



CENTRE FOR INTERNATIONAL AND PUBLIC LAW
FACULTY OF LAW



THE AUSTRALIAN NATIONAL UNIVERSITY

Newsletter

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edited by Cathy Hutton

September 2000

For Your Diary



The Annual Public Law Weekend 10–11 November 2000

This will be the fifth annual conference and the third on administrative law. The speakers on the Friday will examine the shifting intersections between public and private institutions and the laws affecting them. In particular they will look at how tort liability, corporations law and workplace relations have influenced and been influenced by developments in administrative law. The Friday night dinner speaker is the **Hon. Michael Black AC, Chief Justice of the Federal Court of Australia**. Drawing on his experience at the Federal Court, he will reflect on the 20 years since the commencement of the *Administrative Decisions (Judicial Review) Act 1977*. The Saturday update will review recent developments in administrative law over the last two years, covering freedom of information, tribunals, judicial review and future developments.

Convenors: Judith Jones and Daniel Stewart
Secretariat: Cathy Hutton

All those who have attended the Public Law Weekend in the last two years have been sent a brochure which is now also on the web at: <http://law.anu.edu.au/centres/CIPL/WEB22-07.htm> (Conferences and lectures 2000)

SPECIAL FOLLOW-ON EVENT

The Dismissal Dinner

11 November 2000

Marking the 25th anniversary of the dismissal of the Whitlam Government

Special guest: The Hon. Gough Whitlam AC, QC

Twenty-five years have passed since Governor-General Sir John Kerr exercised the so-called reserve powers of the Crown to dismiss serving Prime Minister, Gough Whitlam, from office and install the then Opposition Leader Malcolm Fraser. The events of 11 November 1975 are as controversial today as they were then, and continue to inform the debate about republicanism, democracy and leadership in Australia. The Faculty of Law and the Centre for International and Public Law now mark the 25th anniversary with a dinner featuring Mr Gough Whitlam himself at a venue that reverberates with the politics of the time.

The venue will be the **Lobby Restaurant, King George Terrace, Parkes**. There will be a set three-course meal (with a vegetarian option) in keeping with the occasion. Pre-dinner drinks will be served from 7.00pm. The cost of the dinner (including drinks) is \$75.00 per head.

Numbers are limited and places will be allocated in order of receipt of the booking form. Intending guests are urged to respond as soon as possible and no later than Friday 27 October. The booking form is available from the Centre.

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Centre conferences and workshops

ANZSIL/ASIL joint conference *International Legal Challenges for the 21st Century* Sydney (26 June) & Canberra (28-29 June)

The Centre's annual international law conference in 2000 was a major joint conference of the Australian and New Zealand Society of International Law and the American Society of International Law which was a tremendous success. Susan Karamanian (Locke, Liddell & Sapp, Dallas, Texas) was the co-chair of the organising committee. The first day of the conference was held in Sydney and focused on trade and environmental issues. Excellent panels and two splendid addresses by the Hon. Justice Michael Kirby "International Law — Down in the Engineeroom" and Professor Thomas M Franck "Global Rights and Cultural Exceptionalism" gave the day great depth. A drinks reception at Baker and McKenzie was followed by a dinner at the Hyde Park Barracks Café.

The two days in Canberra offered a considerable array of topics from "Maritime Boundary Settlements through Joint Development Zones" to "Theories of International Law for the 21st Century" with a mix of Australian, New Zealand, European, Asian, Canadian and US speakers. Keynote addresses by the Hon. Alexander Downer and the Hon. Daryl Williams much impressed members of ASIL as particularly frank and illuminating. The Conference Dinner was held at Parliament House on Wednesday 28 June. It featured a game of International Law trivial pursuit with host extraordinaire Robert McCorquodale and was a wonderful evening.

The Centre has received a lot of very positive feedback about the Conference from all parts of the globe. Great thanks are due to Cathy Hutton and Jenny Braid for their wonderful work on the conference. One of our American speakers, John King Gamble of Pennsylvania State University, had this to say, in the July-August ASIL newsletter:

It was an excellent meeting, one of the best I have attended. ... Hilary Charlesworth and Susan Karamanian deserve high praise for organizing an excellent program and persuading many people to make the trip from far away which produced a wonderful synergy with 'locals' who attend almost every year.

I was especially impressed by the high quality of the participation by senior officials from the Australian Federal (Commonwealth) Government. Participation by senior governmental officials is problematic at conferences, especially in the United States.

Difficulties can arise because officials are unwilling to appear. If they do, often their presentations are brief and superficial; it seems the goal is to offend as few as possible and leave quickly without taking questions. When officials do give major substantive speeches, they are so careful to adhere to official government positions that one gets a sanitized, unidimensional version of complex policy issues.

I was delighted—and more than a little surprised—that we were treated to at least three deep, analytical, and substantive speeches from major national governmental officials. Even more remarkable, each speech was extremely candid. Overall we got some very thorough—yes, academic—analyses of what policies the government is pursuing, why, and the myriad problems encountered in developing those policies. This is the way conferences are supposed to work; this one succeeded admirably.

The Conference proceedings are currently being edited for publication in November. All conference participants and ANZSIL members will be advised. For further details contact Cathy Hutton at the Centre.



ASIL participants from left to right: Karen Engle (Utah), David Kennedy (Harvard), David Wirth (Boston College), Ruth Wedgwood (Yale), Susan Karamanian (Locke, Liddell & Sapp), Jonathan Charney (Vanderbilt), Mark Tushnet (Georgetown) and Chris Joyner (Georgetown)

Graduate Program in Law

The intensive course *Special Topics in International Law: Procedures and Policy* given by Professor David Kennedy of Harvard Law School was held at the Law School on 30 June and 1 July. The Centre arranged for the course to be held in conjunction with Professor Kennedy's visit to Australia to attend the ANZSIL/ASIL conference at the end of June. Professor Kennedy's dazzling erudition and inspiring teaching were highly praised by the 26 participants in the course. He tells us he "really had a great time" at the ANU and we have hopes of persuading him to make a return visit.

Liberalism in International Studies

27 June, Law School ANU

This workshop was jointly hosted by the Centre and the Department of International Relations (Research School of Pacific and Asian Studies) and convened by Chris Reus-Smit and Gerry Simpson. The 25 participants discussed the problems and virtues of liberal theory in analysing international relations and law. Some of the papers will be published in the *European Journal of International Law*.

Beijing +5 in review

28 July, London School of Economics

This workshop, funded by the Humanities Research Centre at the ANU, examined the outcomes of the Beijing +5 special session of the UN General Assembly in June. Twenty experts assembled at the LSE to analyse the document adopted by the General Assembly. An article based on the workshop will be published in the *Leiden Journal of International Law* early next year.



Centre lectures

11 April

A lunchtime lecture on **Iraqi Sanctions, Human Rights and International Law** given by Denis Halliday, former head of the UN Oil-for-food programme in Iraq, was attended by 100 people. This lecture was held in association with the Medical Association for the Prevention of War. Mr Halliday spoke on the tremendous suffering facing Iraqi civilians and argued that the sanctions should be lifted. Mr Halliday was very critical of both the US and Australian governments' support for the sanctions. The text of the lecture is available from the Centre and on the web at <http://law.anu.edu.au/centres/CIPL/WEB22-07.htm> (Conferences and lectures 2000).

18 May

Around 120 people attended the evening lecture on **Building the New State of East Timor** given by Jean-Christian Cady, Assistant Secretary-General of the United Nations and Deputy Transitional Administrator of East Timor. Mr Cady spoke on the enormous problems facing UNTAET in rebuilding all aspects of life in East Timor. The lecture text is available from the Centre and on the web at [http://law.anu.edu.au/centres/CIPL/WEB22-](http://law.anu.edu.au/centres/CIPL/WEB22-07.htm)

[07.htm](#) (Conferences and lectures 2000). The lecture was arranged by Centre member, Dennis Pearce.



Jean-Christian Cady & Dennis Pearce

Geoffrey Sawer Lecture

9 August

The Centre was delighted when Professor Kathleen M Sullivan, Dean of Stanford Law School, agreed to give the third in the series of annual lectures convened in honour of Geoffrey Sawer, the first full-time Professor of Law at the ANU. Professor Sullivan is a distinguished constitutional lawyer and a regular advocate before the US Supreme Court. She spoke on **Group Identity and American Constitutionalism**. Her complex and compelling lecture was very well attended. Professor Sawer's daughter and grand daughter, Elizabeth and Kate Penhallurick, were able to be present. The text of the Lecture will be published in 2001 in the Centre's Law and Policy Papers series.

The Centre enjoyed Professor Sullivan's visit to the ANU greatly. She addressed students and staff and met many staff informally. She also engaged in long conversations with our Dean, Professor Michael Coper, about the trials, tribulations and joys of being a Dean.



Michael Coper, Kathleen Sullivan, Kate Penhallurick & Elizabeth Penhallurick

Research in the Centre

Extra-territoriality Research Project

The Centre received a large ARC grant for 2000 and 2001 for this research. In broad terms, the focus of the research project is the identification and analysis of the implications of foreign extra-territorial legislation for Australia. **Deborah Senz** is currently working with **Hilary Charlesworth** on the first of a series of articles. This first paper, through case studies involving interviews with company officials and officers from the Attorney-General's Department and the Department of Foreign Affairs and Trade, will document and analyse the effects of foreign extra-territorial legislation on Australian corporations and individuals. Through comparative research, the paper will then go on to develop policy and legislative options for responding to the use of extra-territorial legislation against Australian nationals and corporations. In particular, it will consider whether the *Foreign Proceedings (Excess of Jurisdiction) Act 1984 (Cth)* should be amended.

The Impact of Administrative Law on Federal Government Agencies

Means of controlling government action have blossomed in the last 30 years. Ombudsmen, freedom of information, a range of specialised tribunals and an enhanced role for the courts have ensured that the ability to question government has shifted markedly in the citizen's favour. However, despite these developments there has been little attempt to assess their impact. **Robin Creyke, John McMillan** and **Dennis Pearce** are undertaking the first such survey, with funds from the Australian Research Council. Preliminary findings were presented at a recent seminar in the Centre. Further information: robin.creyke@anu.edu.au

PhD research

Sari Kouvo

Integrating Gender in the International Human Rights Project – A critical Analysis of the Contents of an Analytic Category

My thesis focuses on the development, use and content of the analytic categories designating one or the other of the “two sexes” and the relationship between them. Hence, I am preoccupied with the stated, presumed and implied content of analytic categories such as “sex” and “gender”. These will be examined from two different angles. On the one hand, I will

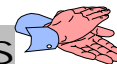
look at them from within international legal feminisms and post-structural feminist theories and on the other hand, I will look at the use of these concepts within the UN-centred international human rights project, especially targeting the so-called “gender mainstreaming strategy” developed within the UN during the 1990s.

Zoe Pearson

International Human Rights Law and the Participation of “A Global Civil Society” — Challenging Ideas of International Law?

My thesis aims to examine the role of global civil society in international human rights law. I will critically examine claims that processes of globalisation are causing much change to the international legal system, in particular changes to the impact of the phenomenon of global civil society through the idea of ‘globalisation from below’. Some of these concepts need further exploration if they are to be of use in new understandings of international law and governance. The thesis seeks to begin to challenge some of the globalisation and civil society rhetoric, questioning assumptions that are made and the concepts that are used. A case study of the influence of civil society on the international criminal court will be used to examine whether the involvement of global civil society in international law is as effective as claimed. The thesis asks whether these changes present a challenge to the traditional notions of the international arena, and whether these ideas are realistic and useful for the strengthening of international human rights law.

Congratulations



- ❖ Venerable Centre member **Peter Bailey** had the honour of carrying the Olympic torch for the second time (he first carried it for the 1956 Melbourne Games) as it passed through Canberra on 7 September.
- ❖ Following her completion of the Bar Practice Course at QUT in February, **Robin Creyke** was admitted as Barrister of the Supreme Court of Queensland on 20 March, and as Barrister and Solicitor of the Supreme Court of ACT in April.
- ❖ **Fabio Spadi**, who returned to Italy in February after spending some months at the Centre, has recently completed his PhD. He says this would not have been possible without his visit to the ANU.

- ❖ **Fiona Wheeler** was awarded the prestigious JG Crawford Prize for one of the two best PhD theses at the ANU in 1999.
- ❖ **George Williams** has been appointed as the inaugural Anthony Mason Professor of Law at the University of NSW and Director of the Gilbert and Tobin Centre for Public Law. He will take up his new position next year.



10th anniversary of CIPL

A Convivial, Inspirational, Pleasurable, and Lively evening was held at the Lobby Restaurant on 7 July to celebrate the 10th anniversary of the Centre. We were delighted that former Centre Directors Philip Alston and Julian Disney were able to join us for this memorable occasion, as well as many friends of the Centre, including former staff Margot Napier, Roslyn Walker and Nola Whitecross. It was a great opportunity to catch up with former colleagues, renew old friendships and plan for the future. Both Philip Alston and Julian Disney spoke with gusto on issues confronting international and public lawyers in Australia.



Julian Disney, Hilary Charlesworth & Philip Alston at the CIPL anniversary dinner



Nola Whitecross, Margot Napier, Roslyn Walker & Cathy Hutton at the CIPL anniversary dinner

Centre publications

Occasional Paper

The Centre has recently published another in our series of Occasional Papers. This is the Blackburn Lecture given by Justice John Gallop to the Law Society of the ACT on 16 May 2000 entitled "The Attorney-General: A Hybrid Character who Needs to be Versatile". Copies are available from the Centre. Law and Policy Papers 2000

The three papers in the Law and Policy Papers series to be published in 2000 are:

Paper 14

Australia and the United Nations: Challenges in the New Millennium

Ambassador Penny Wensley

A survey of Australia's involvement with the United Nations and an analysis of the future challenges in light of this relationship (the text of the first in a series of annual lectures by Australia's Ambassador to the United Nations, presented on 2 March 2000).

Paper 15

The Resurrection of the Republic

Professor George Winterton

A discussion of the 1999 Republic Referendum and the prospects for future constitutional change.

Paper 16

Administrative Review in Transition

Five essays by principal members of the existing tribunals on the proposed changes in the Commonwealth tribunal system discussing the features of the existing system that could be preserved within the new structure.

Justice Deirdre O'Connor

President of the Administrative Appeals Tribunal

Susanne Tongue

Principal Member of the Migration Review Tribunal

Dr Peter Nygh

Acting Principal Member of the Refugee Review Tribunal

Bill Rolfe

Principal Member of the Veterans' Review Board

Margaret Carstairs

Acting Principal Member of the Social Security Appeals Tribunal

Subscription enquiries for the Law and Policy Papers series:

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email sales@federationpress.com.au

Discussion groups

A joint Lunchtime Seminar for the International Law and Public Law Discussion Groups was held on 19 May entitled *East Timor in Transition*. Speakers were Jean-Christian Cady, Assistant Secretary-General of the United Nations and Deputy Transitional Administrator of East Timor, and Daniel Fitzpatrick, Faculty of Law, ANU, an expert on property law in East Timor.

International Law Discussion Group (ILDG) Evening Seminars

- ❖ 13 April — *The Biosafety Protocol on the Transboundary Movement of Living Genetically Modified Organisms* with speakers Rhonda Piggott and Ben Burdon, International Organisations and Legal Division, DFAT.
- ❖ 4 September (with the International Law Association Australian Branch) — *The Southern Bluefin Tuna Cases and Dispute Resolution before new International Tribunals* with speakers Mark Jennings and Donald R Rothwell.
- ❖ 28 September — *Critical Dates in the Interpretation and Application of Treaties* with speaker Professor Don Greig.

If you wish to be included on the ILDG mailing list, please contact the Centre.

Public Law and Public Administration Discussion Group (PLDG) Evening seminars

- ❖ 18 July — *Compensating for work injury – have we got the right model?* with speaker Ms Meryl Stanton, Chief Executive Officer, Comcare.
- ❖ 7 August — *The Impact of Administrative Law on Federal Government Agencies* with speakers Robin Creyke, John McMillan & Dennis Pearce, Faculty of Law, ANU (see p 4).

The PLDG seminars are convened by Pam O'Neil and membership is by invitation only.

Visitors to the Centre

Mr Jean-Christian Cady, Assistant Secretary-General of the United Nations and Deputy Transitional Administrator of East Timor on 18-19 May. Mr Cady gave a lecture and a seminar during his visit (see p 3).

Professor Philip Alston, former Director of the Centre and currently Head of the Law Department, European University Institute, Florence on 7 July. Professor Alston was in Australia to attend the joint ANZSIL/ASIL conference 26-29 June (see p 2) and the Centre's Tenth Anniversary dinner on 7 July (see p 4).

Mr Takafusa Shioya, President of Japan's National Institute for Research Advancement (NIRA) on 18 July. Mr Shioya met with members of the Centre to discuss the role of international law in Australia.

Professor Kathleen Sullivan, Dean of Stanford Law School on 8-10 August. Professor Sullivan presented the third Geoffrey Sawer Lecture on 9 August (see p 3).

Arrivals and departures at the Centre

The Centre welcomes new member **Pene Mathew** who arrived in the Faculty for the start of second semester in June. Pene comes from the University of Melbourne Law School and has recently completed her JSD from Columbia Law School. She will be teaching in international law and human rights law.

Deborah Senz has begun a year-long appointment as research fellow on the large ARC grant awarded to the Centre last year for *Implications of Extra-Territorial Legislation in Australia* (see p 4). Deborah has come from Mallesons Stephen Jaques where she was a litigation specialist.

Sari Kouvo, a PhD student from the Department of Law at the University of Göteborg in Sweden, has come to work at the Centre for six months. Sari's PhD is on "gender mainstreaming" in the United Nations (see p 4).

It was with great regret that we farewelled **Robert McCorquodale** who left the ANU in August to take up an appointment as Chair of International Law at the University of Nottingham. He may be contacted on Robert.McCorquodale@nottingham.ac.uk.

We also sadly farewelled **Deborah Cass** and **Gerry Simpson** who have taken up appointments at the London School of Economics. Email addresses are d.z.cass@lse.ac.uk and g.j.simpson@lse.ac.uk.

Another valued colleague **Ian Holloway** has departed for Canada where he has taken up the position of Dean, Faculty of Law at the University of Western Ontario.

Workshops and training courses

Hilary Charlesworth, with Elizabeth Evatt AC and Roland Rich, Director, Centre for Democratic Institutions, ANU, presented a workshop on Human Rights Treaty Bodies Reporting in Phnom Penh, Cambodia from 12-16 June.

Conference papers and talks

Hilary Charlesworth

- ❖ "The Project of Reconfiguration: How can International Law be Reconstituted?" paper presented at the American Society of International Law (ASIL) Annual Conference, April (Washington DC).
- ❖ "Weighing In" address at the Conferring of Degrees, ANU, April.
- ❖ "Australia's human rights record: magnificent or meagre?" inaugural Dame Roma Mitchell Lecture for the Law Institute of Victoria/Victorian Women Lawyers, June (Melbourne).
- ❖ "A Discipline of Crisis: International Lawyers and Kosovo" paper presented at the International Law Association Conference, July (London).
- ❖ "International Law and the Australian Constitution" talk to the Schools Constitutional Convention, August (Canberra).
- ❖ "The Rule of Law and Human Rights" paper presented at the Globalising the Rule of Law? conference, August (Brisbane).

Robin Creyke

- ❖ "The Impact of Administrative Law on Federal Government Agencies" paper delivered at AIAL Sandwich Seminar, August (Perth).

- ❖ Talk to members of the Social Security Appeals Tribunal on implications for the Tribunal of the Administrative Review Tribunal Bill 2000, August (Perth).
- ❖ "Wherefore ART thou BILL? Administrative review: A critique of the Commonwealth ART Bill" (with P Johnston) at AIAL Sandwich Seminar, September (Perth).

John McMillan

- ❖ "Interpreting Public Sector Legislation – Recent Trends" address to public service seminar, February.
- ❖ "The Federal Court and the Review of Tribunal Decisions" address to Executive Members Conference of the Social Security Appeals Tribunal, April.
- ❖ "Judicial Review of Immigration Tribunal Decisions" address to the National Conference of the Migration Review Tribunal, April.
- ❖ "Law and Administration — Conflicting Values" address to the Senior Executive Service Breakfast Series, conducted by the Public Service and Merit Protection Commission, May.
- ❖ "Globalisation — A Threat to Australian Public Law?": paper presented to the 10th National Administrative Law Forum, June.
- ❖ "Recent Administrative Law Trends in the High Court and Federal Court", address to public sector seminar, August (Brisbane).
- ❖ "Recent Developments in Refugee Law" — address to Australian Institute of Administrative Law seminar, August.

Dennis Pearce

- ❖ Commentator on paper on Freedom of the Press, World Association of Press Councils Conference, April (Cairo).
- ❖ Concluding Comments, 10th AIAL Forum, July (Adelaide).

Adrienne Stone

- ❖ "The Great Debate: The No Case" address to the ACT Schools Constitutional Convention, August.
- ❖ "The Australian Free Speech Experiment and Scepticism about Entrenched Rights" paper presented at "Sceptical Approaches to Entrenched Human Rights", September (Kings College London).

Staff and members' publications

Hilary Charlesworth

- ❖ *The Boundaries of International Law* (with Christine Chinkin) July (Manchester University Press).
- ❖ "Why a bill of rights would protect Howard's 'fair go'", *The Age* 12 September (with Pene Mathew).

Robin Creyke

- ❖ *Veterans' Entitlements Law*, The Federation Press, 2000 (592 pp) (with P Sutherland). The first book on veterans' entitlements law in Australia.

John McMillan

- ❖ "Administrative Tribunals" (2000) 76 *Reform* pp 67-73.
- ❖ "Parliament and Administrative Law", Research Paper, as part of the "Vision in Hindsight" series (2000, Parliamentary Library).
- ❖ "Commentary: Recent Developments in Refugee Law" (2000) 25 *AIAL Forum*.
- ❖ "Globalisation, Rights and Australian Administrative Law" (jointly with R Creyke) in C Finn, *Re-inventing Administrative Law for the New Millennium* (2000, AIAL) (in publication).

Dennis Pearce

- ❖ "Ombudsman in Australia" in *Righting Wrongs: The Ombudsman in Six Continents*, ed Roy Gregory and Philip Giddings (2000, IOS Press, The Netherlands).
- ❖ "Australia's Leap to Success: The Veterans' Entitlement Act", *Legion* (Canada), June 2000.
- ❖ "In the Public Interest?", *Australian Press Council News*, vol 12, 2000.
- ❖ "The Proposed Administrative Review Tribunal", *Administrative Law Service Bulletin*, No 177, July 2000.

John Seymour

- ❖ *Childbirth and the Law* (OUP).

Adrienne Stone

- ❖ "Commentary: The Means and Ends of Constitutional Reticence" (2000) 25 *Australian Journal of Legal Philosophy* 157.

George Williams

- ❖ *A Bill of Rights for Australia* (UNSW Press).



Members' consultations with government

Hilary Charlesworth

- ❖ Human Rights Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence & Trade, June.

Dennis Pearce

- ❖ Victorian Parliament Subordinate Legislation Committee: Jurisdiction and Procedure of the Committee.
- ❖ House of Representatives Privileges Committee: The Scope of "Proceedings in Parliament".
- ❖ House of Representatives Legal and Constitutional Committee: the Privacy Amendment (Private Sector) Bill 2000.
- ❖ Senate Legal and Constitutional Legislation Committee: the Privacy Amendment (Private Sector) Bill 2000.
- ❖ Victorian Supreme Court Academic Appraisal Committee, External Consultant on Recognition of a Law Degree.

Dennis Pearce and John McMillan

- ❖ Hosted a visit from the Victorian Parliament Scrutiny of Acts and Regulations Committee in June 2000, as part of the Committee's inquiry in the Subordinate Legislation Act 1994.

John McMillan

- ❖ Commonwealth Parliament Joint Committee on Migration: Migration Legislation Amendment Bill (No 2) 2000.

