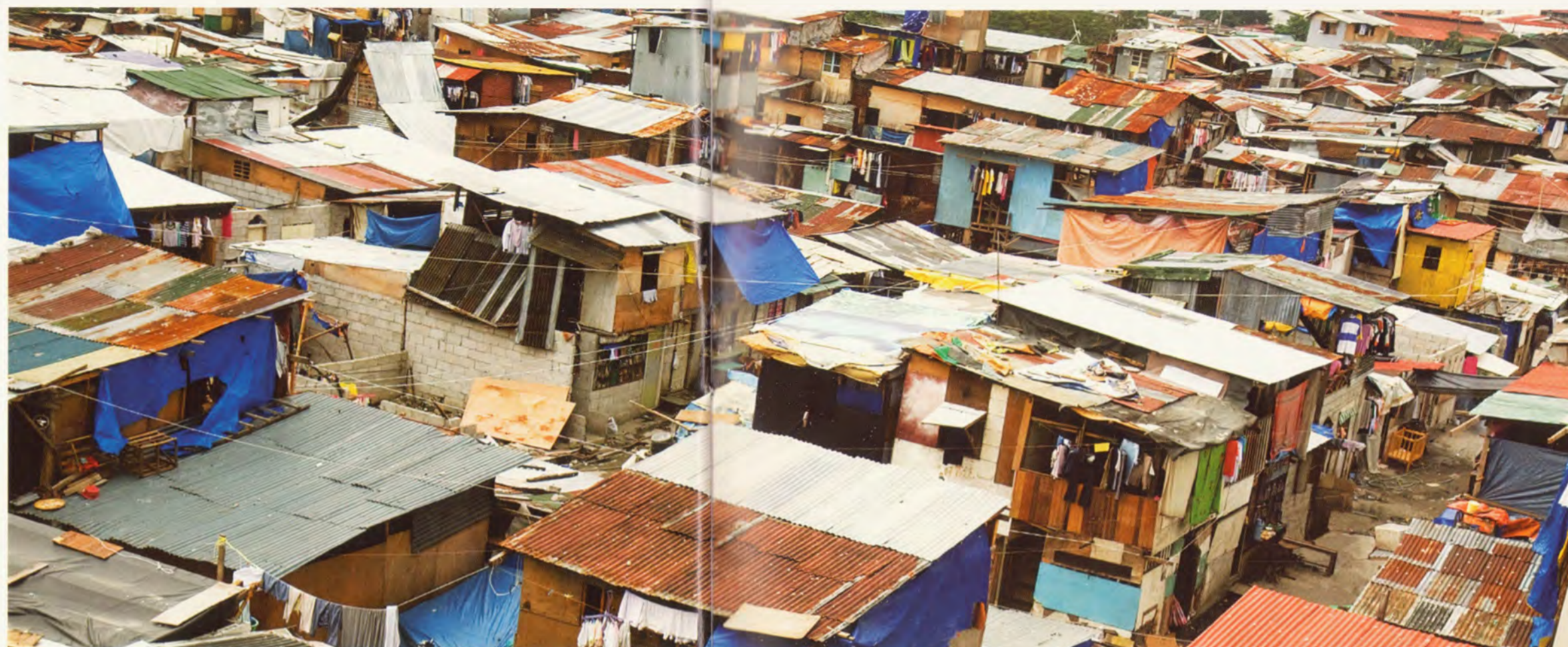
www.law.usyd.edu.au/health



ETHICS AND WORLD POVERTY 13 JULY 2009

PROFESSOR PETER SINGER

IRA W DECAPM PROFESSOR OF BIOETHICS, UNIVERSITY CENTER FOR HUMAN VALUES, PRINCETON UNIVERSITY; LAUREATE PROFESSOR, CENTRE FOR APPLIED PHILOSOPHY AND PUBLIC ETHICS, UNIVERSITY OF MELBOURNE



Peter Singer is Ira W DeCamp Professor of Bioethics at Princeton University and Laureate Professor at the University of Melbourne. In numerous books and articles, he has made significant contributions to various topics in practical ethics. Indeed, in 2005, *Time* magazine included him among the hundred people whom it named as the world's most influential.

Sydney Law School was delighted, therefore, when Professor Singer agreed to take part in its program of public lectures by distinguished speakers. The Julius Stone Institute of Jurisprudence and the Centre for Health Governance, Law and Ethics sponsored his talk, which took place on 13 July and was entitled 'Ethics and World Poverty'. Such was the remarkable level of interest in the event that many of the audience watched a live broadcast of it in another lecture theatre.

Following an introduction by the Dean, Professor Gillian Triggs, Professor Singer began his lecture with a story, a version of which he told when he initially considered the topic in a well-known paper in 1972 and which he puts this way in his most-recent book, *The Life You Can Save* (2009):

On your way to work, you pass a small pond. On hot days, children sometimes

play in the pond, which is only about knee deep. The weather's cool today, though, and it's early in the morning, so you are surprised to see a child splashing about in the pond. As you get closer you see that it is a very young child, just a toddler, who is flailing about, unable to stay upright or walk out of the pond. You look for the parents or babysitter, but there is no one else around. The child is unable to keep his head above the water for more than a few seconds at a time. If you don't wade in and pull him out, he seems likely to drown. Wading in is easy and safe, but you will ruin the new shoes you bought only a few days ago, and get your suit wet and muddy. By the time you hand over the child to someone responsible for him, and change your clothes, you'll be late for work.

If we think that we should save the child, said Professor Singer, then we ought also to help the 1.4 billion people who, according to the World Bank, live on less than US\$1.25 per day and so are in 'extreme poverty'. In both situations, he insisted, 'we can prevent something bad from happening, without sacrificing anything nearly as important'. But is his comparison convincing? Are there relevant differences between the two predicaments? Professor Singer developed his argument by

contemplating a number of objections to his contention of similarity.

He denied that our individual lack of capacity to rescue all of the poorest people in the world removes our moral obligation to help the many, like the drowning child, whom we can help. He also rejected the common belief that our governments, but not we, are required to act by pointing to the inadequate responses of contemporary states. To the criticism that charities and agencies are too inefficient to make a difference, he claimed that many do not merit this description and, indeed, some are highly effective. Finally, he dismissed the objection that we only have 'negative' duties not to harm others, as opposed to 'positive' duties to assist them, by arguing that our obligations are not limited in this way and, even if they were, strong evidence exists that we have, in fact, caused the harm that the poorest people in the world suffer.

Hence, for Professor Singer, we have a moral obligation to alleviate global poverty. For him, the fact that very few, if any, of us comply with this duty results from the irrationality of much of our behaviour, which, given our evolution, tends to favour those with whom we have personal relationships. Yet, he said, we have also evolved to think impartially and

we must strengthen this mode of thought and develop a transparent culture in which helping those in need elsewhere is normal. Because most people currently dismiss the required level of assistance as excessive, however, Professor Singer concluded by recommending that, if we are to be morally decent, we must give between 1 and 5 percent of our income to appropriate agencies. This and other aspects of his lecture were then challenged by the audience in a question-and-answer session.

Professor Singer's lecture can be downloaded from the law school's website.

ACADEMIC REVIEWER

Dr Kevin Walton

Kevin Walton is Director of the Julius Stone Institute of Jurisprudence and teaches in Theories of Justice, Theories of Legal Reasoning and Criminal Law. His particular areas of interest are in legal philosophy, political philosophy and social theory. Kevin's current research focuses on questions of methodology in legal and political philosophy by examining dominant interpretations of certain responses to legal obligations.



The Julius Stone Institute of Jurisprudence was established with the assistance of funds raised from and by the alumni and friends of the Sydney Law School, in particular from those who were students of Professor Stone, or who had worked with or been influenced by him. The Institute serves as a focus for theoretical scholarship in Australia, continuing the law school's strong leadership in this field.

Further information:
www.law.usyd.edu.au/jurisprudence

Centre for
Health Governance
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The Centre for Health Governance, Law & Ethics aims to promote and support innovative scholarship and teaching in all areas of health regulation including bioethics and health policy.

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DOES THE WTO REALLY SETTLE INTERNATIONAL TRADE DISPUTES? REFLECTIONS OF A WTO JUDGE, INTERNATIONAL ARBITRATOR AND CIVIL PROCEDURE PROFESSOR

30 JULY 2009

PROFESSOR YASUHEI TANIGUCHI

FORMER CHAIR OF THE WTO APPELLATE BODY, GENEVA

Throughout July and August, Sydney Law School was privileged to host Professor Yasuhei Taniguchi as ANJEL/CAPLUS Research Visitor and distinguished speaker at several events. Renowned in Japan and internationally for his expertise in insolvency law, civil procedure, arbitration and the World Trade Organization, Professor Taniguchi has taught mainly at Kyoto University, advising also on major law reform initiatives in Japan. He has arbitrated dozens of cross-border commercial disputes, was a judge on the WTO Appellate Body from 2000 until 2007, and is Of Counsel at Matsuo & Kosugi in Tokyo. He is also an ICCA Council member, president of the Japan Association of Arbitrators, and a former Vice-President of the International Association of Procedural Law.

In addition to speaking on 30 July as part of the Distinguished Speakers Program, Professor Taniguchi delivered the keynote presentation at the ANZSIL conference in July, and spoke at a symposium of the Australasian Forum for International Arbitration on 7 August and a one-day symposium reviewing the WTO's Dispute Settlement Understanding on 14 August.

The WTO dispute settlement system has been acclaimed as having brought a true 'judiciary' into international society, where power had often prevailed over justice. In modern states like Australia and Japan, individuals and small firms now often succeed in litigation against large firms or the government. Similar situations sometimes arise under the WTO dispute settlement system operating since 1995. Examples of small countries (and small industries) succeeding against much larger interests including *Antigua v US* (internet gambling) and *Peru v EC* (sardines). Such outcomes would have been inconceivable under the previous regime, centred on diplomatic settlement of disputes.

The WTO system shares many characteristics with a national judiciary. It has compulsory jurisdiction, lacking even in the International Court of Justice (despite the latter's grandiose name and appearance), and involves full adversarial hearings and fact finding by a panel. The 'reverse consensus' rule means that in practice a panel's report is as final as a national court's judgment, despite the formality

of its adoption by the DSB, an assembly of all WTO member states. There is review on points of law by the Appellate Body, whose report is similarly final, along with certain mechanisms for enforcement of an adopted report. All these features indicate 'judicialisation' of international trade dispute settlement through the WTO.

It is true, however, that the weakest aspect of the WTO system is the enforcement phase. The WTO has no supranational authority, and the system lacks means for direct coercion against a sovereign member state. Nevertheless, compliance by losing states is reasonably high, with levels of 83 percent over 1995-2004 compared to 68 percent in the ICJ – even without compulsory jurisdiction.

These are all positive elements in WTO dispute settlement, but there remain many challenges. The vast majority of the over 150 member states, especially developing countries, have never used the system because of lack of resources – human, material and otherwise. Business-government relationships can also affect the use of WTO dispute settlement, as only a state can initiate action against another, even though the real party in interest may be certain businesses in both states. Expertise in WTO law is still limited to a narrow group. Transparency in public affairs also leads to a paradox: the more transparent a government strives to be overall, the more vulnerable it can become when subject to a specific WTO claim. There are also certain in-built problems in the system: the lack of retroactive effect for recommendations and rulings, difficulties in compliance panel proceedings, cumbersome and ineffective retaliation mechanisms, and so on.

Dispute settlement is also limited by WTO agreements' scope (although a non-violation claim is possible, as in the Kodak-Fuji dispute). For example, there is no WTO agreement on investment in general, after it was dropped during the Uruguay Round. Thus, bilateral (and now regional) investment treaties, or chapters in Free Trade Agreements, are increasingly relied upon. These often allow a private investor to claim directly against the host state, usually through ICSID arbitration. Although current developments in investment arbitration are extremely interesting, the whole emerging

ACADEMIC REVIEWER

Associate Professor
Luke Nottage

Luke Nottage is co-director of the Australian Network for Japanese Law (ANJEL) and teaches in Contract Law, International Commercial



Transactions, Japanese Law (now offered in Kyoto and Tokyo), International Commercial Arbitration, International Dispute Resolution, International Investment Law and Consumer Law.

Luke has written extensively comparing Japanese and other foreign and transnational law in all these areas, as well as corporate governance and legal education.



The Australian Network for Japanese Law (ANJEL) is aimed at promoting research, teaching and community engagement with Japanese law. ANJEL is a collaborative venture centred on the law faculties at the University of Sydney and the Australian National University. University of Sydney LLB and LLM courses will be run in Tokyo from 8-18 February 2010.

Further information:

www.law.usyd.edu.au/anjel

field would be dramatically changed if a WTO investment agreement is realised in the present Doha Round.

Generally, despite its many current shortcomings, WTO dispute settlement has proved remarkably significant. It has provided the first permanent transnational mechanism helping considerably in bringing about the rule of law in economic affairs, while underpinning rapid growth in the world economy. Both Australia and Japan have been major beneficiaries of this system, and it was most enlightening to learn from Professor Taniguchi's experiences and views during his visit.

Forthcoming Distinguished Speakers Program Events

Professor Tom Campbell

Director, Charles Sturt University Division & CAPPE Convener; Julius Stone Institute of Jurisprudence Distinguished Visiting Fellow 2009

Resuscitating Lost Causes: Confessions of a Legal Positivist

Tuesday 11 August

Professor Lawrence Gostin, Linda D and Timothy J O'Neill Professor of Global Health Law, Georgetown University Law Centre;

Professor Simon Chapman, School of Public Health, University of Sydney;

Professor Patricia Peppin, Professor of Law, Queens University, Ontario

Global Health Day at the University of Sydney

Friday 28 August

Professor Kazuo Sugeno

Professor of Labour Law, University of Tokyo

Towards a New Form of Flexicurity?:

Fluctuating Employment System in Japan

Monday 31 August

Professor Deborah A DeMott

David F Cavers Professor of Law, Duke Law School; McWilliam Visiting Professor in Commercial Law, Sydney Law School

Corporate and Commercial Series 2009: Legal Perspectives on Dealing in Art and Objects of Cultural Heritage

Tuesday 1 September

The Honorable Murray Gleeson AC

Former Chief Justice of the High Court of Australia; Adjunct Professor, Sydney Law School

Legal Interpretation: The Bounds of Legitimacy

Wednesday 16 September

Professor Eric Talley

UC Berkeley

Corporate and Commercial Series 2009: Allocating Risk and Uncertainty in M&A Agreements

Thursday 24 September

Professor Mariana Valverde

Director, Centre of Criminology, University of Toronto

How We Came to See Cities as Collections of Land Uses

Wednesday 7 October

Professor Alvin Warren

Ropes & Gray Professor of Law, Harvard Law School

Taxation Series 2009: The 2009 Ross Parsons Address in Commercial, Corporate and Taxation Law – Tax Policy after the Financial Crisis

Monday 19 October

Professor Tim Edgar

University of Western Ontario

Taxation Series 2009: Is TOFA Finally Over? A View from Canada

Tuesday 27 October

Brian J Arnold

Consultant, Goodmans LLP, Toronto

Taxation Series 2009: Interminable International Tax Reform

Tuesday 3 November

Professor Martti Koskenniemi

Academy Professor, University of Helsinki

Julius Stone Address: International Law and State Power Historical Reflections

Thursday 12 November

RECENT APPOINTMENTS

THE SYDNEY LAW SCHOOL WOULD LIKE TO CONGRATULATE THE FOLLOWING ALUMNI ON THEIR APPOINTMENTS.

His Hon Judge Mark Marien

BA '74, LLB '79

Appointed President of the NSW Children's Court.

The Hon Justice David Davies

BA '72, LLB '75

Appointed Judge of the Supreme Court of NSW.

Ms Linda Pearson

LLM '98

Appointed Commissioner of the Land and Environment Court.

The Hon Justice Michael Slattery

BA '75, LLB '78

Appointed Judge of the Supreme Court of NSW.

The Hon Justice Nye Perram

BA '90, LLB '92

Appointed Deputy President of the Copyright Tribunal of Australia.

Ms Donna Woodburne SC

BA '84, LLB '87

Appointed Deputy Director of Public Prosecutions in NSW.



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We need significant numbers of alumni to register as mentors before we can offer this service to students, so please register your interest now by emailing alumniadmin@vcc.usyd.edu.au.



In May 2009 the Sydney Law School held its annual Prize Giving Ceremony to celebrate the achievements of outstanding students.

The 2009 Prize Giving Ceremony took place on 21 May in the refined surroundings of the New Law Building on Camperdown campus. The Dean, Professor Gillian Triggs, acknowledged the efforts of the students and spoke of exciting times ahead for the study of law with the Sydney Law School.

Support of the Sydney Law School by the community and the profession is invaluable and the prizes awarded to our students would not be possible without it. We therefore warmly thank all donors for their continuing support.

University Medallists, Tina Zhuo and Zachary Vermeer, each gave a student address at the ceremony, recordings of which can be found on the law school website.

The Sydney Law School would like to warmly congratulate all prize winners:

Ranjini Acharya

- Minter Ellison Prize for Intellectual Property

Kwamena Awotwe Afful

- Bruce Panton Macfarlan Prize

Christopher James Beshara

- George and Matilda Harris Scholarship No 11b for Third Year of Combined Law
- LexisNexis Book Prize No 3 for Most Proficient in Combined Law III

Jillian Black

- University of Sydney Foundation Prize

Tony Bogdanoski

- Nancy Gordon Smith Memorial Prize

David Andrew Britton

- Chartered Institute of Arbitrators Prize

Patrick Grahame Caldwell

- Zoe Hall Scholarship

Julia Ann Carland

- The Justice Peter Hely Scholarship

Rufina Sik Chi Cheung

- Mr Justice Stanley Vere Toose Memorial Prize for Family Law
- NSW Women Justices' Association Prize

Robert William Clark

- Minter Ellison Prize for Intellectual Property

Katrina Mary Close

- Nancy Gordon Smith Memorial Prize

Richard Hallam Coelho

- Walter Ernest Savage Prize for Foundations of Law

Naomi Cook

- The Victoria Gollan Memorial Scholarship

Matthew Costa

- Playfair Prize in Migration Law

Carlile Cripps

- John George Dalley Prize 1a

Martha Dale

- Mr Justice Stanley Vere Toose Memorial Prize for Family Law
- The John Warwick McCluskey Memorial Prize

Sarah Louise Danos

- Kevin Duffy Memorial Prize for Real Property and Conveyancing

Astron Benjamin Douglas

- Allens Arthur Robinson Prize in Advanced Contracts
- Minter Ellison Prize for Intellectual Property

Emma Christie Dunlop

- George and Matilda Harris Scholarship No 1 for Second Year
- Law Press Asia Prize for Chinese Legal Studies No 1
- LexisNexis Book Prize No 5 for Most Proficient in Law II (Graduate Law II And Combined Law IV)
- Sir John Peden Memorial Prize for Proficiency in Foundations of Law, Federal Constitutional Law, International Law and Real Property

Jack Benjamin Dwyer

- Walter Ernest Savage Prize for Foundations of Law

Christine Ernst

- Pitt Cobbett Prize for Constitutional Law
- The C A Hardwick Prize in Constitutional Law

Marcel Thorley Fernandes

- LexisNexis Book Prize No 4 for Most Proficient in Graduate Law I
- Wigram Allen Scholarship No 1a

Paul Alan Ferris

- Andrew M Clayton Memorial Prize – Clayton Utz
- Margaret Dalrymple Hay Prize for Law, Lawyers and Justice
- The Law Society of NSW Prize for Law, Lawyers and Justice

Kay Anita Freedman

- Alan Ayling Prize in Environmental Law Prize

Clare Lloyd Gardoll

- Bruce Panton Macfarlan Prize
- John George Dalley Prize No 1b
- Sir Peter Heydon Prize for the Best Undergraduate Contribution in Constitutional, Administrative or International Law

Sarah Jane Giles

- George and Matilda Harris Scholarship No 11a for Second Year of the Three Year Course

Nicola Maree Gillies

- Blake Dawson Prize in Environmental Law

Benjamin Edward Hall

- Gustav and Emma Bondy PG Prize in Jurisprudence

Sebastian Luke Hare

- J H McClemens Memorial Prize II Criminology No 3

Callista Sarah Alexandra Harris

- Pitt Cobbett Prize for International Law

Benjamin Alfred Jacobs

- Judge Samuel Redshaw Prize

Michael Alexander Johnston

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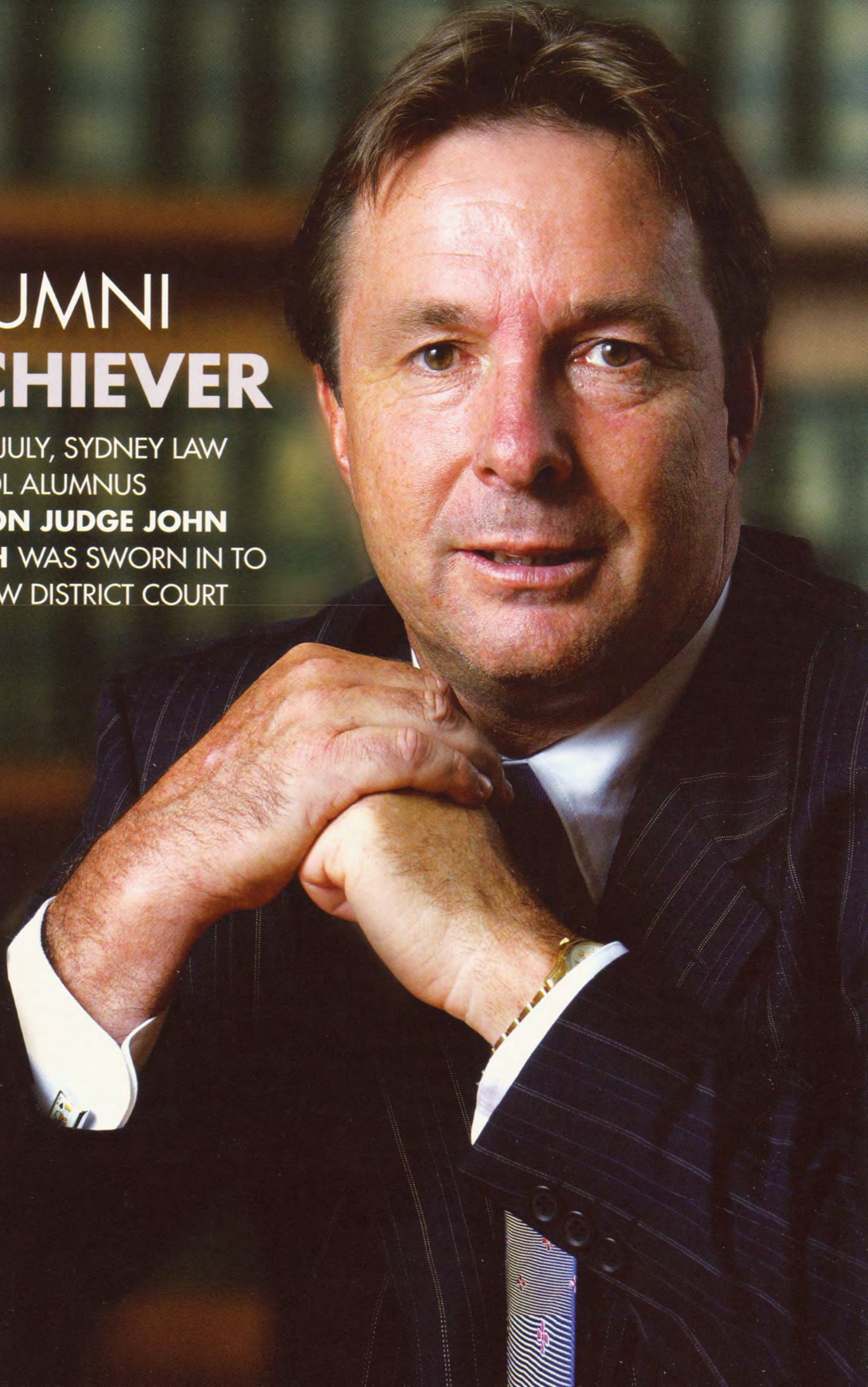
Steven Ellis Zographakis

- Freehills Prize in Torts and Contracts

ALUMNI ACHIEVER

ON 29 JULY, SYDNEY LAW
SCHOOL ALUMNUS

**HIS HON JUDGE JOHN
NORTH** WAS SWORN IN TO
THE NSW DISTRICT COURT



In 1975, His Hon Judge John North headed off to London with his rugby teammates and a DipEd from the University of Sydney, anxious to start his career as a teacher. But try as he might, he couldn't land a teaching job. Instead, Judge North – who was recently appointed to the bench of the NSW District Court – took a job with a shipping law firm in London, where he worked for two years. He enjoyed it so much that he returned to the University of Sydney and earned his LLB in 1983.

'I thought I was going to be a teacher,' Judge North said. 'I didn't want to be a lawyer, because my dad was a lawyer, and I thought he worked too hard.'

His career in education may not have taken off, but his law career has led him to represent some of the most high profile cases in recent Australian history, such as David Hicks, and Scott Rush from the Bali Nine. In 2000, Judge North was president of the Law Society of NSW. He was president of the Law Council of Australia from 2005 to 2006, and he is an executive member of the Law Council's International Law Section, responsible for human rights. He also has extensive experience with Legal Aid and pro bono matters with Indigenous and child care issues.

Judge North said he was drawn to his cases because he's 'always been very keen to ensure rule of law is respected both in Australia, and internationally.'

'When we first became involved with the David Hicks case, there was a massive amount of publicity against him and anyone who tried to stand up for him. Over time, people came to understand how wrong it was to incarcerate anyone without a trial for that length of time.'

David Hicks was detained by the US Government in Guantanamo Bay, where he alleges he was tortured. He was held without a trial until 2007, when he was the first to face a US military commission and was found guilty of providing material support for terrorism.

David Hicks was held incommunicado for five years, with very limited visits from his lawyers. 'If you allow fear of terrorism to enable governments to bring in legislation that breaches long-standing, fundamental human rights, it will almost always cause more trouble than it's worth,' Judge North said. 'For instance, Guantanamo Bay has caused most of the world to view the United States in a far more antagonistic way than if they charged detainees in proper courts.'

Scott Rush's case could not be more different than David Hicks' case, Judge North said, in

that they received considerable support from the Australian Government, and were able to visit him regularly in Bali and keep him up to date with his case.

Scott Rush was sentenced to the death penalty by the Balinese government for attempting to smuggle 1.3 kg of heroin. (He was finalising his final appeal at the time of publication.)

'As an Australian, you have to respect the systems in other countries. Railing about the differences is of no assistance whatsoever. Australia as a nation does not impose capital punishment. We should press this to become a universal norm. We must not just act as an individual country, but must press for universal changes.'

Judge North said he will draw on his experiences in his new appointment as District Court Judge. The District Court is the major trial court of NSW and covers such offences as drugs and customs offences and all criminal matters. 'I hope I'll bring a proper sense of justice to the bench. I've dealt with people from all walks of life, and I hope this will make me a fair and impartial judge.'



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*"Sir William Deane BA '51, LLB '54, LLD '90 supports disadvantaged Australians
Thalia Anthony is passionate about justice for Indigenous people"*

Dr Thalia Anthony is researching wages withheld or stolen from thousands of Indigenous cattle station workers. This work enriches her teaching in the area of Indigenous people and the law. From human rights to genetic engineering, the internet to global climate change... researchers at Sydney Law School are constantly developing new ways to understand and improve our changing world. Please contact us to find out how you can support these and other important projects.

(What legacy will you leave?)

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ANNA ROSE

Anna Rose (BA '06, LLB '08) has won the University of Sydney Young Alumni Award for Achievement based on her career achievements as one of Australia's leading environmental advocates.

Anna founded the Australian Youth Climate Coalition (AYCC), which brings together youth organisations and thousands of individual young people to be a political force on climate change.

In September 2007, Anna was invited by the Secretary General's Office of the United Nations to attend the 'Special Meeting on Climate Change' held in New York with four other youth representatives from around the world.

Anna recently co-authored a book called *The Future, By Us* with a foreword from Prime Minister Kevin Rudd.

She is a member of the Federal Environment Minister's Advisory Council on Education for Sustainability, alongside other prominent Australians including Ian Thorpe, Greg Bourne and Arron Wood. In this role she advises the Environment Minister on curriculum reform and community education, and other crucial aspects of environmental awareness.

Last year Anna was invited to speak at the Blue Planet Summit in Hawaii, as well as the G8 Civil Society Forum in Kyoto, Japan. Anna was selected as one of the youngest members to attend the Prime Minister's 2020 Summit in April 2007, and was placed in the climate change stream.



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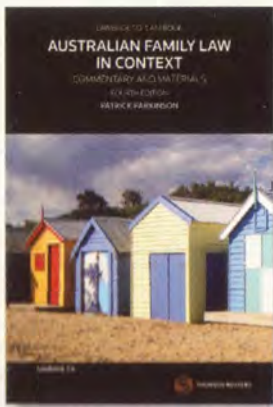
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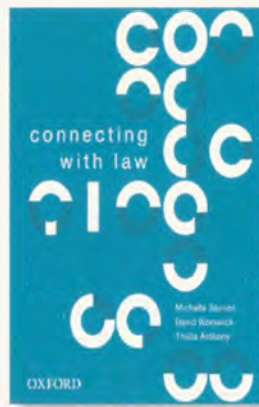
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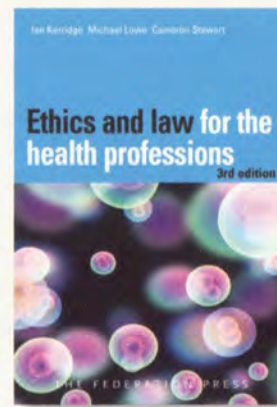
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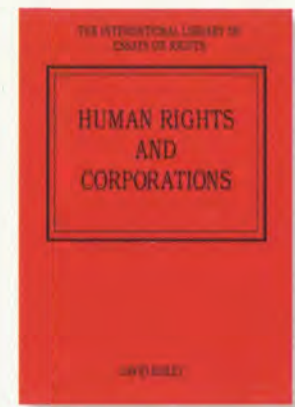
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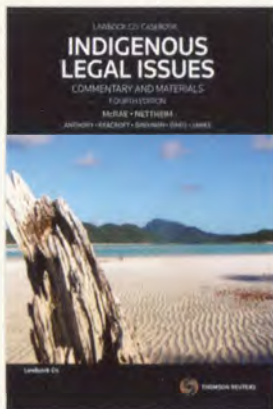
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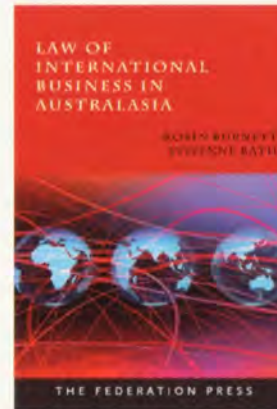
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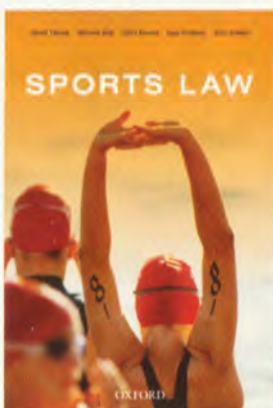
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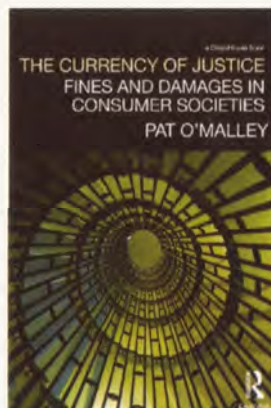
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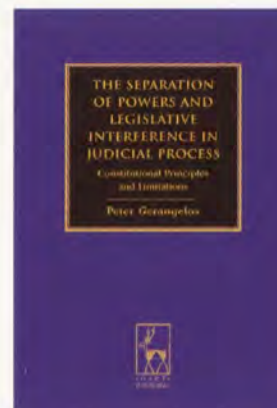
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