



CENTRE FOR INTERNATIONAL AND PUBLIC LAW
FACULTY OF LAW



THE AUSTRALIAN NATIONAL UNIVERSITY

Newsletter

Issue No. 1 of 2002

edited by Jenny Braid

March 2002

Director's Letter

Welcome to the first Centre newsletter for 2002. It gives a good idea of the diversity of the Centre's activities. As always we welcome the participation of Centre friends in these activities.

I spent January and February of 2002 as a member of the Global Law Faculty at New York University School of Law. The Global Law School — an initiative of Professor Norman Dorsen and Dean John Sexton — is a scheme to internationalise the curriculum at NYU. As its website explains, the Global Law School Program (GLSP):

reflects the law school's conviction that the practice of law has escaped the bounds of any particular jurisdiction and that legal education can no longer ignore the interpenetration of legal systems. Since its inception in 1994, the GLSP has overseen a radical change in the structure of NYU Law faculty and curriculum, the composition of the student body, and the range of extracurricular opportunities. The goal has been to transform legal education and make NYU Law a "global" rather than merely a national law school.

Each year, the GLSP brings a number of non-American academics and judges from around the world to teach at NYU Law. The Law School also runs the largest graduate law program in the United States of more than 300 foreign students.

I was teaching a course on 'Gender and human rights' to a group of US and foreign students and enjoyed the time at NYU greatly. It is a very lively Law Faculty with a particular strength in international law. A distinctive feature of the curriculum is a number of semester-length colloquia which attract both faculty and students for intense discussion. Former CIPL Director, **Philip Alston**, has just joined the NYU Law Faculty on a permanent basis, so it was a great opportunity to catch up with him. I saw CIPL member **Amelia Simpson**, currently a teaching associate at Columbia Law School, who is enjoying her time in New York. She is both preparing for her JSD and working for the eminent international lawyer, Professor Louis Henkin, assisting him in his work as a member of the UN Human Rights Committee.

I also used my time to continue work on a Macarthur Foundation funded research project on women and international dispute resolution. This is a significant topic at the United Nations at the moment, since the adoption of the Security Council Resolution 1325 (on women and peace) in 2000. I met with ANU Law Faculty alumna, Jane Connors, now in the UN's Division for the Advancement of Women, who is a leading figure in this area.

It's great to be back at the ANU and I'm looking forward to a stimulating year. Many thanks to **John McMillan** for acting as Director in my absence.

Hilary Charlesworth

For Your Diary



- **International Law Discussion Group**
[Professor Hilary Charlesworth](#) — 'Sex, Gender and 11 September' — 23 April, Staff Library, Law Faculty, ANU, 5.30 pm
- **International Law Discussion Group**
[Wayne Morgan](#) — 'Queering International Law' — 14 May, Staff Library, Law Faculty, ANU, 5.30 pm
- **International Law Discussion Group**
[Dr Ann Kent](#) — 'Why States Comply' — 20 June, Staff Library, Law Faculty, ANU, 5.30 pm
- **Inaugural/Valedictory Public Lecture Series 2002**
[Professor Phillipa Weeks](#) — 'Fairness at Work' — 20 May, Law Theatre, Law Faculty, ANU, 5.30-6.30pm
- **Inaugural/Valedictory Public Lecture Series 2002**
[Professor Andrew Byrnes](#) — 'Apocalyptic Visions and the Law: The Legacy of 11 September' — 30 May, Law Theatre, Law Faculty, ANU, 5.30-6.30pm
- **ANZSIL Annual Conference / CIPL International Law Weekend** — 14-16 June — ANU
- **Geoffrey Sawer Lecture** — 31 July, 6pm, Shine Dome, ANU — The fifth Geoffrey Sawer Lecture will be presented by [Judge Navanethem Pillay](#), President, International Criminal Tribunal for Rwanda
- **Public Law Weekend** — 1-2 November — ANU
Convenor, [Robin Creyke](#)

Centre Events

CIPL International Law Weekend /

ANZSIL Annual Conference – 14-16 June, ANU

Convenors: Andrew Byrnes, CIPL; Rebecca Irwin, AGs;
Kevin Riordan, NZDF; Shirley Scott, UNSW

The Centre's international law weekend is held jointly with the Australian and New Zealand Society of International Law. This conference will be held on 14-16 June 2002 at the Australian National University, Canberra. On 14 June there will be a full-day discussion on international law issues concerning **East Timor**, including the 1999 INTERFET operation and UNTAET's role in the birth of East Timor as a nation on 19-20 May. The remainder of the program will feature topical panels on international criminal law, international law/constitutional law/domestic law interface, Tampa panel, environmental law/fishing issues, human rights, September 11: international and national responses, and the year in review.

The conference brochure will be sent out in April 2002 with details of registration, travel, accommodation etc.

ANZSIL Secretariat

CIPL, Faculty of Law

Australian National University

Canberra ACT 0200



+61 2 6125 0454



+61 2 6125 0150

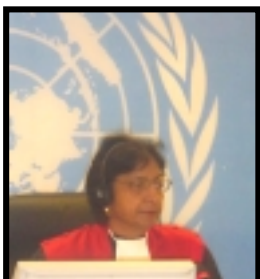


anzsil@law.anu.edu.au

Geoffrey Saver Lecture 2002

31 July

6pm Shine Dome, ANU



Judge Navanethem Pillay

We are delighted that Judge Pillay has agreed to deliver the fifth Geoffrey Saver Lecture. **Judge Navanethem Pillay** was born in 1941 in Durban South Africa. From 1967 to 1995, she practised as an attorney in Durban and was defence attorney for members of the African National Congress, Unity Movement, Azapo, Black Consciousness Movement, Trade Unions and Swapo. She was instrumental in bringing a successful ground-breaking application in the Cape High Court, which spelt out the rights of Robben Island political prisoners, particularly their right of access to lawyers. Judge Pillay was the first black woman Attorney to be appointed acting judge of the

Supreme Court of South Africa, and was a lecturer at Natal University. Judge Pillay is a trustee of Lawyers for Human Rights and was a Trustee of The Legal Resources Centre, member of Women's National Coalition, Black Lawyers' Association co-founder of the Advice Desk for the Abused and Vice President of the Council of University of Durban Westville.

Judge Pillay is the Honorary Chair of Equality Now, an international human rights organisation for action on women's rights based in New York. She holds the BA and LLB degrees from Natal University and the LLM and SJD from Harvard University. Judge Pillay was elected judge of the International Criminal Tribunal for Rwanda in May 1995 by the United Nations General Assembly and re-elected for a further four year term in November 1998. In June 1999, she was elected President of the Tribunal for a two-year term by the unanimous vote of the thirteen judges of the ICTR.

Welcome New Centre Members



Leighton McDonald



Wayne Morgan



James Stellios

We welcome **Leighton McDonald, Wayne Morgan and James Stellios** as members of CIPL and look forward to a long and happy association.

Leighton McDonald, BEc LLB (Hons) (Macq); LLM (Osgoode Hall, York) Leighton's interests are public law and theory, regulation and the rule of law, constitutional rights and jurisprudence. He is teaching Australian Public Law, Legal Theory, Judicial Review of Administrative Action and part of Fundamentals of Government and Commercial Law.

Wayne Morgan, BA LLB (Hons) (Melb); LLM (Columbia). Wayne teaches a range of international law subjects (as well as a range of domestic law subjects). In 2002, he is teaching the undergraduate course in international law, as well as graduate courses in International Trade Law and International Dispute Resolution. His research and writing tend towards theoretical and human rights issues. He is an acknowledged expert on law and sexuality and has written extensively on the human rights of those who do not identify as heterosexual.

James Stellios, BEc LLB (ANU); LLM (Cornell). James has a particular interest in express and implied constitutional rights and Chapter III of the Constitution. He is also interested in public international law generally, specifically the intersection of human rights and trade law. He is teaching International Trade Law and Commonwealth Constitutional Law.



Centre publications

Australian Year Book of International Law Vol 21

This volume is a continuation of the festschrift for
Emeritus Professor D W Greig published in volume 20



Don Greig

Articles

The Awfulness of Lawfulness: Some Reflections on the Tension between
International and Domestic Law

Sam Blay and Ryszard Piotrowicz

International Law and the Use of Force by States Revisited

Ian Brownlie

The Place of Customary International Law in Australian Law: Unfinished Business

Henry Burmester and Susan Reye

The Exception of Non-performance: Links between the Law of Treaties and the
Law of State Responsibility

James Crawford and Simon Olleson

Teoh and Visions of International Law

Gavan Griffith and Carolyn Evans

Constitutions, Constitutionalism and the Effective Implementation of the
International Standards of Human Rights

Patricia Hyndman

International Legal Relations between Australia and Taiwan: Behind the Façade

Ivan Shearer

The Great Powers, Sovereign Equality and the Making of the United Nations
Charter

Gerry Simpson

Book Reviews: Edited by *Ryszard Piotrowicz*

Australian Cases Involving Questions of Public International Law 2000

Ben Olbourne and Donald R Rothwell

Australian Legislation Concerning Matters of International Law 2000

Mary Wood, Derran Moss and Barton Hoyle

Australian Practice in International Law 2000

Edited by *Tim Bolotnikoff* and supervised by *Peter Scott*

Australian Treaty Series 2000

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Jo.Bushby@anu.edu.au

Law and Policy Paper Series

Paper 19

The International Human Rights Movement: Part of the Problem?

by **Professor David Kennedy**, Director, European Law Research
Center, Harvard Law School and Henry L. Shattuck Professor of Law.

*A critical analysis of the role of the international human rights
movement, questioning whether its pre-eminence has not in some
respects made it a restriction on the possibilities of emancipation, as
well as a force for good.*

Law and Policy Papers 2002

Another three papers, — one on administrative law, one on
constitutional law, and one on international law — will be
commissioned for publication in 2002.

Subscription enquiries for the Law and Policy Papers series:

The Federation Press

tel: 02 9552 2200

fax: 02 9552 1681

email sales@federationpress.com.au

Discussion groups

Current Issues Seminars

Staff Library, Law Faculty, ANU, 5.30pm

Current Issues Seminars allow in depth discussion of significant
developments in the Centre's fields of interest.

Dennis Pearce — 'Review of Breaches and Penalties in the Social
Security System'

Emeritus Professor Dennis Pearce presented a talk on 'The
Independent Review of Breaches and Penalties in the Social Security
System' Report on 19 March. A more detailed summary of the report is
on page 6 of this newsletter.

International Law Discussion Group

Staff Library, Law Faculty, ANU, 5.30pm

Don Greig — "'International Community': Rhetoric or Reality?'

Emeritus Professor Don Greig critically analysed the newly fashionable
notion of an 'International Community' which is capable of redressing
the world's evils. This seminar was held on 25 March.

Hilary Charlesworth — 23 April — 'Sex, Gender and 11 September'

Wayne Morgan — 14 May — 'Queering International Law'

Ann Kent — 20 June — 'Why States Comply'



Centre Grants

ARC Discovery Grant

In its most recent round, the Australian Research Council awarded a four-year grant (\$365,000) jointly to **Hilary Charlesworth**, Director of the Centre and George Williams, Director of the Gilbert and Tobin Centre for Public Law at the University of New South Wales Law School for a project — 'International Challenges to the Australian Legal System: Trade and Human Rights'. The rationale for the project is that the traditional notion of the Australian legal system as self-contained can no longer be sustained. Australia's legal structure operates within an international framework in which norms permeate national boundaries and influence local debates. This project will examine how Australian law and parliamentary and judicial institutions have reacted to this challenge, using the areas of trade and human rights as case studies. It will contribute to a new theoretical understanding of the Australian legal system as well as providing practical guidance for policy makers.

Centre Members to Participate in Public Lecture Series

This year, the Faculty of Law Alumni has joined with the ANU's newly established National Institute of Government and Law to present a series of public lectures in March and May to commemorate the recent appointment of three new professors of law and the departure of some venerable colleagues after many years of service to the Faculty. Professors **Andrew Byrnes**, **John McMillan** and **Phillipa Weeks** have given or will give inaugural lectures to mark their new appointments, and Professors Tom Campbell and Jim Davis will give valedictory lectures to mark the end of their long association with the Faculty. The three new professors are all closely associated with the Centre:



Andrew Byrnes



Phillipa Weeks



John McMillan

Professor **John McMillan**, was appointed to the Alumni Chair of Administrative Law. John gave his address on 5 March. It is available on the Centre's web site < <http://law.anu.edu.au/CIPL>>.

News of Centre members

The Oxford Companion to the High Court of Australia



The Oxford Companion to the High Court of Australia edited by Tony Blackshield, **Michael Coper** and George Williams, was launched at the High Court of Australia on 13 February by **Chief Justice Murray Gleeson** who said: 'It is a great credit to Professors Blackshield, Coper and Williams, to their vision, their professional skill, and their industry, that they have combined to produce this monumental work on the history and role of the Court, the cases it has decided, and the people who have participated in its business. There is a need for a wider and deeper understanding of this institution and the part it plays in the life of the nation. This publication will make a major contribution to such understanding. The work is also testimony to the courage of the Editors. The contributors have had a lot to say about many people who are still living, and who are not famous for turning the other cheek.

...
Professor Michael Coper was the convenor of a group of scholars who, in 1994, first conceived this project. Its scale is remarkable. There have been 225 authors, writing on an astonishing range of subjects, from judicial appointments to unrepresented litigants; from socialism to sexual preferences. The work of the three Editors in defining the tasks of each author, overseeing their contributions, and combining what they produced, commands admiration. I congratulate them on their magnificent achievement.'

Chief Justice Gleeson's speech is available at <http://www.hcourt.gov.au/speeches/cj/cj_oxford.htm>.

The Hon Michael McHugh AC, Justice of the High Court of Australia, spoke about *The Oxford Companion to the High Court of Australia* at the 2002 Constitutional Law Conference on 15 February in Sydney. He said: '... the *Oxford Companion to the High Court of Australia*, [is] a truly remarkable book, by whatever standard it is measured.

...
Even inveterate High Court watchers will find in its pages, much that is novel, interesting and useful. It is hard to believe that it could be at one and the same time a work that is as interesting to the non-lawyer as it is useful to the legal professionals who follow the Court's work. Yet it is. In my view, it is superior in its reach and quality to the *Oxford Companion to the Supreme Court of the United States*.

I congratulate the editors, contributors and research assistants for producing this monumental work that should be on the bookshelf of



every lawyer, politician, journalist, political scientist and citizen interested in the history and workings of the High Court.'

Read Justice McHugh's speech:

<http://www.hcourt.gov.au/speeches/mchughj/mchughj_oxford.htm>

The Oxford Companion to the High Court of Australia 'Preface' is available on: <http://law.anu.edu.au/highcourt_project/hcpmain.htm>

Members of CIPL and the Law Faculty were major contributors:

Peter Bailey: 'Civil liberties

Peter Bayne: 'Evatt, Herbert Vere', '*Northern Land Council Case*', '*Uniform Tax Cases*'

Juliet Behrens: 'Family law'

Tony Blackshield: 'Australia Acts', 'Authoritative legal materials', 'Bill of Rights', '*Caledonian Collieries Cases*', 'Constitutional basis of Court', 'Contract and tort', '*Cormack v Cope*', 'Corporations power', 'Counsel, notable', 'Deane, William Patrick', 'Dismissal of 1975', '*DOGS Case*', '*Engineers Case*', '*Federal Roads Case*', '*Free Speech Cases*', 'Fullagar, Wilfred Kelsham', 'Inter se questions', 'Jacobs, Kenneth Sydney', 'Judicial reasoning', 'Jurimetrics', 'Knox Court and arbitration', 'Litigants, notable, 1903-1945', 'Litigants, notable, 1945-2001', '*Melbourne Corporation v Barry*', 'Murphy affair', '*Namatjira v Raabe*', 'Obiter dicta', 'Papua and New Guinea', '*Parker v The Queen*', 'Precedent', 'Privy Council', 'Puisne Justices', 'Ratio decidendi', 'Realism', 'Removal of Justices', '*Sankey v Whitlam*', 'Seat of Court', 'Sovereignty', '*Tasmanian Dam Case*', '*Trident General Insurance v McNiece*', '*Viro v The Queen*'

Stephen Bottomley: 'Corporations law'

Simon Bronitt: 'Sex'

Alex Bruce: 'Trade practices law'

Hilary Charlesworth: 'International law', '*Koowarta's Case*', 'Stephen, Ninian Martin'

Michael Coper: 'Accountability', 'Amendment of Constitution', '*Cole v Whitfield*', 'Concurring judgments', 'Constitutional law', 'Counsel, notable', 'Democracy, Court's role in', '*Dennis Hotels v Victoria*', 'Excise duties', 'Intergovernmental immunities', 'Interstate trade and commerce, freedom of', 'Joint judgments and separate judgments', '*Marbury v Madison*', 'National unity', 'Outcomes, effect of procedure on', 'Political institution, Court as', 'Privy Council', '*Territory Senators Cases*', 'Tied vote'

Robin Creyke: '*Green v Daniels*', '*Kioa v West*', 'Legitimate expectation', 'Veterans' entitlements'

Jim Davis: '*Burnie Port Authority v General Jones*', '*Donoghue v Stevenson*', 'Occupiers' liability'

Douglas Hassall: 'High Court Rules', '*Ziems v Prothonotary of the Supreme Court of NSW*'

Judith Jones: 'Environmental law'

Mike Kobetsky: 'Taxation law'

Henry Mares: 'Sex'

Anthony Mason (Distinguished Visiting Fellow): 'Barwick Court', 'Chief Justice, role of', 'Comparison with other courts', 'Form and substance', 'Griffith Court', 'Judiciary Act', 'Law-making role: reflections', 'Personal relations: a personal reflection', 'Policy considerations', 'Reform of Court: further reflections'

Pene Mathew: '*War Crimes Act Case*'

Leighton McDonald: 'Rule of law'

John McMillan: 'Administrative law', 'Natural justice', '*Teoh's Case*: some quandaries'

Dennis Pearce: 'Statutory interpretation'

Richard Refshauge: 'Criminal law'

Pauline Ridge: '*Garcia v National Australia Bank*', '*Yerkey v Jones*'

Hugh Selby: 'Expert evidence'

John Seymour: 'Children', '*Marion's Case*'

Amelia Simpson: 'Annual Reports', 'Attorneys-General', 'Litigants, notable, 1903-1945', 'Litigants, notable, 1945-2001', 'Personal relations', 'Reform of Court', 'Research assistance', 'World War I'

Peta Spender: 'Civil procedure'

Daniel Stewart: 'Economics', '*Victoria Park Racing v Taylor*'

Phillipa Weeks: 'Owen, William Francis Langer', '*Patrick Stevedores Case*'

Fiona Wheeler: 'Non-judicial functions', 'Separation of powers'

The list also includes former Faculty members:

Fiona Burns: '*Muschinski v Dodds*', 'Unconscionability', 'Undue influence'

Francesca Dominello: 'Background of Justices', 'Colonialism', 'Constitutional basis of Court', 'Contract and tort', '*Hannah v Dalgarno*', 'Intergovernmental immunities and judicial reasoning', 'Papua and New Guinea', 'Popular culture', 'Popular images of Court', 'Race', 'Seat of Court', 'Sovereignty', 'Stereotypes'

Ian Holloway: 'Aickin', 'Keith Arthur', 'Court attire', 'Higgins, Henry Bournes', 'House of Lords', 'Privative clauses'

Geoffrey Lindell: 'Justiciability', 'Nationhood, Court's role in building'

Robert McCorquodale: '*Teoh's Case*'

Susan Priest: '*Bank Nationalisation Case*', '*Irish Envoys Case*', '*Jehovah's Witnesses Case*', 'Strike of 1905'

Troy Simpson: 'Appointments that might have been', 'Circuit system', 'Conferences', 'Counsel, notable', 'Humour', '*Irish Envoys Case*', 'Personal relations', '*Tait's Case*'

Adrienne Stone: 'Constitutional interpretation', 'Implied constitutional rights', 'Political communication, freedom of'

Ernst Willheim: 'Collective responsibility'

George Williams: '*Bank Nationalisation Case*', '*Communist Party Case*', 'Defence power', 'Due process', 'Express constitutional rights', '*Hindmarsh Island Bridge Case*', '*Jehovah's Witnesses Case*', 'Judicial review', '*Langer v Commonwealth*', '*Leeth v Commonwealth*'

Leslie Zines: 'Commonwealth legislative powers', 'Depression of the 1930s', 'Dixon Court', 'External affairs powers', 'Gleeson Court'

Former PhD students:

Annemarie Devereux: 'International Bill of Rights'

Declan Roche: '*Dietrich v The Queen*'

Bruce Topperwien: 'Foreign precedents'

Plus many more ANU graduates



The Independent Review of Breaches and Penalties in the Social Security System



Dennis Pearce

The Independent Review of Breaches and Penalties in the Social Security System has found that failings in the design and implementation of the system cause "many unemployed people to suffer arbitrary, unfair or excessively harsh" penalties. It has also found that the system "often diminishes people's capacity to seek work and thus become less dependent on social security".

This Review was undertaken by **Dennis Pearce**, Julian Disney (former CIPL Director), Director, Social Justice Project, UNSW and Heather Ridout, Deputy Chief Executive, Australian Industry Group. The Review was established six months ago by nine leading charities and other organisations following a trebling in the number of penalties imposed by the Department of Social Security on unemployed people over the three years since 1998.

The Chair of the Review, Dennis Pearce said: '... the system has concentrated excessively on achieving high breach rates and penalties rather than on encouraging active efforts to find work. It should be fairer, more cost-effective and strongly supportive of attempts to escape welfare dependency. ... The Review proposes a package of reforms to improve job search efforts and increase successful employment outcomes, thereby reducing social security expenditure. The package would improve help for genuine jobseekers while also pursuing and punishing the small proportion of people who seek to abuse the system. ... Many of the problems arise when Centrelink or Job Network members fail to communicate effectively or investigate jobseeker's circumstances thoroughly. Other problems arise through Centrelink failing to observe due process and to apply the relevant legal criteria before deciding to impose penalties. ... failings appear to result from staff being exposed to excessive pressure or incentives to impose penalties.'

The Independent Review made 36 detailed recommendations aimed at achieving:

- better process for interviewing, assessing and communicating with jobseekers;
- better decision-making when imposing obligations on individual jobseekers and referring them for assistance;
- stricter procedures for investigating potential breaches and ensuring that breaches are not imposed unlawfully;

- more help for jobseekers who are trying to comply with their obligations;
- removal of excessive pressures and incentives to impose breaches and penalties;
- fairer and more effective penalties.

A full copy of the Report is available at <http://www.breachreview.org>

News of former Centre members

Fabio Spadi is now working in the Enterprise Directorate-General of the European Commission, more precisely in the Directorate A: Enterprise Policy. He starts work in Brussels on 1 April. Fabio was a Visiting Postgraduate Student to the Centre for six months in 1998-9 from Scuola Superiore S. Anna. Pisa, Italy. His PhD thesis was on 'The People's Republic of China and International Economic Law'.

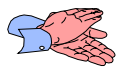
Vale Bettie McNee

In Memoriam

Many of you will be aware that **Bettie McNee** died on Monday 11 March, age 56. Bettie graduated from this Law Faculty in the early 1980s and was admitted as a solicitor in 1984. She had previously worked as a secretary within the ANU, and commenced law studies under a special entry category for mature age students (one of four only in that year). Thereafter, her career blossomed. She was a Partner in Freehill Hollingdale Page, Canberra by 1988, Managing Partner, Canberra from 1990 until 1995, and National Coordinating Partner, also from 1993-1995. Had she stayed in Canberra, Bettie would have been the first woman President of the ACT Law Society, having by then reached the position of Vice-President of that organisation. Bettie left Freehills in 1995 to become General Counsel for Westpac, a role she filled until 2000. This position was based in Sydney, and Bettie who at heart remained committed to Canberra, wanted to return here. This she did in 2000, but not to retire. She was appointed as the President of the Administrative Review Council, another challenge, since her work hitherto had been principally in the commercial field. However, with her usual intelligence and commitment she threw herself into the role as leader of that administrative law co-ordinating body. So much so, that she was asked to give the prestigious Blackburn Memorial Lecture in 2001 on developments in administrative law. In addition to these positions, Bettie was a Director of the Permanent Trustee Co Ltd from 2000, Deputy Commissioner of the Private Health Insurance Administration Council from 1998, a member of the ACT Remuneration Tribunal (from 1996), Chair of the Australian War Memorial ACT Advisory Group (1993-1995), amongst others. She leaves a husband of 32 years, a daughter and two granddaughters. She was an inspirational role model for many people in law-related professions, and in particular

for women. Her tact, charm, humour and down-to-earth, but sensitive approach to problems made her a memorable person. The Faculty can be proud that we had the confidence to recognise and foster her talents which have so richly endowed the legal profession in Australia.

Robin Creyke



Congratulations

Peter Bailey has been awarded a Faculties Research Grant for 2002 of \$2970 for his research on Anti-Discrimination Tribunals and the Courts.

PhDs have been awarded with high praise to **Annemarie Devereux** and **Helen Watchirs** – hearty congratulations.

Annemarie's thesis, **Australia and the International Bill of Rights, 1946-1966**, examined Australia's policies towards the development of the International Bill of Rights (1946-1966). It considers Australia's approach both to the substance of human rights guarantees and to the modes of international and domestic implementation for such rights. Prevailing impressionistic accounts have assumed either that Australia consistently supported a commonly understood set of human rights standards, or voiced reservations motivated by Cold War ideologically related concerns. The picture that emerges from this thesis is of a more complex relationship between decision makers' pre-existing philosophies, domestic pressures and policy. The dominant pattern noted is Australia's progressive movement away from many of the tenets of the modern 'human rights lexicon'. Under the leadership of Dr HV Evatt, Australia gave strong support for the equal recognition of all forms of rights and envisaged extensive forms of State and international implementation. When Liberal Ministers for External Affairs, PC Spender and RG Casey gained power, and as policy-making power was devolved to the bureaucratic level, Australia moved towards triumphing 'civil liberties' as archetypal human rights. Support was forthcoming for only limited State and international society involvement. A sub-text throughout the negotiations were Australia's efforts to accommodate sensitive domestic policies concerning migrants, Aboriginal persons and indigenous inhabitants of Australia's external territories, and women. Although Australia has since ratified the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, by highlighting the deep-seated philosophical differences concerning the scope of human rights, this thesis points to the likelihood of such variations continuing to influence the perceived implications of Australia's international human rights obligations.

Helen's thesis was titled **Measuring Legal Implementation of International Human Rights Norms in the Context of HIV/AIDS**.

The HIV/AIDS epidemic has already infected nearly 58 million people world-wide. Human rights protection is a central part of an effective and expanded response by the whole of society to the epidemic. Such protection assists in preventing infection of vulnerable people, and reducing the impact of infection, such as discrimination against people living with HIV/AIDS. Although human rights are worthy of protection in their own right, public health is an additional compelling reason to promote compliance with international human rights norms, as the epidemic thrives in conditions of inequality. A rights-based approach recognises societal vulnerability to infection for disempowered or stigmatised populations such as women, children, drug users and gay

men. Coercive limits on freedoms such as association and speech, impede the ability of the community to respond adequately to the epidemic. Law may reflect and reinforce these human rights abuses, but it can provide opportunities for prevention and redress.

This thesis develops a new methodology in the area of human rights and HIV/AIDS, by using a Legal Rights Implementation Measuring Instrument. The Instrument consists of ten indicators with numerical scoring to evaluate implementation of justiciable rights contained in the International Guidelines on HIV/AIDS and Human Rights. It attempts to bridge the gap between international obligation and domestic practice. The Instrument may provide a vital link with epidemiology, by producing data that is statistically manipulable. The Instrument does not claim to solve all HIV/AIDS and human rights problems, nor could any single methodology, but it does attempt to track implementation of these norms in one particular dimension, that is, law.

The Guidelines are based on international human rights treaty obligations that are relevant to the epidemic, covering the full array of economic, social, cultural, civil and political rights, such as health, equality before the law, liberty of the person, privacy, education and information. Human rights accountability is increased by making general norms more specific in soft law, such as the International Guidelines, and therefore capable of being measured. The thesis recognises that legal implementation is a necessary, but not sufficient measure, as extra-legal enforcement of rights is also important. However, objective assessment of legal implementation is an important step in securing compliance with human rights norms involving various coordinated actors in dense webs of influence.

Human rights not only provide a normative framework of analysis, but also bring into play a legally binding foundation with procedural, institutional and other accountability mechanisms within the United Nations system. The Instrument is designed to be implemented transparently at national level by tripartite panels, with a pilot application in Australia. The Instrument could provide a valuable tool in sharpening the dialogue engaged in between the treaty monitoring committees, States Parties and non-government organisations, by highlighting critical areas of concern in country reports. A major challenge of the thesis is whether the Instrument will be as useful in stimulating law reform and positive changes in human rights protection in developing countries, where 95 per cent of HIV/AIDS cases occur. Only repeated applications of the Instrument to chart progression or retrogression of implementation in a variety of jurisdictions will give a fuller picture over time. It is hoped that a deeper and more comprehensive understanding of the epidemic will be gained by linking the methodology developed in this thesis to other disciplines studying complementary methods to turn the tide of global infection.

Helen Watchirs is also the recipient of the Jonathan Mann Health and Human Rights Scholarship from the AIDS Trust of Australia to extend her thesis methodology from the NSW pilot to the rest of Australia. Helen is now working as a Post-Doctoral Fellow at Regnet, ANU.

Anthea Roberts (currently Associate to Chief Justice of the High Court of Australia, Justice Murray Gleeson, and formerly an honours research student in the Centre) has been awarded the Francis Deák Prize by the American Society of International Law for her article, 'Traditional and Modern Approaches to Customary International Law: A Reconciliation' (2001) 95 *American Journal of International Law* 757.



The article argues that there are two contemporary approaches to the determination of customary international law: the 'traditional', which emphasises state practice, and the 'modern', which emphasises *opinio juris*. The article proposes a theory of custom that incorporates both approaches. It rejects analysing custom on a 'sliding scale' in favour of a reflective interpretive approach that reconciles the descriptive and normative justifications for traditional modern custom.

This prize is awarded to the best article published in a year by an author under the age of 40 years. Congratulations Anthea!

Staff and members' conference papers, addresses, media

Recent media contributions by CIPL members are available at the CIPL website <<http://law.anu.edu.au/CIPL>>

Andrew Byrnes

- attended a *Regional Workshop on International Human Rights Law and Domestic Activism* as a resource person, in Bangkok 7 to 12 December 2001. The workshop, in which lawyers from a number of South Asian countries participated, was organised by Forum Asia, the Law & Society Trust, Interights, and the International Women's Rights Watch (Asia-Pacific)
- attended a conference to mark the tenth anniversary of the Hong Kong Bill of Rights in Hong Kong on 12 January 2002. He presented a paper entitled 'Jumpstarting the Hong Kong Bill of Rights in Its Second Decade: The relevance of International and Comparative Jurisprudence'. The conference, *A Decade of the Bill of Rights and the ICCPR in Hong Kong: Review and Prospects*, was organised by the Centre for Comparative and Public Law of the Faculty of Law at the University of Hong Kong. His paper, together with other papers presented at the conference, can be found at <http://www.hku.hk/ccpl/pub/conf/index.html>
- gave a panel presentation 'Treaty Interpretations and International Relations — The Lost State Monopoly' at *Treaties in the Global Environment*, seminar organised by the Department of Foreign Affairs and Trade, Canberra, 13-14 March 2002
- as co-rapporteur of the Committee on International Law and Practice of the International Law Association, he was primarily responsible for the preparation of the report of the Committee that will be considered at the biannual conference of the Association, to be held in New Delhi in April 2002. The report, *Interim report on the impact of the United Nations treaty bodies on the work of national courts and tribunals*, can be found on the ILA website: www.ila-hq.org (go to Committees, then to International Human Rights Law and Practice, then to Download 2002 Pre-conference report)

- took part as a speaker in a Roundtable *Humanitarian Intervention after September 11*, held on 12 February 2002, which was organised by the ANU Department of International Relations and the Royal Netherlands Embassy, in association with the ANU's National Institute for Government and Law and the National Europe Centre
- together with Shanthi Dairiam, Executive Director of the International Women's Rights Watch (Asia-Pacific), Andrew participated as a resource person in training for Mongolian government officials and non-governmental organisations on the implementation of the UN Convention on the Elimination of All Forms of Discrimination against Women, in Ulaanbaatar, from 26 February to 1 March 2002. The workshop was organised by the United Nations Development Programme and UNIFEM, in conjunction with the Mongolian National Human Rights Commission and Ministry of Social Welfare.

Hilary Charlesworth

- gave a talk, 'Understanding September 11', to Columbia Law School International Law Colloquium on 24 January
- addressed the New York University Law Faculty Globalisation Colloquium on 3 February with a talk 'International Democracy? Women in East Timor'
- gave an address, 'The Hidden Gender of International Law', to the Temple Law School, Philadelphia on 12 February
- spoke at the Australian Federation of University Women's Executive Council dinner on International Women's Day (8 March) on the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

John McMillan

- Professorial address 'Twenty Years of Open Government: What Have We Learnt?', Faculty of Law, ANU, Inaugural and Valedictory Lecture Series, 5 March. The text is available on <<http://law.anu.edu.au/CIPL>>.

James Stellios

- gave a lecture on the High Court and the Constitution on 30 January to students visiting from Michigan State University, USA
- gave a lecture on responsible government on 6 March to the University of the Third Age, Canberra



Staff and members' publications

Please contact CIPL members directly for further information on their publications

Hilary Charlesworth

'Concepts of Equality in International Law' in G Huscroft & P Rishworth (eds), *Litigating Rights: Perspectives from Domestic and International Law*, Hart Publishing (2002) 137-147

'Terrorism: international legal implications' (panel discussion) (2002) 8 *New England Journal of International and Comparative Law* 74-95

'Post 11 September: A War of Words', (Summer 2001-2002) 7 *Dissent*

Peter Bailey

'Is Administrative Review Possible without Legalism?', (2001) 8 *Australian Journal of Administrative Law* 163-175

Ann Kent

'China's Participation in International Organisations', in Y Zhang and G Austin (eds), *Power and Responsibility in Chinese Foreign Policy*, Asia Pacific Press, Canberra (2001) 132-166

'Australia and the International Human Rights Regime' in James Cotton and John Ravenhill (eds), *The National Interest in a Global Era: Australia and World Affairs 1996-2000*, Oxford University Press, Melbourne, 256-278

Dennis Pearce

The Independent Review of Breaches and Penalties in the Social Security System with Julian Disney and Heather Ridout

Daniel Stewart

'China's Impact on the Review of TRIPS', with Brett Williams, in Deborah Cass et al. (eds), *China and the World Trade System: Entering the New Millennium*, Cambridge University Press (forthcoming)

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Welcome home Hilary



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Cent**r**e **f**or **I**ntern**a**tion**a**l **a**nd
Public **L**aw
Faculty of Law
The Australian National University
Canberra ACT 0200
Australia
Telephone: 61-2-6125 0454
Facsimile: 61-2-6125 0150
Email: cipl.law@anu.edu.au
<http://law.anu.edu.au/centres/cipl>

