



CENTRE FOR INTERNATIONAL AND PUBLIC LAW
FACULTY OF LAW



THE AUSTRALIAN NATIONAL UNIVERSITY

Newsletter

Issue No. 2 of 1999

edited by Cathy Hutton

December 1999

Director's foreword

1999 has been a busy year in the Centre. We have organised or co-organised two major conferences — the ANZSIL Annual Conference held 8–10 July in Wellington, New Zealand, and the Public Law Weekend held 5–6 November at the ANU — four workshops, twelve evening seminars, two public lectures, and a number of other special events. Over 1,400 people have attended Centre events in 1999. The Centre has co-published (with Federation Press) three Law and Policy Papers and has also been involved in four training courses.

I would like to thank everyone who has been involved in the Centre's activities in 1999: Robin Creyke, who took over as Acting Director in the first half of the year, our members who made the Centre such a lively place, the members of the Centre's Advisory Board who provided support and advice, and particularly the Chair of the Board Professor Michael Coper, Dean of the Law Faculty, and the many friends of the Centre who attended its events. The Centre could not function without the considerable efforts of its Administrator Cathy Hutton and its Publications Officer Jenny Braid.

We were pleased to receive positive feedback on our first newsletter. Let us know what issues you would like to see covered in future newsletters.

Thanks and millennium greetings to all!

Hilarv Charlesworth

Special congratulations to **Robin Creyke** who has just been appointed by the Governor General to the Administrative Review Council, the peak body advising on the structure and operation of Commonwealth administrative law.

Law and Policy Papers

Law & Policy Paper 11

Aspects of Judicial Review

The Hon. Justice J R F Lehane

Law & Policy Paper 12

National Implementation: The Cutting Edge of International Human Rights Law

The Hon. Elizabeth Evatt AC

Law & Policy Paper 13

The Common Law in Australia: Its Nature and Constitutional Significance

Professor Leslie Zines

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For further information on any item in this newsletter please contact the Centre (contact details on back page). The office will close for the Christmas break at 3pm on Friday 24 December and will reopen at 9am on Tuesday 4 January.

For your 2000 Diary

Research workshop — 14–15 February 2000

Following the very successful International and Public Law Research Workshop in December 1998, the Centre will co-sponsor with the Law Program in the Research School of Social Sciences, a Research Workshop on "Writing about Law" on 14 and 15 February 2000. The Workshop is aimed at legal researchers of all ages and stages and will focus on the process and problems of writing about the law.

For further information

Hilary Charlesworth: hilary.charlesworth@anu.edu.au

Peter Cane: peter.cane@coombs.anu.edu.au

International Law Conference 26–29 June 2000

This historic joint conference of the Australian and New Zealand Society of International Law and the American Society of International Law, *International Legal Challenges for the 21st Century*, will take place in Sydney on 26 June and in Canberra on 28–29 June. Conference panels will cover a broad range of issues including intervention in international law, Asia-Pacific international law, international criminal law and theories of international law. Confirmed speakers include Professor Thomas Franck (NYU Law School), Professor Stephen Ratner (University of Texas), Dr Larissa Behrendt (RSSH, ANU) and Professor Karen Knop (Toronto).

Public Law Weekend 10–11 November 2000

This annual conference deals in alternate years with administrative or constitutional law. The 2000 Conference will be the fifth conference and the third on administrative law, making it one of the longest-running public law conferences organised by an Australian university. The conference will be convened by Judy Jones and Daniel Stewart.

Corruption project

The Centre was commissioned by the Centre for Democratic Institutions, ANU, to prepare a background paper on the issue of human rights and corruption. Zoe Pearson, a PhD student in the Faculty, worked on the paper, supervised by Centre Director, Hilary Charlesworth.

This project examined the phenomenon of corruption from an international human rights viewpoint. Corruption is a phenomenon that appears to be increasing throughout the world, and the paper briefly considered the literature on the issue of corruption in the international arena. The paper argued that, while corruption is a phenomenon that is widely discussed in the literature, and increasingly addressed on the international level, a fundamental aspect of corruption has been left out of the debate. The effect that corruption has on the fundamental human rights of people has been largely ignored, with the focus instead on the economic and political costs of corruption. After a discussion of current human rights discourse, and what an international human rights approach would mean, the paper highlighted instances where corruption has had, or may have had, a deleterious effect on the rights of people. It examined the role and responsibility of States to ensure the respect, protection, and fulfilment of human rights as guaranteed under the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and linked this with States' anti-corruption obligations to suggest that States have responsibilities to ensure protection for human rights against corruption. The paper suggested that utilising existing human rights discourse and mechanisms might be useful in the efforts to combat corruption, and to promote accountability and transparency on the part of States.

Centre conferences and workshops

FOI Reform Workshop — 5 July 1999

This workshop, sponsored by the Centre jointly with the National Institute for Governance at the University of Canberra, was convened by Centre member **Peter Bayne**. It brought together a number of Australian experts in FOI law for the purpose of reviewing the state of Australian FOI laws and considering the potential for, and direction of, reform. It is hoped that a report will be presented to the Justice and Community Safety Committee of the Legislative Assembly of the ACT which has a reference to review the FOI Act 1989 of the ACT.

For further information

Peter Bayne: peter.bayne@anu.edu.au



Professors Tony Blackshield, Michael Coper & Leslie Zines who presented the final session of the Public Law Weekend

**Public Law Weekend
5-6 November 1999**

This extremely successful conference attracted 175 participants. The Friday Theme was *Recent Developments in Chapter III of the Constitution*. The speakers covered issues such as the recent cross-vesting decision, the conferral of adjudicative power upon tribunals and legislative interference with the judicial process. The Saturday 'Update' covered recent cases such as *Egan v Willis* and *Sue v Hill* and looked at the work of the High Court and constitutional law generally over 1998-1999. The conference dinner featured a stirring and amusing speech by Justice Ronald Sackville, and an introductory roast by that host with the most, Michael Coper.

Congratulations to Convenors CIPL members **Adrienne Stone** and **George Williams** for their great design and organisation of the program, and to Cathy Hutton and Jenny Braid for ensuring that everything ran smoothly. The proceedings will be published in mid 2000 by Federation Press.

For further information on the publication
George Williams: george.williams@anu.edu.au



Discussion groups

The **International Law Discussion group** (ILDG) held three seminars in November and December:

W.T.O Dispute Settlement Casenote Series

- **Canada** — Measures Affecting the Importation of Milk and the Exportation of Dairy Products: Elizabeth Young, WTO Branch, Trade Negotiations Division, DFAT (9 November)
- **Japan** — Measures Affecting Agricultural Products: Marie Wynter, International Trade & Environmental Law Branch, Office of International Law, Attorney-General's Department (7 December)

Indigenous Cultural and Intellectual Property Rights: Sonia Smallacombe, Head, Indigenous Cultural and Intellectual Property Task Force, ATSIIC (25 November).



Sonia Smallacombe, Daniel Stewart, Larissa Behrendt & Greg Marks

If you wish to be included on the ILDG mailing list for seminars in 2000, please contact the Centre.

The **Public Law Discussion Group** Annual Dinner was held at University House on Wednesday 20 October. The dinner speaker was Graeme Neate, President of the National Native Title Tribunal, who spoke on the practical application of the Native Title Act and the longer term implications for Australia of the recognition of native title. The Attorney-General, the Hon Daryl Williams attended. The Centre hopes to publish the text of the talk as an occasional paper.



The Hon. Daryl Williams, Pam O'Neil & Graeme Neate at the dinner on 20 October



News of CIPL staff and members

Hilary Charlesworth and **Mary Wood** have been working on a research project, funded by a small ARC grant, entitled "Extra-territorial legislation and Australia". The project considers the conceptual and legal problems surrounding the definition of extra-territoriality and the uncertainty of international jurisdictional rules. It also reviews the many

existing formulations of extra-territoriality that appear in Australian statutes, and the rationale for these.

John McMillan, Vice President of the Australian Institute of Administrative Law, was Director of their 1999 National Administrative Law Forum on "Administrative Justice – the Core and the Fringe" held in Canberra on 29–30 April 1999. This year, he has presented submissions to the Referendum Taskforce on the draft legislation for an Australian republic, and to the Senate Legal and Constitutional References Committee Inquiry into the Operation of Australia's Refugee and Humanitarian Program.

The Australian Research Council-supported *Judicial Review Project* has entered its third and final phase which involves administering a questionnaire to government agencies to give them an opportunity to comment on the effectiveness of external review. **Robin Creyke**, **John McMillan** and **Dennis Pearce**, the three Principal Investigators, have been fortunate to have the sponsorship for Phase 3 of Peter Kennedy, Deputy Public Service Commissioner, Public Service Merit Protection and Review Agency, Mr Tony Blunn, Secretary, Attorney-General's Department and Ms Bettie McNee, the newly appointed President of the Administrative Review Council. The researchers anticipate the co-operation of nearly 50 Commonwealth government agencies. Over 250 questionnaires have already been sent out and it is hoped that all respondents will have completed the two questionnaires before Christmas 1999. The surveys examined two aspects of administrative law: the mechanisms existing within agencies to disseminate information about external review to decision-makers within the agency; and an attitudinal survey on the impact of administrative law on Commonwealth decision-making.

Dennis Pearce, Chairman, Australian Press Council, Visiting Fellow in the Centre, reports "The two major issues that have occupied me since the last newsletter have concerned the government's intention to legislate for privacy in the private sector and the increasing interest in the concept of self-regulation. In relation to privacy, the government has indicated that it does not wish to limit the media in its news gathering and publishing activities through this form of privacy legislation. However, defining this exception is difficult and the Press Council has been involved in discussions relating to the issue. Does "news" include commentary, opinion, background pieces, entertainment? What is encompassed by the media?"

Internet publishers? Self-regulation is much in fashion. A Senate Committee is looking at media self-regulation. I have spoken at two seminars on the topic organised by the Centre for Media, Communications and Information Technology which is based in Melbourne Law School. The Commonwealth Treasury has established a task force to examine self-regulation generally. As one of the oldest self-regulatory bodies, the experience of the Press Council is of interest to that inquiry."

Training courses

Hilary Charlesworth and **Daniel Fitzpatrick** taught a human rights and civil society course for AusAID officials in September 1999 under the auspices of the National Centre for Development Studies, ANU.

Robert McCorquodale conducted human rights training program for Philippines government officials in Manila in September 1999 (with Elizabeth Evatt and Roland Rich), and conducted two day human rights training courses for DFAT and AusAid, in August and November 1999 (with Sarah Joseph of Monash Law Faculty).

John McMillan presented courses to government agencies on "Tendering for Government", "Administrative Law and Good Decision-Making", and "Freedom of Information".



National Institute for Governance

Centre Board member **Professor Meredith Edwards** will be Director of the University of Canberra's National Institute for Governance in 2000. The Institute welcomes expressions of interest from those concerned with all issues of governance. For further information visit the Institute's website: <<http://governance.canberra.edu.au>>.



Staff and members' conference papers and addresses

Hilary Charlesworth

- ❖ "Concepts of Equality in International Law" paper for Liberty, Equality, Community Conference, Legal Research Foundation, held in Auckland, New Zealand on 20–21 August 1999

- ❖ "International Theory and International Law" paper in a seminar series to celebrate the 50th anniversary of the International Relations Department at the ANU on 14 October 1999
- ❖ "Human Rights and Human Capabilities" paper for the Women's Rights are Human Rights Workshop, Centre for Women's Studies ANU on 20 October 1999
- ❖ "Law as a Social Science: a research perspective" for the Legal Research Seminar, University of Technology Sydney on 26 October 1999
- ❖ "International Law in the New Millennium: lessons from Kosovo and East Timor" School of Graduate Studies Dean's Lecture, University of Melbourne on 28 October 1999
- ❖ "International Criminal Court: a brave new agenda for justice" presentation to the Foreign Affairs Council meeting on 10 November 1999
- ❖ "Books in my life" talk for the Friends of the ANU Library on 24 November 1999

Robert McCorquodale

- ❖ 'Strategic Stability, the UN System and International Norms: Law and Morals' paper at the Workshop on International Norms and Strategic Stability: Kosovo and Lessons for East Asia, held at the ANU on 12 May 1999
- ❖ 'Human Rights and Global Business' paper at the CIPL/CCL Conference on Commercial Law and Human Rights, held at the ANU on 24–25 September 1999
- ❖ 'The Incredible Importance of International Law' talk (with Hilary Charlesworth) at the Law Alumni Weekend, held at the ANU on 30–31 October 1999

John McMillan

- ❖ "The Courts and Government Decision-Making" address to a seminar series on "Democratic Governance: Improving the Institutions of Accountability", conducted by the ANU Graduate Program in Public Policy, on 4 May 1999
- ❖ "Commercial Judicial Review" paper at the CIPL/CCL conference on "Commercial Law & Human Rights", held at the ANU on 24–25 September 1999
- ❖ "Authorised Decision-Making" (March 1999), "Reasons for Decision: Update on Recent Developments" (June 1999), and "The Liability of Public Authorities" (November, 1999) papers presented in a series of public law seminars for the public service

- ❖ After-dinner speech presented at the Australian Federal Police — Commonwealth Ombudsman Integrity Investigation Program, Canberra, November 1999.

Pam O'Neil

- ❖ presented speeches at the dinners held in Sydney and Melbourne on the occasion of the 15th Anniversary of the Commonwealth Sex Discrimination Act, October-November 1999.



Members' publications

Robin Creyke

- ❖ "The Administrative Appeals Tribunal — What's Happening?" *Current Issues Brief* No 8 1999–2000, Department of the Parliament Library, Information and Research Services, 1–26
- ❖ "Tribunal Reform: A Commentary" in S Kneebone (ed) *Administrative Law and the Rule of Law* *Still Part of the Same Package?* AIAL, 1999, 359–370
- ❖ "Dennis Pearce and Stephen Argument Delegated Legislation in Australia (2nd edn)" (1999) 93 *Canberra Bulletin of Public Administration* 61–62 (book review).
- ❖ "Access to Medical Records" paper prepared for Commonwealth Department of Health and Aged Care, September 1999, 1–78

Robert McCorquodale

- ❖ Editor, 5(2) *Australian Journal of Human Rights* (1999) on "Implementing International Human Rights"
- ❖ General Editor of Dartmouth series on International Law, including volumes by J.Gardam: *Humanitarian Law*, and W.M. Reisman: *Jurisdiction in International Law*
- ❖ "Globalization and Human Rights" 21 *Human Rights Quarterly* (1999) 735 (with Richard Fairbrother)
- ❖ "Implementing Human Rights in Australia" 5 *Australian Journal of Human Rights* (1999) 1
- ❖ "The Universal Declaration of Human Rights Today" 4 *Alliance Française Magazine* (1999) 4
- ❖ "Pinochet: The Impact of the Decision on International Law" 40 *International Law News* (1999)
- ❖ "Some Lessons from East Timor", *On Line Opinion*, October 1999 (with Hilary Charlesworth)

John McMillan

- ❖ "The Role of Administrative Review Bodies: A Commentary" (1999) 58 *Australian Journal of Public Administration* 76
- ❖ "Federal Court vs Minister for Immigration" (1999) 22 *AIAL Forum*

Pam O'Neil

- ❖ "Native Title Act in Practice" (1999) 20 *AIAL Forum* 1

Dennis Pearce

- ❖ "The Press Council and Self-regulation" *Australian Press Council News*, vol 11, No 4

Works in progress

Robin Creyke

- ❖ Several chapters of R Creyke and P Sutherland *Veterans' Entitlements Law in Australia* (The Federation Press) (700 pages) have been sent to the publisher. The manuscript will be completed by December 1999 and the launch by the Minister for Veterans' Affairs is expected towards the end of April 2000.

John Seymour

- ❖ Final corrections to the manuscript of *Childbirth and the Law*, which will be sent to Oxford University Press before Christmas.

Congratulations

Grants

The following members of the Centre were awarded grants in the recent Faculty Research Grants Scheme:

A small ARC Grant to **Ernst Willheim** 'A new theory of judicial accountability' (\$3,500).

Faculties Research Fund Grants to **Jennie Clarke** 'Australian Aboriginal Protection Laws' (\$3,000), **Daniel Fitzpatrick** 'Legal protection of investors in Indonesia's privatisation programme' (\$8,000), and **Robert McCorquodale** 'The impact of globalisation on human rights in Africa' (\$10,840).

Members of the Centre were also successful in the Large ARC grants round:

Hilary Charlesworth, Robert McCorquodale, John McMillan & Christine Chinkin (LSE) 'Extraterritorial legislation and Australia' (\$83,000 over 2 years).

Appointment

Robert McCorquodale was appointed Head of School, Faculty of Law, ANU from July 1999.

Chair of Administrative Law, ANU

The Faculty of Law has announced an appeal for funds to establish a Chair of Administrative Law. The Faculty has always held a pre-eminent position of academic and practitioner leadership in Administrative Law, and staff of the Faculty have been pivotal in every major development in this area, as well as taking on key roles in government. The endowment of the Chair is the first major activity of the ANU Faculty of Law Alumni Association, following the inaugural ANU Law School Alumni Weekend in October 1999. The University and external donors have already pledged support.

The Steering Committee for the Chair comprises Professor Michael Coper, Dean of the Faculty and Professor of Constitutional Law; Ms Robin Creyke, Reader in Law, ANU; Justice Paul Finn, Judge of the Federal Court of Australia and former Reader in Law, ANU; Emeritus Professor Dennis Pearce, Chair of the Australian Press Council and former Dean of the Faculty; Mr Alan Robertson SC; Ms Susanne Tongue, President of the Australian Institute of Administrative Law.

For further information

Robin Creyke: robin.creyke@anu.edu.au



Graduate Program in Law

The following units are being offered in 2000 in the Law Faculty, ANU.

* intensive units

Public Law

Semester 1

Constitutional Reform — T Blackshield

Executive Power — P Bailey (28 February — 31 March, 7–8, 14 April)

Fundamentals of Administrative Law — J McMillan

Fundamentals of Constitutional Law — P Bailey and A Stone

Government Contracts — N Seddon

*Native Title — J Clarke (3–5, 7–8 March)

Semester 2

*Anti-Discrimination Law — P Bailey (10, 14, 21 July)

Contemporary Issues in Administrative Law — J McMillan

Freedom of Information — P Bayne (first half of semester)

Government Corporations — S Bottomley

High Court of Australia — T Blackshield and M Coper

Privacy Act — P Bayne (second half of semester)

*Public Sector Employment Law — P Weeks (9 Sep, 7–8 Oct)

International Law

Semester 1

Fundamentals of International Law — JP Fonteyne

International Law of World Trade — D Cass

International Relations Theory — G Fry, RSPAS

Law of International Organisations — G Simpson

Law of the Sea — JP Fonteyne

Semester 2

Asia Pacific Security in the 1990's — P Van Ness, RSPAS

Contemporary Problems of International Law — JP Fonteyne

International Business Transactions — A Mugasha

*International Human Rights Law — H Charlesworth and R McCorquodale (30–31 August, 1, 4–5 September)

For further information on the Graduate Program in Law

Patricia Farzan on TEL (02) 6249 0510 or Patricia.Farzan@anu.edu.au



The Centre and the Faculty of Law are delighted to announce a special course "International Law and Policy" to be taught by **Professor David Kennedy, Henry Shattuck Professor at Harvard Law School**. Professor Kennedy is a major figure in the 'newstream' of international legal theory and is considered one of the most dynamic and influential teachers and writers of his generation. The course will be taught intensively over 3 days on **30 June and 3–4 July** immediately following the joint ANZSIL/ASIL conference.

The course is open to students enrolled in the Graduate Program and a limited number of places are available to others interested in attending the course. The cost for external students will be \$600. If you are interested in participating in the course as an external student please contact **Cathy Hutton** in the Centre.

Course description

The course will briefly review the history and rule structure of international law, focusing on basic doctrines about the status of norms, jurisdiction, claims and territory which are said to govern relations among "sovereigns". Particular attention will be paid to the relationship between modern ways of understanding this structure in the United States, which might be called modern, pragmatic, anti-formalist, functional, realist or "legal process", and more traditional ways of thinking about it. The public international law system, including the world of inter-governmental institutions, will be compared with the structure of rules governing international economic transactions and trade. Much recent commentary about "globalisation" has stressed the challenges for public policy in a world of fast-paced change, increasingly unified markets and fragmented political institutions.

This course will review the disciplines of public international law and international economic law to compare their approaches and contributions to a variety of contemporary policy issues in fields such as environmental protection, labour policy, regulation of pornography and the sex trade, human rights and international criminal law and the law of force. The course will assess the capacity of national, regional and international legal structures to make redistributive and regulatory policy, and focus on the potential for blind spots and bias in the machinery for international policy making.

About the Centre

1999 Staff and Members of the Centre

Staff

Hilary Charlesworth, *Professor and Director*

Cathy Hutton, *Administrator*

Jenny Braid, *Publications*

Academic Members: Public Law

Peter Bailey, *Adjunct Professor*

Peter Bayne, *Reader*

Jennifer Clarke, *Lecturer*

Michael Coper, *Professor and Dean*

Robin Creyke, *Reader*

Daniel Fitzpatrick, *Lecturer*

Ian Holloway, *Senior Lecturer*

Judy Jones, *Lecturer*

John McMillan, *Reader*

John Seymour, *Adjunct Professor*

Daniel Stewart, *Lecturer*

Adrienne Stone, *Lecturer*

Fiona Wheeler, *Senior Lecturer*

George Williams, *Senior Lecturer*

Philippa Weeks, *Reader*

Academic Members: International Law

Peter Barcroft, *Lecturer*

Deborah Cass, *Senior Lecturer (on leave)*

Annemarie Devereux, *Visiting Lecturer & PhD Candidate*

J-P Fonteyne, *Senior Lecturer*

Don Greig, *Robert Garran Professor (on leave)*

Robert McCorquodale, *Reader*

Zoe Pearson, *PhD Candidate*

Gerry Simpson, *Senior Lecturer (on leave)*

Visiting Fellows

Pam O'Neil

Dennis Pearce, *Emeritus Professor*

Tom Sherman

Ernst Willheim

Visiting Postgraduate Students

Fabio Spadi (*Scuola Superiore S. Anna. Pisa*)

Research Assistants

Belinda Hollway

Esther James

Georgia Price

Mary Wood

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Professor Don Greig, Faculty of Law, ANU (on leave from September 1999)

The Hon. Justice Susan Kenny, Federal Court of Australia

The Hon. Justice Michael Kirby AC, CMG, High Court of Australia

Mr Miles Kupa, Deputy Secretary, Department of Foreign Affairs and Trade

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