

The Centre for International & Public Law, ANU College of Law, The Australian National University *presents*

Between the Devil and the Deep Blue Sea? Administrative Law in an Age of Rights

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Tuesday 25 March 2008, 1pm (sandwiches from 12.45pm)

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This paper examines the impact of the new jurisprudence of rights on administrative law. Commentators tend to conceptualise this development in terms of constitutionalisation and internationalisation. I examine the effects of this process in two jurisdictions – the UK and Australia – which present sharply opposed responses. Australian courts seem by and large to have rejected the international discourse of rights, retreating to the apparent safe haven of old-fashioned Dixonian legalism. Rules are preferred to principles, and strict textual exegesis prized above context-sensitive adjudication. The situation in the UK presents a radically different picture: courts seemingly awash on a sea of principles, and pre-existing rules partially abandoned or downgraded. The courts have opened themselves up to the influence of international law and the decisions of foreign courts. All this has resulted in a complicated stew in which the new principles have not been given anything like coherent shape. The paper asks whether, absent the discovery of coherent limiting devices, the prospect of 'judicial lawlessness' can be avoided in the application of rights-based administrative law.

Dr Thomas Poole studied Law at University College London, St. John's College, Oxford and the University of Manchester. He taught at the University of Nottingham for 6 years before joining the LSE in September 2006. Tom has also held Visiting Fellowships at the University of New South Wales (2004-6) and the European University Institute (2007).

Tom's main teaching and research interests lie in the field of constitutional and administrative law and theory. He currently teaches Public Law, Administrative Law, and Civil Liberties & Human Rights at LSE. His doctoral thesis on common law constitutionalism has since been published in a series of articles. He has also published articles on emergency constitutionalism, the constitutional thought of John Griffith and the political theory of John Locke.