OTAGO LAW

FACULTY OF LAW NEWSLETTER 2009
UNIVERSITY OF OTAGO

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UNIVERSITY of OTAGO
Te Whare Wānanga o Otāgo
NEW ZEALAND

Welcome from the Dean

Dear Otago Law Faculty Alumni/ae,

It is a pleasure to bring to you our second edition of our Otago Law newsletter. In this newsletter we feature the Inaugural Professorial Lectures that were delivered in late 2007 through to late 2008, by John Dawson, Richard Mahoney, Paul Roth, Geoff Hall, Rex Ahdar and Nicola Peart. It has given us all much delight to share with the University community the thinking and research that our colleagues are working on. The new professors will be well known to you all. They have served the Faculty with distinction over a long period of time and richly deserve their promotion to professor. We also have as a feature in this edition four of our recent appointments talking about their own research work; Jessica Palmer, Ceri Warnock, Stephen Smith and Tracey Epps have all been excellent appointments to the Faculty. Their youth vitality and passion for their work have contributed significantly to the life of the Law Faculty.

We also have a feature on the Vanuatu exchange which is an exciting development for the Faculty; we are looking forward to the students from USP visiting us this year.

In other news, Andrew Geddis was appointed to head a taskforce by the government in 2008 to look into electoral law reform in New Zealand because of his extensive research in this area.

Three members of the Law Faculty were awarded teaching awards in 2008, Jessica Palmer, Selene Mize and Mark Henaghan.

Emma Peart and Honour Lanham competed successfully in the world negotiation competition coached by Selene Mize, finishing in the first four of this competition. Annabelle Robb and Katherine Barker won the Mahony Cup for the National Family Law Mooting Competition. We were delighted to have our 9th Rhodes Scholar in recent times, Laura Fraser. Laura is an outstanding all round student from Southland (James Hargest College) who was the senior tutor in the Faculty in 2008 and is currently working as a clerk in the Supreme Court.

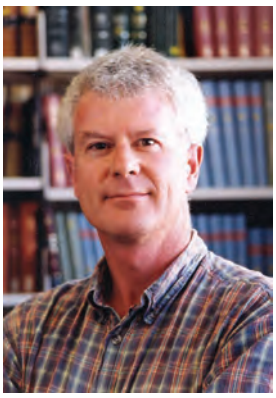
In our next newsletter we will do a feature on our Rhodes Scholars and what they are doing. We would also like to hear from you with stories about what you and your Otago colleagues are doing. We are very proud of all of our alumni/ae; we always like catching up with you. The spirit of the Otago Law Faculty is alive and well and we are continuing to produce well trained and well rounded lawyers who can practise law anywhere in the world.

Inaugural Professorial Lectures

The following are the overviews of the Inaugural Professorial Lectures given by the Faculty of Laws' most recently appointed Professors. (September 07– Oct 08)

Professor John Dawson

"Concepts of liberty in mental health law"
September 2007



John Dawson argued in his inaugural lecture that compulsory, community-based psychiatric treatment of a person with a serious mental illness – even one who posed no serious threat of harm to others – could be justified when this would promote their positive liberty: that is, when it would promote that person's capacity to control their life, meet their goals and maintain important personal relationships.

This approach was illustrated, he said, in a recent case before NZ's Mental Health Review Tribunal. The patient, who had applied for discharge from compulsory outpatient treatment under the mental health legislation, was a dairy farmer with a long-term schizophrenic illness characterised by delusions and social isolation. His continuing farming career and relations with his family had, over the years, been made possible only through involuntary treatment. Although, by the time his application came before the Tribunal, he was sufficiently well to leave hospital and resume farming, the Tribunal still considered his involuntary treatment under a Community Treatment Order should continue because the whole course of his illness showed that when he stopped medication (as he proposed to do again) he rapidly became unwell with paranoid delusions. Then he lacked the capacity to meet the goals he set for himself when he was well: to be a dairy farmer and have ongoing contact with his family. He could therefore be viewed as having an abnormal state of mind, of an intermittent kind, in the sense contemplated by the mental health legislation, plus a seriously diminished capacity for self-care. He therefore met the criteria for involuntary treatment.

This decision was typical of the preventive approach taken in such cases by NZ courts and tribunals, said Dawson. This approach could be justified, he argued:

- when a person's capacity to control or govern their life was seriously diminished due to mental illness;
- involuntary treatment would significantly advance their positive liberty; and
- that advantage would outweigh any reduction in their negative liberty (or their right to be left alone).

"In mental health proceedings, no lawyer or psychiatrist should therefore claim to occupy the high moral ground of 'true' liberty on the patient's behalf", he argued, "because there is no high ground of 'true' liberty to be found, only different and contestable concepts of liberty – both positive and negative – that can point to different conclusions in the same case.

"The legal criteria governing involuntary treatment in New Zealand can be interpreted and applied in this light by responsible clinicians, courts and review tribunals, to reach a judgment as to which set of liberty interests should prevail in a particular case.

"This approach respects the intellectual traditions of both law and psychiatry, it is consistent with New Zealand's political culture and constitutional traditions, and it illustrates the distinctive use made of Community Treatment Orders in Australasia."

The full version of the lecture will be published in the 2009 *Otago Law Review.*

Professor Richard Mahoney

"Is it ever justifiable to torture or to even think about that question?" October 2007

Equally with genocide and slavery, torture is universally condemned by international law. There is no exception. The law recognises no occasion when any state or individual can resort to torture as a means of thwarting an immediate threat to the lives of thousands of innocent citizens.

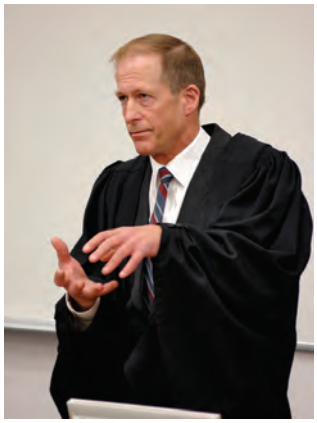
This was not always the case. Only a few hundred years ago, torture was commonly employed in inquisitorial procedures for investigating crimes. This was largely a reflection of the requirement of corroboration, with the suspect's confession (however obtained) being the best form of corroboration. In contrast, English law did not require a confession and a conviction could be based on circumstantial evidence. Nonetheless, approximately 80 "torture warrants" were issued in pre-Cromwell England, authorising the use of torture as a means of rooting out suspected plots against the state.

Despite the present universal condemnation of torture, the sad reality is that it is a common phenomenon in many countries. However, it is important to draw distinctions among the various uses for which torture many be employed. Torture can be used as a means of punishment, *after* a crime has been committed. Torture can also be used in an attempt to terrorise potential dissidents *before* any crime is committed, the aim being to deter future politically motivated activity. However, my concern is the use of torture as a means of uncovering and neutralising an imminent plot to cause the death of numerous innocent citizens. In other words, torture used to thwart the ticking time bomb.

Since the events of 9/11, the question whether the use of torture can ever be justified has become a well worn topic in American culture. This is epitomised by the ever repeating television series "24". Each year Kiefer Sutherland is confronted with the need to defuse one form or other of a ticking time bomb in 24 hours if Los Angeles, or indeed the whole of the free world is to be saved. In view of the urgency of the situation, Kiefer does not hesitate to use (or threaten to use) torture to break the silence of the terrorist who knows some crucial detail of the plot to annihilate millions of Americans.

From what I can tell, there are relatively even numbers in the opposing camps in the torture debate. The major point made by those who oppose the use of torture under any circumstances is that the ticking time bomb problem

is illusory. True, bombs are routinely planted by terrorists, but there has never been a case yet where a terrorist, possessed by sufficient knowledge of the bomb's location, has been captured in time to give up that knowledge. Even if such an unlikely situation should occur in the future, a host of experts agree that torture is not the best way of eliciting the crucial knowledge from the captured, committed terrorist – especially when he or she knows that all goals will be achieved if silence can be maintained for only a few hours.



The more interesting level of argument is the idea that it is an error to even enter into the debate stimulated by the ticking time bomb. The stark question "would you approve of the use of torture in order to save thousands of innocent lives?" leads many people to answer "yes". But once that initial admission is made (in response to the unrealistic scenario of the ticking time bomb), the slide down the slippery slope has started. The landing point of the slide is uncertain, but it may lead to the acceptance of torture in any case where the general end of protecting the public is accepted as justifying the means employed.

Once *any* circumstance of state authorised torture is accepted, it must also be accepted that the state officials who perform the torture cannot be amateurs. Professional training and a state run bureaucracy of torture become inevitable.

In my lecture, I concluded by pointing out that strong contrary arguments exist to the viewpoint just outlined. In particular, supporters of the use of torture in exceptional circumstance have called for the reinstitution of the "torture warrant". This would require judicial approval of the current "under the table" process which, though not openly discussed, is what we actually expect our state officials to do for us when required – use any means available to save the lives of innocent citizens in a world where terrorist activity is an ever increasing phenomenon.

Professor Paul Roth

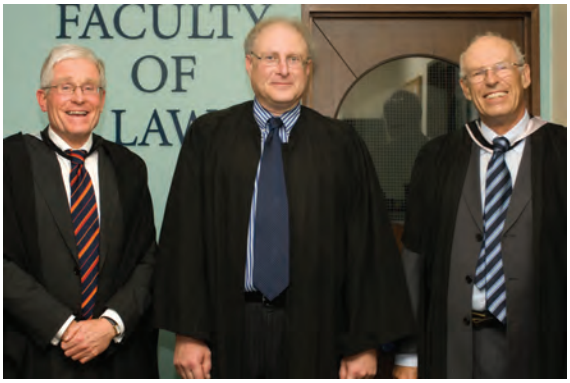
"Child Labour in New Zealand – A job for the nanny state?" March 2008

Child labour is loosely regulated in New Zealand, and it is out of step with international standards. The Labour Party's 2005 Party Manifesto was committed to pursue ratification of the International Labour Organisation's Minimum Age Convention 1973 (ILO 138), but New Zealand has yet to ratify it. ILO 138 has been ratified by 150 out of 181 ILO member states. Ratification would require some changes to current law, but regulation in this area has historically been unpopular.

International standards aside, it is not known for certain whether there actually is a child labour problem in New Zealand. Relevant information is not being routinely collected and abuses are difficult to detect.

There is no minimum age for work in New Zealand. The sector is mainly regulated by a combination of education and health and safety legislation. The Education Act requires children to attend school until age 16 and prohibits their employment during school hours. The Health and Safety in Employment Act and regulations limit the employment of children under 15 years of age in certain work such as logging, construction, and manufacturing.

Little hard information is available about child labour in New Zealand. The census no longer collects information about the employment of children under 15. Inland Revenue Department information is also lacking, since PAYE need not be deducted from wages due to a children's minimum income threshold of $2,340. For the same reason, there are no records of ACC deductions or levies. This means that child workers are invisible to the tax system and the collection side of the accident compensation system.



Our main information comes from work-related death and accident statistics and OSH prosecutions. This does not tell us how many children are working, but it does indicate that some are performing hazardous work and that at least one under-16 worker will be killed in the workplace each year. The most common scenario involves a child being crushed by an ATV while mustering stock.

ACC figures indicate that on-going entitlements or rehabilitative assistance is paid out to fewer than 10 child workers under 9 per year; about 15 children in the 10-14 year old age group; and 1,000-2,000 young people per year in the 15-19 year old age group. Annually, about 300 children under 15 years old will need to see a GP for a work injury.

Current New Zealand law does not comply with ILO 138. There is insufficient regulation of the minimum age specified for entry to various kinds of work according to their appropriateness for young people; the minimum legislative settings that do exist are inferior to international standards; and there is a lack of regulation over key aspects of working conditions such as working hours and what constitutes "light work" for younger workers.

If countries like New Zealand are unable or unwilling to conform to international labour standards, it is difficult to see why we should expect countries with poorer conditions to so. Non-compliance with ILO 138 also does not sit well with New Zealand's 2001 policy on integrating fundamental ILO labour standards into its trade agreements.

Professor Geoff Hall

"'Bloody Idiots!' Have the drunks behind the wheel reached a cross-roads?" May 2008

Prof Geoff Hall introduced his lecture by stating he believes we are at a crossroads in dealing effectively with the alcohol-impaired driver. He said few who study the statistics and the effects of various punishment regimes, the long advertising campaign against drink-driving, the changing social attitudes towards alcohol abuse, would disagree.

While there can be little argument about the need to protect the community by imprisoning recidivist drink-drivers who will not or cannot change their ways, education and deterrence are the chief weapons for all other offenders and potential offenders. Recidivist drink-drivers should only be imprisoned as "a last resort", and more creative and intelligent ideas are needed to stop drink-drivers.

"Recent statistical evidence from three sources, fatalities, enforcement and convictions, indicates the battle is far from won." Prof Hall revealed statistics drawn from drink-drive conviction records show a disturbing trend. He found that in 1986, female drink-driving was 9% of all such offending; in 1996 it was 18%, and last year 23%. "This is a significant shift and no doubt reflects the changing role of women in New Zealand society," Prof Hall said.

He also noted that not one of the drink-drive advertisements on television target women, yet further analysis of the statistics makes this omission even more inexplicable. The two age groups which figure prominently among women drink-drivers are 17-19 year-olds, and those over 40. Of the latter category, "the 1996-2006 figures show a staggering 82% increase in drink-drive convictions for women of this age," reported Prof Hall. "Convictions for men in the same group have increased by 13.5%."

The question is, though, whether current programmes are sufficiently effective in circumstances of rapidly changing social trends. Clearly, the growth in female offending needs particular attention, since the two age groups so dominant in the statistics are largely ignored by education programmes. While it may be obvious why teenage girls are abusing alcohol (viz the lowered drinking age, the popularity of "alcopop" drinks, and peer pressure), explaining why so many middle-aged women are succumbing to alcohol abuse and then driving may not be so obvious.

Prof Hall posited the thought that "many drivers are drink-drivers through ignorance rather than simply irresponsibility", and suggested more information on the actual alcohol content of drinks popular with women should be made readily available.

He emphasised a need for compulsory medical assessments of all offenders for dependence on alcohol and, where required, attendance for treatment as part of a sentence. The National Party's crime policy, he noted, goes some distance along this path by promising to give courts the power to refer young offenders to compulsory drug and alcohol rehabilitation programmes, but the policy needs to be universal.

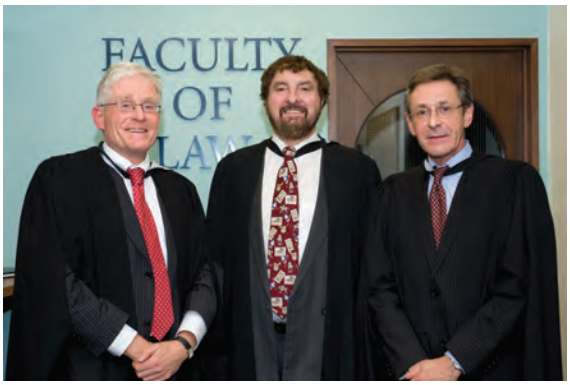
Limiting access to alcohol by younger people needs to be revisited, but other options, such as raising taxes on low-priced ready-mixed drinks, should also be seriously considered since research shows much heavy teenage drinking is focused on this segment. Prof Hall noted both Germany and Australia had made moves along these lines.

Increasing random breath-testing is an obvious and necessary response and police legislation currently before Parliament broadening the tasks that can be carried out by non-sworn officers is an opportunity to do this, especially since road safety surveys show that less than 50% of drivers believe it is likely they will be stopped at a checkpoint, the lowest level since 1999.

Wider use of the mandatory licence suspension and confiscation of vehicles is called for.

Prof Hall advocated the use of ignition locking devices, which prevent drinking drivers from operating their cars, as part of sentencing regimes, and this sanction – which is used in several countries – is already under study by the police.

He also contributed an idea that has not had widespread debate but looks to have extremely promising possibilities: the wheel-clamping of vehicles of offenders as an alternative to confiscation. Prof Hall suggested vehicles could be clamped at the owner's home, in their garage, backyard or on the street outside their home – in short, in full view of the public, providing "a daily reminder of their crime". Drink-driving is, after all, a crime against the community.



The anti-smoking campaign over the past 40 years has, finally, begun to produce significant community economic and health benefits. Similarly, the 20-year publicity campaign that has seen heavy drinking and driving become socially unacceptable now needs to be extended to incorporate the effects of moderate drinking, and focused on both men and women, so that our roads are safer for everyone to use.

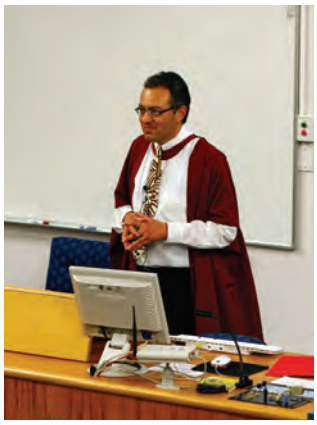
Summary adapted from 'Drinking and Driving' editorial by Otago Daily Times, Tuesday 20 May 2008, www.odt.co.nz

Professor Rex Ahdar

"Slow train coming: religious liberty in the last days" August 2008

Religious liberty is not in imminent peril in the West and, in both global and historic terms, liberal democracies like New Zealand enjoy a healthy measure of religious freedom. But, there is no need for complacency, argued Professor Rex Ahdar in his inaugural public lecture. The "travail of religious liberty", as the historian Roland Bainton wrote, has been just that – a long and difficult journey. The lecture explored sociological and political reasons why potential restrictions upon religious freedom can never be discounted.

Ahdar explained the broad scope of religious liberty – how it must extend to cover not just patently "religious" conduct, but to ordinary, mundane conduct engaged in by the devout. The potential breadth of religious activity was matched by the penetration and breadth of the modern bureaucratic state. Because the state affects the activities of religious communities and believers in a fashion not dreamt of a century or so ago, this cramps religious conduct and threatens religious liberty. If I wish to construct a place of worship, physically discipline my children, refrain from taking advantage of life-preserving medicine, hire only workers who share my faith, the state will have something to say about it. Religion may seek the quiet solace of the private sphere – the place where it has been relegated – but even there the modern state's writ runs large.



The second major threat to religious liberty, after the expanding modern state, was the ideology or mindset held by a significant section of the liberal secular elite. Their attitude toward religion generally and, in particular, fervent or deeply religious people was characterized by Ahdar as a prevailing suspicion, tinged by puzzlement and sometimes even contempt. Ahdar went on to outline a provocative model of assertive, hegemonic liberalism that was less tolerant of religious minorities (and their worldview) than commonly touted.

While liberal democratic states generally accommodated religious practice, there were, Ahdar contended, necessarily limits. Liberalism will defend itself when its fundamental premises or major institutions are directly challenged. Whilst in theory all views in a pluralistic society are welcome, in reality, strong dissenting religious voices – those that challenge key planks of liberalism such as the celebration of moral diversity – are not.

Ahdar illustrated the tension between liberal, secular thought and conservative "resistant" religionists by recounting the recent *Catch The Fire* case. Two Australian evangelists were prosecuted under a Victorian religious vilification law for running a public seminar exhibiting intolerance of and inciting hatred towards Muslims. There was, Ahdar suggested, something paradoxical about laws trying to "enforce" religious tolerance.

The Lecture concluded with a sobering prediction that states determined to mould their citizens into their own open-minded, liberal image would continue to jostle with both conservative, truth-affirming, traditionalist believers, as well as comparatively newer and smaller, but similarly countercultural faiths. Religious people would be wise to remember that neither the state nor – as the American experience of religious freedom litigation showed – the courts can be guaranteed to protect cherished beliefs and practices in times of crisis.

The full version of the lecture will be published in the 2009 *Otago Law Review*.

Professor Nicola Peart

"Can your Trust be Trusted?" October 2008

Trusts have been an interest of mine since 1986 when Richard Sutton introduced me to the wonderful world of equity and trusts. Having done my law degree in the Netherlands, I was totally unfamiliar with trusts. For a person educated in a codified system of rules, it took me some time to appreciate the advantages and disadvantages of this "institute of great elasticity and flexibility" as Maitland so famously described the trust. Now, one cannot help but know about trusts. They are everywhere and everyone seems to have one! But with this increasing popularity comes a growing level of concern about the use and management of trusts.

People seem to establish trusts without a clear understanding of their consequences. They want the benefit of protection that a trust can provide against creditors, future spouses or the State, but they do not want to lose control over the assets. They achieve their purpose either by reserving extensive powers to themselves in the trust instrument or by exercising de facto control over the trustees. Settlors are seldom the only beneficiaries and usually have only a discretionary interest in the trust, but they have such control over the trust that they are able to treat the property as their own and ignore their fiduciary obligations to the other beneficiaries. In reality such trusts are not trusts at all; they are shams! It is hardly surprising that these sorts of trusts are challenged when people run into personal or financial trouble.

In my inaugural professorial lecture last October I tried to dispel some of

the myths and misconceptions about trusts and point to the pitfalls that tend to become apparent on separation and bankruptcy. While it may not be easy to prove that a trust is a sham, given the high threshold set by the Court of Appeal in *Official Assignee v Wilson and Clyma* [2008] 3 NZLR 45, other causes of action are beginning to erode the protection once afforded by trusts. There is a compensation power in the Property (Relationships) Act 1976 if relationship property was transferred to a trust, and a power to vary marriage and civil union settlements in the Family Proceedings Act 1980. These statutory remedies have paved the way for other remedies when relationship property rights are undermined by trusts. Constructive trust claims are increasingly used against trustees by contributors who reasonably expected to share the beneficial ownership of the assets held in trust. And the recent decision of the Supreme Court in *Regal Castings v Lightbody* [2008] NZSC 87 suggests that it may be easier now to prove that a disposition to a trust was intended to defraud creditors. These developments suggest that trusts can no longer be trusted to provide the safe harbour they once did.

The full version of the lecture will be published in the 2009 *Otago Law Review*.

Catching up with Staff

In the first newsletter we introduced some recently appointed staff to the faculty; Jessica Palmer, Ceri Warnock, Stephen Smith and Tracey Epps. Below you can read about their research and projects undertaken since their being with the faculty.

Jessica Palmer

I am interested in those areas of law traditionally considered part of black letter law: contract, equity and a relative newcomer to that group, unjust enrichment. The underlying object of my research is that old and new doctrines developed in these areas should be conceptually coherent and consistent, both in the context of the particular areas of law in which they arise and in the private law as a whole. A just system of law that serves society's interests requires the substance of its law to be fair, explicable and predictable. Hence, my work endeavours either to justify certain legal rules and principles and how they ought to apply or to present logical and convincing reasons why they are inappropriate and ought to be replaced by alternative approaches.

In one recent project, for example, I considered what the appropriate remedy ought to be in a joint venture situation when one of the joint venture parties illegitimately ends the relationship taking the venture for itself. Where the venture goes on to make a profit, there has been conflicting authority on whether all of the profit ought to be handed over to the innocent party or whether the remedy only extends to that share of the profit which would have been earned by the innocent party had the joint venture been carried through. The resolution of the question requires identification and classification of the relevant duties owed in a joint venture relationship and how a breach of those duties is appropriately repaired. Some of my suggested answers are published in "Remedies for Breach of Fiduciary Duty in Joint Ventures" in *The Law of Remedies: New Directions in the Common Law*, (eds J Berryman and R Bigwood, Irwin Law, Canada and Federation Press, Australia, forthcoming) and, with C Rickett, "Joint Ventures and Fiduciary Law" in *Joint Ventures Law* (eds P Joseph and M Chetwin, 2008, The Centre for Commercial & Corporate Law Inc, University of Canterbury, New Zealand, pp 81-94).

Ceri Warnock

Ceri's reserach interests focus upon resource management law, energy law and international environmental law, particularly the climate change regime. Latterly her publications have focused upon both adaptation to climate change (the necessity for wildlife corridors) and mitigation (the law and policy measures required to promote sustainable construction).

Stephen Smith

Since joining the faculty in 2006, most of my research has been related to the International Criminal Court and related events in international criminal law. Thomas Lubanga Dyilo is currently scheduled to become the first accused tried before the ICC (the trial is scheduled to begin in January 2009), but there have been a number of pre-trial rulings made by the court in the *Lubanga* case that will affect how the court operates in its future cases. Most notably, the court has interpreted its statute as allowing for the prosecution of only the most senior leaders who are most responsible for the commission of war crimes, crimes against humanity, and genocide. I have begun to examine the likely implications of this ruling on the future viability of the Court.

I have also continued my research involving a project I began as a graduate student. I have been examining the history of polygamy and the criminal and other legal sanctions taken against Mormon polygamists in the United States from the mid-nineteenth century to the present. In today's context, I am examining whether the practice of polygamy as a religious belief would be protected under the modern interpretation of the free exercise of religion provision of the United States Constitution and under similar constitutional provisions in other countries.

Since joining the Faculty, I have taught lectures and tutorials in Evidence, Criminal Law, Legal Systems (Legal History), and International Criminal Law.

Dr Tracey Epps

Dr Tracey Epps joined the Faculty of Law at Otago in January 2007 after having worked for several years in a national law firm in New Zealand as well as for a management consulting firm in Canada. She came to us from the University of Toronto where she obtained an LLM and subsequently an SJD. She is currently teaching an elective paper in international trade regulation as well as a component of public law (including a new series of lectures on "law and globalization"). She will be introducing a new elective paper in international investment law in the second half of 2009. This paper will focus in particular on investor protection and the growing field of investor-state treaty arbitration. Tracey's research interests are closely aligned with her teaching at Otago and are focused on international economic law, including both trade and investment issues. She has recently published her doctoral research. Entitled "International Trade and Health Protection: A Critical Analysis of the WTO's Sanitary and Phytosanitary Agreement", the book was published in September by Edward Elgar in the UK as part of their International Economic Law series. Together with a colleague at the University of Toronto, Professor Andrew Green, she is currently working on a project examining the complex and important linkages between the international climate chance regime and international trade rules. She is also working on various other pieces of research, including looking at various aspects of import product safety regulation, and on the investment side, some of the issues that have arisen in the context of countries' responses to increased investment by sovereign wealth funds and other government-controlled investment entities.

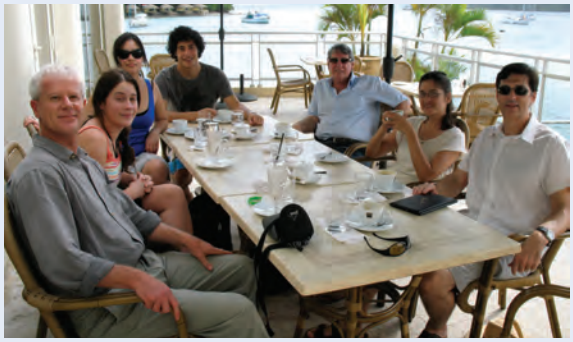
Vanuatu Trip Report

In late June early July 2008, a delegation from the Otago law faculty made an exchange trip to the University of the South Pacific law school in Vanuatu. It was the first leg of a two-year programme aimed at establishing a longer-term relationship between the schools. The Otago delegation comprised two staff members, John Dawson and Jacinta Ruru, and students Natalie Coates, Alex Latu and Albany Lucas.

The visit started with a formal welcome, including a challenge, a kava ceremony and a speech from the dean. The formal, academic aspects of the exchanged consisted of a law conference, spread over two mornings, and a moot between the students.

The conference programme was very stimulating and educational on all sides. The focus of several papers on the USP side was the interaction between customary law and state law in Pacific legal systems. This was extremely informative for the Otago delegation, as there is much more limited interaction between these sources of law within the NZ legal system. The post-coup legal situation in Fiji was also discussed.

The Otago papers focused particularly on the position of Māori interests within the NZ legal system. This provided an interesting contrast to the material presented on Pacific legal systems, as in the Pacific the indigenous peoples generally constitute a majority of the population and there is official recognition of their customary laws. In NZ, in contrast, Māori constitute a minority of the population, and there is only limited recognition within the legal system of their customary norms. The conference was therefore an interesting exercise in comparative law.



From Alex Latu's standpoint, "it was interesting to learn about the contemporary dynamics of conflict between Western and traditional models of land ownership". Alex also found "the experience particularly rewarding".

The moot was based on research materials prepared at Otago. The motion was: that the definition of a "refugee" in the United Nations Convention Relating to the Status of Refugees should be expanded to cover "environmental refugees". Otago took the affirmative position, USP the negative. This topic opened up the difficult international law issues presented by climate change, many of which are directly relevant to Pacific Nations, some of which may be completely flooded by the rising ocean. Otago were declared the winner of the moot, and Natalie Coates the best speaker for Otago.

In addition, a trip was made to a proposed World Heritage site, a visit was made to the Vanuatu national museum and cultural centre, and there were many opportunities to look at USP teaching programmes, many of which proceed by distance learning, and to see the USP campus. There were many informal opportunities to talk with USP students and Faculty members.

Overall, the trip was a successful staff and student exchange and we look forward to hosting the USP delegation at Otago in 2009. We are also looking to establish a scholarship to support a USP student undertaking an LLM at Otago, with the necessary sponsorship, and a Memorandum of Understanding is being entered along these lines between the two law schools. The Otago delegation thoroughly enjoyed this very stimulating trip.

JOHN DAWSON

Teaching Acknowledgements

The Faculty of Law has again shone though in the teaching arena, with three staff gaining finalist positions in the annual OUSA teaching awards for 2008.

Jessica Palmer, Selene Mize and Mark Henaghan were nominated amongst the top ten teaching staff across the University of Otago. Higher Education Development Centre (HEDC) has taken some teaching tips from the nominees and published these in their periodical Akoranga (Issue 4: February 2009).

JESSICA PALMER

SELENE MIZE

MARK HENAGHAN

OECD Conference – Slovenia

Thanks to the generous sponsorship of the Faculty of Law, I was able to travel to Slovenia in the semester break to attend a two-day OECD conference on "Open and Inclusive Policy-making". This conference was the culmination of over five years of investigation by the OECD into inclusiveness in governance so I count myself lucky to have been able to contribute at a stage where reports are being compiled, and where what was said will be disseminated far and wide.

This was my first time at an international conference, so I listened somewhat cautiously at first, learning the ropes and getting a feel for the style of debate. I was soon dropped in the deep end during a 20-person workshop. It turned out I was the only native English-speaker in the room, so I was designated as 'rapporteur' of the group's findings in a plenary session. In front of World Bank officials, Government Ministers and OECD functionaries I managed to get the major points across and even draw a few laughs from these people three times my age. In my mind at least, that was a success!

I was invited to present my experiences from New Zealand to a workshop alongside Nick Yeo from the Canadian organisation "takingITglobal". Nick was the next youngest contributor at 24 years old - entirely appropriate for a manager of a website that connects politically active youth around the world.

It was eye-opening to attend a "Master Class" run by Prof. Benoît Thieulin (Paris 12 University) on how policy could truly be generated inclusively through the use of Web 2.0 technology in combination with traditional party meetings. As a campaign manager for French Presidential candidate Segoline Royal in 2007, Benoît organised 6,000 real-life meetings, the results of which were summarised and put on the net. The public was then able to indicate their preferred policies by voting each proposal up or down using a system similar to the popular website "Digg.com".

Particularly intriguing was a comment from a South Korean attendee who explained that their civil servants are encouraged to develop new policy in their capacity as private citizens. Those who had suggestions adopted then received a monetary prize.

The workshop came to a close with a panel discussion amongst the most senior delegates. Sina Odugbemi from the World Bank voiced the concern that, at least at international level, technocrats subvert decision-making. His solution was to empower the workforce of government departments with "information intermediaries" to bridge the gap between technical experts and laymen.

Of course, it's tempting to think that it was all just a big talk-fest, but a fellow participant from the UK whom I spoke to reassured me. He told me he was once writing documents on aggregate mining policy, and nearly lost faith in his work out of sheer boredom! A few months later, he received a call from a council that faced problems with a new quarry being built and had used the exact principles he had laid out to solve their problems! It's easy to be cynical and believe any contribution I made will at best sit on a shelf for years, but, by some of the surprised looks I received while presenting, I'm hopeful that one day I'll get a call like that too.

MATTHEW DODD - 25 JULY 2008
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