

# *Mapping the Law*

**Postgraduate Research Conference 2008**

Thursday 12 June & Friday 13 June 2008

Sparke Helmore Theatres  
ANU College of Law  
Fellows Road  
Canberra





## WELCOME

Welcome to the ANU College of Law Postgraduate Research Conference for 2008. It will explore the theme of 'Mapping the Law'.

This symposium acknowledges that higher degree research students are pioneers, path-breakers, and innovators in the field of law. Such students will make discoveries of new areas of law, and chart new disciplines; as well fill in lacuna and gaps in well-established domains and disciplines.

The event will examine literal conflicts over maps and boundaries - from the theft of Ptolemy's 15th century map of the world from the National Library of Madrid; to contests over native title and the geographical indications of Australian wine regions; to battles over the law of the land, the sea, and space.

The symposium will also consider legal disputes over land and water, property and intellectual property, natural resources and cultural heritage, knowledge and identity.

The event will also consider larger questions about international law and comparative law. It will explore the concepts of jurisdiction, territory and sovereignty; discuss; and consider conflicts of law.

We hope that you enjoy the event. We wish you all the best in the completion of your postgraduate research.

Dr Matthew Rimmer  
Director of Higher Degree Research  
ANU College of Law



## TABLE OF CONTENTS

Schedule of Presentations.....	5-6
Academic Profiles.....	7-8
Student Abstracts and Biographies.....	9-18
Participating Research Students.....	19
Location and Map.....	20
Notes.....	21



## SCHEDULE OF PRESENTATIONS

**DAY ONE    12 JUNE 2008                    SPARKE HELMORE THEATRE**

09:00            Introduction

### PLENARY TALKS

09:30            Professor Heidi Hurd (Plenary talk)  
10:15            Professor George Williams (Plenary talk)

**10:45            MORNING TEA**

### CRIMINAL LAW

11:15            Professor Michael Moore (Plenary talk)  
12:00            Saskia Hufnagel  
12:30            Kylie Weston-Scheuber

**13:00            LUNCH**

### ADMINISTRATIVE LAW

14:00            Bruce Lindsay  
14:30            Virginia Newell

**15:00            AFTERNOON TEA**

### CONTRACT LAW AND LEGAL THEORY

15:30            Helen Saunders  
16:00            Regina De Vela-Santos



## SCHEDULE OF PRESENTATIONS

**DAY TWO 13 JUNE 2008**

**SPARKE HELMORE THEATRE**

### **INTELLECTUAL PROPERTY**

09:30 Dr Matthew Rimmer (Plenary talk)  
10:15 Hafiz Aziz ur Rehman

**10:45 MORNING TEA**

### **LAW REFORM**

11:15 Associate Professor Simon Rice (Plenary talk)

### **CLIMATE LAW and ENVIRONMENTAL JUSTICE**

12:00 Megan Bowman  
12:30 Brad Jessup

**13:00 LUNCH**

### **INTERNATIONAL LAW**

14:00 Dr Ann Kent (Plenary talk)

### **WATER LAW**

14:30 Virginia Falk

**15:00 AFTERNOON TEA**

### **WHALING LAW AND ANIMAL RIGHTS**

15:30 Lesley-Anne Petrie  
16:00 Owen Cordes-Holland  
16:30 Close



## ACADEMIC PROFILES

### Professor Heidi Hurd

A scholar in the areas of criminal law, torts, and general jurisprudence, David C. Baum Professor of Law and Philosophy, Heidi M. Hurd served as the University of Illinois College of Law's 11th Dean from 2002 through 2007. She co-directs the College's Program in Law and Philosophy and is the Co-Editor-in-Chief of Law and Philosophy. Professor Hurd is a very active scholar, publishing five articles on topics in political theory, criminal law, and jurisprudence in 2005-2006. She is the author of *Moral Combat* (1999) which has been widely reviewed and translated into multiple languages. Her numerous articles in the areas of criminal law, torts, ethics, and legal philosophy have appeared in the nation's top law and philosophy journals. She has presented more than 80 lectures and papers at conferences in the United States, Europe, Japan, and Australia, and in 1999, she provided testimony before the U.S. House of Representatives Judiciary Committee on the proposed Hate Crime Prevention Act of 1999. She regularly teaches criminal law, evidence, torts, and jurisprudence, as well as philosophy courses in ethics and political theory.



### Dr Ann Kent

Dr Ann Kent is a Visiting Fellow in the Centre for International and Public Law, ANU College of Law. She was previously ARC Research Council Fellow in the ANU Faculty of Law. Her most recent book is *Beyond Compliance: China, International Organizations and Global Security* (Stanford CA, Stanford University Press, 2007). Her previous positions have included China research specialist in the Australian Department of Foreign Affairs and in the Foreign Affairs Group, Legislative Research Service, Commonwealth Parliament.



### Professor Michael Moore

One of North America's most prominent authorities on the intersection of law and philosophy, Professor Michael Moore joined the University of Illinois in 2002 as the Charles R. Walgreen, Jr. Chair. He is jointly appointed as Professor of Law in the College of Law and as Professor of Philosophy in the College of Liberal Arts and Sciences. He also holds an appointment as a Professor with the Center for Advanced Studies, an honour bestowed on faculty on the basis of their outstanding scholarship and among the highest forms of campus recognition. In addition to eight books, Moore has published some 60 major articles, which have appeared in the country's top law reviews including *Stanford*, *Berkeley*, *Michigan*, *Pennsylvania*, and *Cornell*, as well as peer reviewed journals in philosophy and psychiatry. He is the author of *Placing Blame, a General Theory of the Criminal Law* (Oxford University Press, 1997), widely regarded as the leading modern statement of the retributivist theory of punishment and of that theory's systematic application to criminal law doctrine. In *Act and Crime: The Philosophy of Action and its Implications for Criminal Law* (Oxford University Press, 1993), Moore provided a unified theory of action that underlies English and American criminal jurisprudence. Earlier in his career, he authored *Law and Psychiatry: Rethinking the Relationship* (Cambridge University Press, 1984), which explored, in detail, the tension that often exists between legal and mental health theories.





## ACADEMIC PROFILES

### Associate Professor Simon Rice OAM

Associate Professor Simon has worked and researched extensively in access to justice and human rights issues. After a stint in private commercial practice Simon worked at Redfern Legal Centre in Sydney and co-founded Macarthur Legal Centre. He was Director of Kingsford Legal Centre where he ran the clinical legal education program of the UNSW. He was a Board member of the NSW Legal Aid Commission, and has been a board member of Macarthur Legal Centre, Redfern Legal Centre, Redfern Legal Centre Publishing, the Communications Law Centre, the Disability Discrimination Legal Centre and the Intellectual Disability Rights Centre. He has been Director of the NSW Law and Justice Foundation, President of Australian Lawyers for Human Rights, and a consultant to the NSW Law Reform Commission. Since 1996 he has been a part-time judicial member of the NSW Administrative Decisions Tribunal in the Equal Opportunity Division.



### Dr Matthew Rimmer

Matthew is a senior lecturer and the Director of Higher Degree Research at the ANU College of Law, and an Associate Director of the Australian Centre for Intellectual Property in Agriculture (ACIPA). He holds a BA (Hons) and a University Medal in literature, and a LLB (Hons) from The Australian National University, and a PhD in law from the University of New South Wales. Matthew wrote his dissertation on 'The Pirate Bazaar: The Social Life of Copyright Law'. He is the author of *Digital Copyright* and the *Consumer Revolution: Hands off my iPod* (Edward Elgar, 2007), and *Intellectual Property and Biotechnology: Biological Inventions* (Edward Elgar, 2008).



### Professor George Williams

Professor George Williams is the Anthony Mason Professor at the Faculty of Law, University of New South Wales and was the foundation Director of the Gilbert + Tobin Centre of Public Law from 2000 to 2008. He has written and edited 22 books, including *A Charter of Rights for Australia*, *What Price Security? Taking Stock of Australia's Anti-Terror Laws*, *Australian Constitutional Law and Theory* and *The Oxford Companion to the High Court of Australia*. He practises as a barrister and has appeared in the High Court of Australia in cases such as *Lange v Australian Broadcasting Corporation* (on freedom of speech), the *Hindmarsh Island Bridge Case* (on freedom from racial discrimination) and *Plaintiff S157/2002 v Commonwealth* (on review of government action and the rule of law) and in the Supreme Court and Court of Appeal of Fiji, including in *Republic of Fiji v Prasad* (on legality of the 2000 coup).





## STUDENT ABSTRACTS & BIOGRAPHIES

### Ashleigh Barnes

#### The Australian National University

American lawyer with an LLM in Public International Law, International Criminal Law Specialization. PhD candidate at the ANU, thesis on the legal construction of the child in international law.

### Megan Bowman (Speaker)

#### Victoria University

Barrister and Solicitor of the Supreme Court of Victoria and High Court of Australia. Megan Bowman is a lecturer at Victoria Law School, Victoria University, Melbourne. She is also Coordinator of Postgraduate Courses and a professional practice program titled the Magistrates' Court Program as well as chairing the school's Engagement Committee. Ms Bowman completed her LL.M., specialising in International Relations and International Law, at McGill University in 2003. She has authored publications on commercial law, sustainable development, environment and planning law, and criminal law. She has taught previously in law and also environmental studies at McGill University in Montreal and Monash University in Melbourne. Ms Bowman has also practised law in both commercial and non-governmental milieux. She is about to undertake her PhD at the University of Melbourne on the topic of climate change, governance change and the role of international law.

#### **Abstract: Climate change, 'soft law' and the growing phenomenon of 'Corporate Environmental Citizenship'**

The global magnitude of disruption and devastation that climate change is predicted to wreak upon the world (and Australia in particular) has precipitated urgent responses within governmental, corporate and community spheres. The Kyoto Protocol is one legal measure adopted by some nation States at public international law. However the focus has recently shifted from the public to the corporate sector, specifically corporate social responsibility (CSR), as a mode of effective action to combat climate change. The release of the 2007 Corporate Responsibility Index (CRI) results on 20 May 2008 in Australia (at [www.corporate-responsibility.com.au](http://www.corporate-responsibility.com.au)) demonstrates a growing awareness amongst Australian and multinational companies of the benefits of responsible business practice, particularly in the area of climate change and environmental management. Moreover, a network of CRI leading companies are creating a culture of peer-to-peer influence, a 'corporate sustainable supply chain' through which CSR corporations set standards for other corporations with which they do business. By referencing this growing corporate phenomenon to 'soft law' documents such as the Earth Charter and also the Greenhouse Gas Protocol Initiative developed by the World Business Council for Sustainable Development, this paper will demonstrate that corporations, by becoming 'corporate environmental citizens', have an important role to play in moving the world towards a sustainable future.

### Owen Cordes-Holland (Speaker)

#### The Australian National University

Owen is in the first year of his PhD candidature at the ANU College of Law, from which he graduated with first-class honours and the University Medal in Law in 2007. Owen's major interests in law include international and domestic environmental law and international human rights law. His PhD thesis, supervised by Professor Don Rothwell, will study environmental issues such as climate change, whaling, biodiversity, and GMO's in order to assess Australia's performance as an international citizen with respect to international environmental law. Owen's publications include: 'Climate Change, Light-Duty Motor Vehicles and the Stern Review: Environmental Law and Policy Measures to Reduce Passenger Vehicle CO2 Emissions' (2007) *Environmental and Planning Law Journal* 382; "The Sinking of the Strait: The Implications of Climate Change for Torres Strait Islanders' Human Rights Protected by the ICCPR" (2007) ANU College of Law Research Paper No. 08-06, available at SSRN: <http://ssrn.com/abstract=1129087> (journal publication forthcoming). In his spare time, Owen conducts research for the College's Dr James Prest in the area of renewable energy law.



## STUDENT ABSTRACTS & BIOGRAPHIES

### **Abstract: Good International Citizenship and Australia's Campaign to Stop Japanese Whaling: Have the Howard and Rudd Governments Done Enough?**

Owen's PhD thesis will assess whether Australia has been a 'good international citizen' with respect to the environment in recent years by critically analysing its engagement with international environmental law during the term of the Howard Coalition government and the first two years of the Rudd Labor government. One environmental issue on which Australia has arguably demonstrated good international citizenship qualities has been with respect to its campaign to stop Japanese whaling in the Antarctic. Although a moratorium on the commercial exploitation of whales has been in place since 1986 (under the Schedule to the 1946 International Convention for the Regulation of Whaling), Japan has continued to hunt whales under the guise of "scientific whaling", allowed for by Article VIII of the Convention.

Research for Owen's thesis is in its early phase but this paper will explore some preliminary views on the notion of 'good international citizenship' and how it applies in the context of the whaling issue. The focus of the paper will be on assessing the strength of international and domestic legal avenues available to Australia to restrain Japan's whaling practices. In doing so, it will question whether, as a matter of good international citizenship, the Australian government should do more to stop Japanese whaling by pursuing either international or domestic legal options available to it.

### **Megan Davis**

#### **The Australian National University**

Megan Davis is Director, Indigenous Law Centre and Senior Lecturer, Faculty of Law, University of NSW. Megan's scholarship involves critical analysis of Indigenous public law issues in particular constitutional reform and democratic theory and governance. Megan's research also includes Indigenous peoples rights in international law, in particular UN treaty body jurisprudence and the UN Declaration on the Rights of Indigenous Peoples and she is also an Australian member of the International Law Association's Indigenous Rights Committee.

Megan's previous positions include Director, Bill of Rights project, G + T Centre of Public Law; Senior Research Fellow, Jumbunna, UTS and Legal Counsel, Administrative, Legislation and Corporate Law Section, Legal Branch, ATSIC. Megan has held a UN Indigenous Fellowship, UNOHCHR, Geneva and has participated for a decade in UN expert seminars and working groups as an Indigenous lawyer. Megan is an admitted Legal Practitioner of the Supreme Court of the A.C.T. Megan is completing her PhD (Law) at the Regulatory Institutions Network, ANU examining Aboriginal women and democracy.

### **Regina de Vela-Santos (Speaker)**

#### **Macquarie University**

Regina is a solicitor admitted to the Supreme Court of New South Wales and a candidate for a PhD in Law at Macquarie University. She holds a Bachelor of Arts degree in Communication Arts (Cum Laude) from Miriam College (Quezon City, Philippines) and an LLB with First Class Honours from Macquarie University (Sydney, Australia). She has taught Public and Private International Law and Jurisprudence. Before studying law, Regina was a cultural worker and promoted the principles and practice of cultural action as workshop facilitator, writer and thespian. She has also worked as Researcher and Writer for the Women's Studies Development Program of a women's resource and research centre, now known as the Women and Gender Institute of WAGI, based at Miriam College. In 2006, she presented a paper at the 6th International Roundtable for the Semiotics of Law, held at Wollongong University, titled "Cupid's Arrows, Law and the Matter of Time". Regina has been invited to participate and present papers at the 7th International Roundtable for the Semiotics of Law and the 2008 Annual Meeting of the Research Committee on Sociology of Law, to be held in July at Boulogne-sur-Mer and Milan/Como, respectively. Regina writes lyrical and narrative poetry with implications for law and law's treatment of figurative images. For her PhD thesis, she advocates the epistemological and heuristic relevance of poetic expression/texts and other figurative forms for jurisprudence.



## STUDENT ABSTRACTS & BIOGRAPHIES

**Abstract: Ruins of Delphi & Pythia's Lore: Parergonal Implications of Sexuality and the Matter of Faith for Law** – Framed by a poetic text that has regard for the contours of the 1997 US case *Venters v. City of Delphi* (concerning sexual harassment and religious freedom) and the status of the Pythia vis-à-vis Apollo of Delphi, this paper considers the intimate connections of sexuality, religion and personhood according to law. Firstly, the paper outlines the extent that law's ruins are the outcome of law being prophecy, purification and sublimation and proposes the ironic implications of law that feigns to be separate or distinct from sexuality and the matter of faith. Moreover, it questions the assumption that sexuality is opposed to the matter of faith. Secondly, the paper considers the extent that feminist legal theory can be seen to convey a male prophetic will that claims to be divine when, indeed, it is a form of reason that betrays or else undermines the will of the woman to freely become. With reference to the jurisprudential value attributed to vulgar wisdom (or woman's wisdom) by Giambattista Vico, the paper advocates a figurative frame or a different map by which feminist legal theory can proceed to travel in order to mean more. Finally, the paper considers Derrida's conception of parergon (the border or boundary of a work) as that which, on the one hand, constrains and disciplines and, on the other hand, provides the means for flight and enhancement of freedom to mean. It is proposed that the parergonal function of religious faith, the woman or figurative other (the poetic text) in relation to law serves not as a limit upon freedom but the vast scope or province wherein to realize the fulfilment of law's promise, woman's infinite potential and good faith. Good faith, it is proposed, can be gleaned from narratives concerning law's melancholy ruins where justice for the woman begins.

### Virginia Falk (Speaker) Macquarie University

Virginia Falk is a final year PhD candidate in law at Macquarie University NSW. Virginia has degrees in LLM(ANU), Grad.Dip.Legal Prac.(Wollongong), BA(Hons)(Wollongong) Bachelor Training and Vocational Education(CSU) and LLB (Wollongong). She is a Solicitor to NSW and the High Court and for several years the CEO of the Aboriginal Water Trust NSW and is a consultant in Aboriginal site and heritage surveys and water law and policy. Virginia has four children and lives in the Southern Highlands.

### Abstract: Water Ethics, and the competing water rights and interests of Aboriginal Australia

The thesis examines some of the 'gaps' in water knowledge and water management of Aboriginal Australia as suggested in the essays of Jackson (2006;2007) of CSIRO Australia. The conflict of land and waters in Australia since British colonisation has undermined the inherent Aboriginal values and beliefs to exclusivity and non-exclusivity under Aboriginal law.

Australia has defined itself through the pastoral industry and the allocation of water and government funding has been prioritised over the rights and interests to water for Aboriginal communities and their ancient relationship to the water landscape. With no recognition in a treaty or constitutional protection of Aboriginal rights to water or land or natural resources it now leaves Aboriginal communities with little more than political good will to the water requirements of Aboriginal Australia. In the advancement of current water reforms in Australia there is a reluctant desire by government and industry to reserve Aboriginal water rights and interests as a distinct right.

### Jian Rong (Jenny) Fu The Australian National University

Jenny is currently undertaking her second year PhD in Law research in the area of corporate governance of listed companies in China at the ANU College of Law. Jenny holds a Master of Legal Studies and a Bachelor of Laws (Honours) from the University of Canberra and an overseas degree of Bachelor of Arts in English. Before taking her position as a law lecturer with the Faculty of Law, University of Canberra in 2006, Jenny worked for the Faculty of Business and Law, Victoria University as the principal legal research officer to a large ARC-funded project on corporate governance of top 100 listed companies in China.



## STUDENT ABSTRACTS & BIOGRAPHIES

Jenny's interest in law developed eleven years ago when she entered the National People's Congress (the NPC, the central Chinese legislature) as a legal researcher. Her five years experience with the NPC involved the development of legal policy and the drafting of several important PRC laws such as the Securities Law and the Contract Law.

Jenny's research interests are mainly in the areas of corporate law, corporate governance and comparative law. She published a few journal articles/conference proceedings in these areas.

### **David Heckendorf** The Australian National University

#### **Topic: The interconnections and interaction between disability and Law**

David Heckendorf has recently completed his LLM and this March commenced his PhD in law at the ANU and works part-time for the ACT Government. Having a serious disability himself, his interest is in policy and the law and their influence on people's disabilities.

### **Saskia Hufnagel (Speaker)** The Australian National University

Undergraduate studies of law undertaken at the University of Trier, First State Law Exam 2000. Two years of Practical Legal Work Experience in Duesseldorf, Second State Law Exam 2002. At the same time worked as an Assistant to the Criminal Law Firm Thomas, Deckers, Wehnert and Elsner in Duesseldorf. In 2003 Master of Laws specializing in International Law at the Australian National University, Canberra. From 2004 to 2006 practice as Defence Lawyer in Krefeld, Germany. In 2006 awarded Accredited Specialist in Criminal Law. Since 2006/7 PhD student at National Europe Centre, Australian National University, awarded the inaugural ANU National Europe Centre PhD Scholarship funded by the European Commission and the ANU. The Topic of PhD thesis is "Comparison of European and Australian Cross Border Enforcement Strategies". Since 2007 tutoring Australian Criminal Law and 'Lawyers, Justice and Ethics' at the ANU College of Law, Research Assistant at the National Europe Centre, ANU, involved in the organization of two international conferences by the NEC and lecturing Law and Society at the University of Canberra.

#### **Abstract: Comparison of Australian and European Cross Border Law Enforcement Strategies**

This PhD thesis compares European and Australian cross border law enforcement, which is becoming particularly important in relation to the fight against terrorism. In relation to Europe, the thesis will focus on the first five Schengen states as they have a common legal basis for cross border law enforcement and are most experienced in relation to it. The thesis will examine how the European states, despite different laws and jurisdictions, are working together to fight criminality across borders, and will identify where there are difficulties in this cooperation. It will also examine the situation in relation to Australian states and territories, which also have different jurisdictions and laws and therefore need cross border police cooperation. The arrangements in the EU and Australia will then be compared and analysed in relation to their efficiency and legality, including in regard to human rights issues. The thesis will discuss whether the existing arrangements in the Schengen states could be applicable and useful for Australia, and vice versa. Finally, the thesis will propose new solutions that could be relevant to both Australia and Europe.



## STUDENT ABSTRACTS & BIOGRAPHIES

**Jacqueline James**

University of New South Wales

**Topic: Contemporary Australian Anti-Terror Laws: Do They Disproportionately Restrict Freedom of the Press?**

Since September 11, the Australian Government has introduced a litany of anti-terror legislation. There has been public discussion on the tensions between the promotion of national security and the need to preserve liberal democratic rights, such as freedom of speech. However, there has been little thorough analysis on how contemporary Australian anti-terror laws impact on the media and its ability to report. My thesis will provide an in-depth legal analysis of the anti-terror provisions dealing with preventative detention orders, control orders and ASIO's detention and questioning powers and how they affect freedom of the press and whether such laws are in the public's interest. Such an investigation is significant, as freedom of the press is an important liberty in democratic societies and should be preserved where possible. This is because the public relied on the media for information, due to their greater resources, in order to make informed decisions, particularly about governmental and political matters.

**Elinor Jean**

The Australian National University

**Topic: Comparative Study of water rights in India, South Africa and Australia**

Elinor Jean is a PhD candidate at the ANU College of Law. She is researching water law in Australia, India and South Africa. The focus of her research is the relationship between private property, public control over water and the human right to water. Elinor has a combined Bachelor of Arts (Hons) and Bachelor of Laws (Hons) from the ANU. Her background includes work as a research assistant in the College of Law, and privacy and health law experience from the Commonwealth Department of Health and Ageing.

**Brad Jessup (Speaker)**

The Australian National University

Brad is a geographer and environmental lawyer. He commenced his teaching appointment and candidature for the degree of the Doctor of Philosophy at the ANU College of Law in November 2007. Brad's PhD research focuses on the concepts of ecological and environmental justice in Australian Environmental Law. He graduated from Monash University in 2001 with Honours degrees in Science (majoring in Geography) and Law before commencing a legal career. Brad worked as an environmental and planning law specialist until 2006. In 2006 and 2007, Brad completed a Master of Philosophy in Environment, Society, and Development in the Department of Geography at the University of Cambridge. Brad's Masters research explores value conflicts between environmentalists in the wind energy debate in Victoria and Britain.

**Abstract: Warding against environmental injustice: a case for third party environmental protection rights**

The concept of environmental justice has been extensively researched in the North American context. There, environmental injustice has been mapped and analysed. Since the 1980's, scholars have studied the political ecology of pollution and identified the existence of disproportionate environmental harm in disadvantaged communities. Pollution, contamination, and a lack of government environmental services have been located in relatively poorer communities and in communities with relatively higher proportions of blacks and immigrants. Environmental goods, including clean water, transport infrastructure and government services have conversely been found in greater proportion in richer, whiter areas. While the concept of environmental justice has been analysed elsewhere in minority, as well as majority countries, the concept has not had traction in Australia and rarely appears in environmental law jurisprudence.



## STUDENT ABSTRACTS & BIOGRAPHIES

Nevertheless, lessons learnt from elsewhere may be relevant in our local context. The identified contributing factors to environmental injustice, particularly a lack of power to halt activities and incapacity to oppose degrading activities or proposed harmful developments, could arise in certain circumstances in Australia. Indeed, despite vocal opposition to industrial activities or proposals in Australia, these factors still stymie efforts of local communities to prevent illegal pollution and contamination or to require potentially offensive developments to undergo a thorough assessment. In this paper it is argued that statutory rights to enforce environmental protection laws could ward against any rise of environmental injustice in Australia. In this regard, the paper is a new contribution to the call for the recognition of these third party environmental rights in Australian environmental laws.

### **Mitchell Jones**

**The Australian University**

#### **Topic: The application of administrative law principles in the Australian Defence Force**

Mitchell Jones is a PhD student at the ANU Law Faculty. His area of research is in the area of military personnel disputes and whether administrative law mechanisms, particularly judicial review, is able to provide a remedy of any substance where there are grounds for complaint. He is a principal legal officer in the Australian Public Service.

### **Johannes Krebs**

**The Australian National University**

#### **Topic: The Right to Fair Trial in the Context of Counter-Terrorism Legislation: A Comparative Study**

Studied law at the University of Vienna (Magister iuris, 2005). Sponsored by the ERASMUS programme of the European Union spent 2003-04 at the Institut d'Études Politiques de Paris (Sciences-Po), France, undertaking studies in political science. Worked as a judge's associate at District Court in Tulln in criminal matters in 2005 before undertaking a Master of Laws specialising in International Law at the Australian National University in 2006. Started his PhD funded by the ANU College of Law at the beginning of 2008. Also works as a Research Assistant at the National Europe Centre, ANU, and tutors in 'Criminal Law and Procedure' at the ANU College of Law.

### **Rebecca LaForgia**

**University of South Australia**

Rebecca LaForgia is a senior lecturer in law in the Law School at University of South Australia. Her main research interest is in the export of normative ideas, such as democracy and transparency, through United States bilateral free trade agreements. This research forms the basis of her PhD which she is currently undertaking. In 2005 she completed a submission to the Australian Department of Foreign Affairs and Trade on the type of state to state dispute body to be included within the ASEAN Free Trade Agreement. This led to an article with Bryan Mercurio in the Melbourne Journal of International Law entitled "Expanding Democracy: Why Australia Should Negotiate for Open and Transparent Dispute Settlement in its Free Trade Agreements". Rebecca has also written on transparency and trade in the context of rules of origin. She has a forthcoming article (to be published in July 2008) with Dr Marinella Marmo on the use of a trade analysis in the context of the trafficking of women. 'Inclusive National Governance and Trafficked Women in Australia: Otherness and Local Demand' Asian Journal of Criminology. In 2006 she was awarded a grant to conduct research at the Trade Implementation Section of the Department of Labor in Washington D.C. Rebecca also has research interests in constitutional law and was invited to appear before the Senate Legal and Constitutional Committee on the issue of migration. This submission became the basis for two articles (one co-authored)



## STUDENT ABSTRACTS & BIOGRAPHIES

### Bruce Lindsay (Speaker)

The Australian National University

Bruce Lindsay is a PhD candidate in the ANU College of Law. He has previously worked as student rights officer at various universities, and is currently teaching sessionally in law and bringing up two young boys!

#### **Abstract: Delivering 'in-house' justice? Practice and procedure in university disciplinary action**

University decisions affecting their students have come under growing judicial scrutiny and legislative reform over the past half-century. However, little empirical research has been undertaken on this sphere of education. As part of wider investigation into disciplinary decision-making in universities, this paper reports on issues arising from an empirical study of student discipline case records at two Australian public universities. Data available from these records provides insight into practice and procedure employed by 'in-house' student disciplinary tribunals. These bodies are not routinely subject to public scrutiny. The research suggests that questions and problems regarding practice and procedure exist, including with regard to fairness, legality and appropriate policy and rules. While problems of legality, procedure or policy do not appear pervasive, thematic findings as to conduct and practice can be discerned, including:

- Instances of systemic shortcoming in the duty to afford a fair hearing;
- Recurrence of questionable actions in respect of fairness and/or legality in proceedings;
- Inadequacy of procedure for the tasks being asked of decision-makers.

These findings indicate the need for reform of decision-making practices in this area and further research.

### Andrew Lu

The Australian National University

#### **Topic: Developments in the Private International Law Doctrine of Renvoi**

Andrew Lu is a Senior Associate in the national Dispute Resolution group of the commercial law firm Minter Ellison. He has extensive experience as a specialist in insurance (professional indemnity) and corporate risk advice, and transnational dispute resolution. He has a particular interest in the conflict of laws.

As a solicitor he has worked in Perth, Sydney, Melbourne, Canberra and London. He is admitted as a Barrister and Solicitor of the High and Federal Courts of Australia, and of the Supreme Courts of WA, NSW, Victoria and the ACT. As counsel he has appeared in various state Supreme Courts, in the Federal Court, and (with leader) in the High Court, including in *Neilson v Overseas Projects Corporation of Victoria* (2005) 223 CLR 331 on the conflict of laws doctrine of renvoi and its application to tort. His current doctoral research at the Australian National University examines developments in the doctrine of renvoi since 1990. He has published and also guest lectures in this field both within Australia and abroad.

Andrew also has a passion for the visual and performing arts. Formerly a partner of an arts management firm, he has worked in Europe and Australia as an arts administrator, and has represented the interests of some of Australia's leading classical musicians. Andrew is presently Deputy Chairman of the Canberra Symphony Orchestra, Chairman of the Jigsaw Theatre Company, a Trustee of the National Capital Film Development Fund, a Governor of the Art Gallery of New South Wales Foundation, and a member of the board of directors of the Griffin Centre. He is also a member of the Calvary Health Care ACT Human Research & Ethics Committee, and of the Pro Bono Panel of the Arts Law Centre of Australia. His various honours include a Fulbright Scholarship, a Distinguished Alumni Award from the University of New England, and the Order of Australia medal for services to the arts.



## STUDENT ABSTRACTS & BIOGRAPHIES

### Virginia Newell

The Australian National University

Virginia completed her LLB(Hons) at the ANU and is due to complete her M(Phil) at the ANU by the end of 2008. Virginia's career has seen her working for the Central Land Council in the Northern Territory on land rights issues; in the Department of Prime Minister and Cabinet in Canberra working on indigenous issues and native title; in private legal practice in Canberra and Melbourne working as a commercial/government/regulatory lawyer; in Geneva working for the United Nations Compensation Commission; and lately to Newcastle University where she taught administrative and constitutional law. Virginia is looking forward to completing her Masters and starting a new chapter in her career.

#### **Abstract: Administrative law values? What are they, where do we find them and why bother looking for them?**

What values underpin the administrative law system in Australia? Since 1995, there have been upwards of thirty Australian articles that make reference to administrative law values, though the precise nomenclature changes from article to article. While the concept of administrative law values is enjoying great currency, only a handful of authors have drawn on their experience and listed the values that they believe are embodied in, and promoted by, our administrative law system. The remainder of the articles simply reference or adapt these earlier lists. What is intriguing is that while the concept of administrative law values is now routinely being used to argue for and against significant developments in public administration, there has been little written on the provenance, suitability and utility of these values. By researching the reform reports of the 1970s – the Kerr Committee Report, the Bland Committee Reports and the Ellicott Reports – my aim is to demonstrate that certain administrative law values were expressly built into New Administrative Law system in order to ensure enhanced executive accountability and adequate administrative justice for individuals. The significance of this research is that by studying the 1970 Reform Reports it is possible to separate core administrative law values from the current range of administrative law mechanisms (the ADJR Act, FOI etc) in a defensible manner. Once isolated, these administrative law values can then be promoted as a means of improving administrative accountability and administrative justice for individuals in new modes of public administration, such as in the contracting-out of government services.

### Lesley Petrie (Speaker)

Flinders University

Originally from Scotland, Lesley Petrie graduated with LLB (Hons) from the University of Dundee in 2000. She also has a LLM (Research) from Flinders University which she completed in 2005, and has recently (March 2008) embarked on a PhD at Flinders University. Lesley is a full-time Lecturer in Law at Flinders University: she currently teaches Property Law Concepts, Trusts and Assignments and Land-Use Planning, and is in the process of developing an elective in Animal Law

#### **Abstract: Legal recognition of human-animal relations**

The Australian legal system classifies animals as personal property; however, such a classification fails to acknowledge the realities of reciprocal human-animal relations. In comparing the law's recognition of attachment to inanimate objects with the lack of recognition of attachment to animals, this thesis poses a number of questions including: what is the value of an animal and are animals interchangeable objects?

In seeking to answer these questions, this thesis examines the legal and moral status of 'things', including animals, through a Hegelian conception of property, and asks why it is that the law does not recognise the human-animal bond. Could it be that such recognition would highlight the inherent value of animals, and cast doubt upon the status of these sentient creatures as objects to be utilised merely to satisfy human ends?



## STUDENT ABSTRACTS & BIOGRAPHIES

### **Hafiz Aziz ur Rehman (Speaker)** The Australian National University

Hafiz Aziz ur Rehman is Assistant Professor at the Faculty Shariah & Law, International Islamic University and currently a PhD candidate at ANU College of Law. Aziz's PhD work focuses on patent law and access to essential medicines with an emphasis on Indian pharmaceutical production and exports. In 2000 Aziz completed his LLM from the University of Stockholm Law School, Sweden and earned an LLB (Hons) degree from the International Islamic University, Islamabad-Pakistan in 1998. In addition to intellectual property, Aziz has worked on issues related to consumer protection, health regulations, competition law, land rights and Shariah law.

#### **Abstract: The Roche Litigation: Indian Patent Law & Compulsory Licences**

The debate about the intellectual property and public health has come a long way since the adoption of the WTO Doha Ministerial Declaration on the TRIPS Agreement & Public Health 2001. In the backdrop of wide of range of thematic approaches which traditionally underpin this debate, access to essential medicines in developing & least developing countries remained the single most important consideration in this regard. By 2005, all developing countries had amended relevant domestic patent regimes to implement the minimum standards set out by the TRIPS Agreement 1994 and since then, the focus of the debate considerably shifted from norms setting to enforcement and subsequent implications. A noticeable literature and research studies emerged to study and analyse the process of internationalization of the TRIPS based standards and in this regard Indian patent law and amendments were points of close scrutiny and academic discussions. Given the market share and contribution of Indian generic drug manufacturers in the supply and availability of affordable medicines in many developing and least developing countries, it is important to monitor the development and application of new patent regime in India with a view to forecast the future of supply side. The new Indian patent regime is now generally recognized as an innovative and balanced outcome with several inbuilt safeguard provisions.

This paper addresses this issue in general and in specific terms it focuses on two recent attempts of securing compulsory licences of Roche's patented cancer drug Tarceva (Erlotinib). The paper first discusses the application of Natco, a leading generic manufacturer in India, for the grant of compulsory licence of Erlotinib for export to Nepal. The paper then focuses on the judgement of Delhi High Court in Roche v Cipla. In this case Justice S. Ravindra Bhat refused to injunct Cipla from selling generic versions of a patented anti-cancer drug (Erlotinib) belonging to Roche.

In the light of these two cases, I have highlighted the administrative (Natco case) and judicial (Cipla case) responses towards the safeguards provisions incorporated in Indian patent law. It is argued here that a careful and informed interpretation of patent law from public health perspective can be helpful for poor patients that mainly rely on cheap Indian generic medicines throughout the world. It also suggests that the effectiveness and relevance of compulsory licensing as a safeguard tool can only work in an integrated policy framework and in this regard the role of government (regulators and political will), industry (supply side, alternative business models and R & D activities) and civil society (push for suggesting 'out of box' solutions and mitigation of political pressures) is extremely critical for any successful IP based access to medicine initiative.

### **Helen Saunders (Speaker)** The Australian National University

Helen Saunders is a Teaching Fellow at the ANU College of Law, undertaking a doctoral thesis on historical aspects of the development of the doctrine of unconscionable dealing, and teaching in Contract Law. She completed her LLB at the University of Sydney in 2006, after a previous life as a musician and musicologist; as a result she is somewhat surprised to now be considered both employable and respectable.



## STUDENT ABSTRACTS & BIOGRAPHIES

### **Abstract: From Blenheim Palace to Wicks Ave, Campbelltown: the Long Journey of the Expectant Heir**

The decision of the High Court of Australia in *Commercial Bank of Australia v Amadio* extended the equitable doctrine of unconscionability, as it applies to contract law, far beyond its application in most other common law jurisdictions, including that of the United Kingdom. In that decision, both Deane J and Mason J – the judges who, with Wilson J, formed the majority – made reference to a group of cases known as the 'expectant heir' cases. Two of the most widely cited of these cases – *Earl of Chesterfield v Janssen* and *Earl of Aylesford v Morris* were also referred to in *Blomley v Ryan*, another High Court of Australia case upon which the majority in *Amadio* relied in reaching their decision.

The expectant heir cases are widely viewed as containing the seeds of the modern doctrine of unconscionability; and indeed it seems that no contemporary discussion of the doctrine is complete without some – usually fleeting – reference to them. This paper raises the possibility that this view may rest on some fundamental misunderstandings as to the true nature of these cases, which can be revealed through a contextual case study approach.

### **Imogen Saunders**

**The Australian National University**

#### **Topic: Article 38(1)(c) Statute of the International Court of Justice**

Imogen Saunders gained a law/science degree from UWA, undertaking a law honours thesis in the field of international law. She completed her articles year with a Perth litigation firm, and worked as a litigation solicitor before moving to Canberra in early 2007. Imogen commenced her PhD at ANU in March 2007, studying the theory and application of Article 38(1)(c) of the Statute of the International Court of Justice.

### **Fiona Tito Wheatland**

**The Australian National University**

#### **Topic: The barriers to adoption of safer care in health**

Fiona has been actively involved in policy development, data analysis and law reform in health, compensation and disability-related issues for over 20 years in Government, the community and private sectors. She was the Chair of the Professional Indemnity Review of the Commonwealth Health Department between 1991-1996.

Fiona has extensive experience as a consumer advocate at the national, ACT and individual facility level, as well as undertaking personal advocacy for consumers where this is needed. She was a consumer representative on the Calvary Healthcare ACT's Quality Improvement Committee for 5 years and Clinical Health Improvement Program for 3 years, a consumer representative on the Royal Australian College of Physicians Better Practice Coordinating Committee and an Official Visitor for the ACT Mental Health System. She was also the inaugural chair of the Australian National University Medical School's Community Liaison Committee. She was a consumer board member on the National Medication Safety Collaborative and on several of the advisory committees of the Australian Council for Quality and Safety in Health Care.

Fiona was the chair of the Community and Health Rights Advisory Council between 2000-2002. She was the Australian Council of Social Service Principal Policy Advisor on Health between 2000-2003, as well as chairing the Australian Capital Territory Council of Social Service Health Advisory Committee between 1997-2003. She was on the Board of Consumers Health Forum between 2002-2004. Fiona was also a member of the Management Committee of the ACT Mental Health Consumer Network in 2003 and remains a representative on the ACT Mental Health Policy Committee.

### **Kylie-Weston Scheuber (Speaker)**

**The Australian National University**

#### **Topic: Ideology: a comparison of motive in terrorism case versus manslaughter cases**

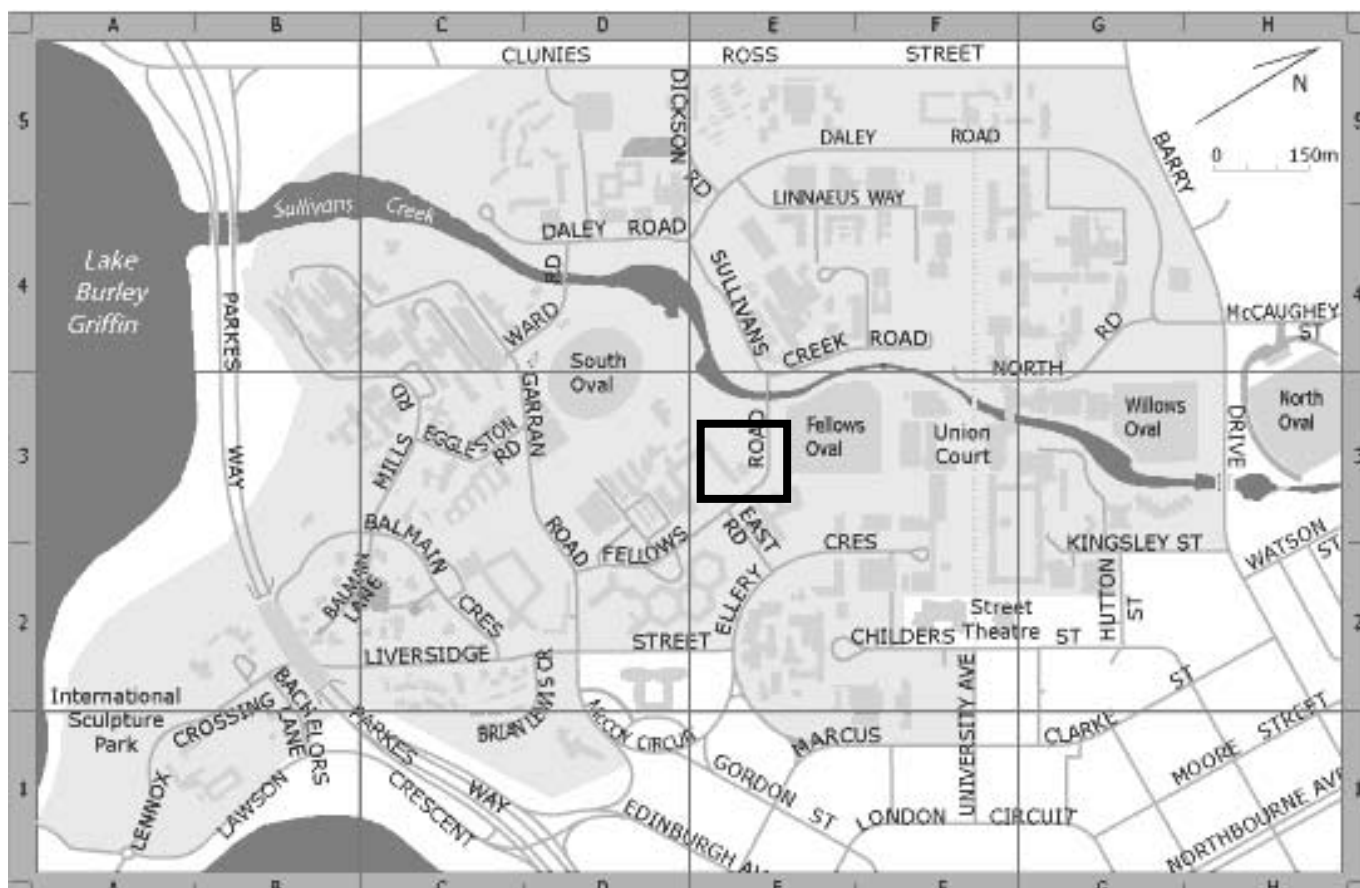


## PARTICIPATING RESEARCH STUDENTS

Ashleigh Barnes	The Australian National University
Megan Bowman	Victoria University
Owen Cordes-Holland	The Australian National University
Megan Davis	University of New South Wales
Regina De Vela-Santos	The Australian National University
Virginia Falk	Macquarie University
Jian Rong (Jenny) Fu	The Australian National University
David Heckendorf	The Australian National University
Saskia Hufnagel	The Australian National University
Jacqueline James	University of New South Wales
Elinor Jean	The Australian National University
Brad Jessup	The Australian National University
Mitchell Jones	The Australian National University
Johannes Krebs	The Australian National University
Rebecca Laforgia	Flinders University
Bruce Lindsay	The Australian National University
Andrew Lu	The Australian National University
Virginia Newell	The Australian National University
Lesley-Anne Petrie	Flinders University
Hafiz Aziz ur Rehman	The Australian National University
Helen Saunders	The Australian National University
Imogen Saunders	The Australian National University
Fiona Tito-Wheatland	The Australian National University
Kylie Weston-Scheuber	The Australian National University



## LOCATION



### MAP LOCATION: E3

Sparke Helmore Theatres  
ANU College of Law  
Fellows Road  
The Australian National University  
Canberra



**NOTES**