

Otago Law

M A G A Z I N E

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Welcome to the inaugural issue of the annual University of Otago Faculty of Law Alumni Magazine.

We have had successful periodic newsletters for several years, but we decided to launch a larger-scale yearly publication to coincide with the 150th sesquicentennial celebrations. As you will see, we traverse many of the things you would expect to see in such a magazine: feature articles, interviews, news updates from alumni from all parts of the globe, staff arrivals, departures and retirements, notable student achievements, recent scholarship, reports on research activities, and so on. There is also a small dose of legal humour by one of our alumni.

It has been a real pleasure investigating leads, collecting stories and renewing links with alumni and I do hope you will keep in contact with us. We always enjoy hearing from you. Please send your news to us at: law.alumni@otago.ac.nz

I wish to thank all those who contributed items and a special thanks to the industrious and skilful efforts of Sam Stevens, Communications Adviser, Humanities Division. My sincere thanks also to Ben Williams, Design Unit, University of Otago, for his expert layout and design.

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From the Dean

Welcome to this first edition of our new annual magazine, highlighting events and research in the Faculty and stories from alumni both near and far.

It has been another busy year, and a particularly special one as we marked Otago's 150th anniversary. In addition to a range of university events, we held two special events for law alumni which you can read about on pages 6 and 7. It was a nice opportunity to catch up with more than 100 alumni who travelled from near and far. We will soon begin planning for celebrations to mark the 150th anniversary of law at Otago in 2023. We hope you will be able to join us.

Celebrating our history has provided good incentive for thinking about our future. This year, we began a process of reviewing the LLB curriculum. This is no easy task and I am grateful to Professor Shelley Griffiths for leading this project. We have heard from Professor Prue Vines (School of Law, University of New South Wales) and from various people across the University as we think through the learning methods and practices that best suit today's university students and as we consider our aspirations for a modern LLB.

We are committed to ensuring that the Otago law degree continues to provide students with excellent analytical and problem-solving skills, while also

broadening their understanding of the value that law can and should be to society.

We want to impart in our graduates a deep respect for the rule of law, coupled with the courage and skill to challenge injustice. The law is one of the key means we have in a civilised society for promoting justice and well-being but it needs people skilled in understanding its rules and principles to make sure it is enforced. As lawyers, we champion fair process and substantive justice to protect against abuses of power and inequality. We hope our graduates are people who take the institution of law seriously whilst never taking themselves too seriously.

Next year, in addition to carrying on with the curriculum review, we will be paying particular attention to how we can encourage greater diversity in our student body and support the success of students from all walks of life. As a Faculty, we are committed to encouraging diversity, both in the university and in the legal profession. This is an exciting and important journey that we are on and I would love to hear your thoughts. Please feel free to get in touch.

Along with 150th events, we have had many other reasons to celebrate this year. Staff success has included promotions for Ceri Warnock to Professor, and Dr Simon Connell and Dr Ben France-Hudson both to Senior Lecturer. Associate Professor Nicola Taylor was appointed by the new Principal Family Court Judge to the Family Court Education Committee.

Professor Jacinta Ruru was appointed to one of seven inaugural Sesquicentennial Distinguished Chairs (Poutoko Taiea) by the University of Otago. Jacinta was also selected as a member of the NZ Technical Working Group for the United Nations Declaration on the Rights of Indigenous Peoples. The working group was established to advise the Minister for Māori Development on how best to assist the Government to develop a Declaration Plan that will demonstrate New Zealand's response to, and implementation of, the Declaration.

Dr Ben France-Hudson was appointed to the New Zealand Media Council. The Council is a self-regulatory body funded by industry that provides an independent forum for resolving complaints in relation to media content.

Professor Andrew Geddis received the 2019 national Critic and Conscience of Society Award, administered by Universities NZ and sponsored by the Gama Foundation.

And although we sadly had to farewell Associate Professor Michael Robertson, we also welcomed three new colleagues (you can read about them on pages 34-35) and two new babies into the Faculty – congratulations to Dr Anna High and Dr Maria Hook.

Our students have also continued to challenge themselves and expand their knowledge and skills. Savanna Gaskell and Meghan Laing represented Otago at the New Zealand Red Cross International Humanitarian Law Moot and won the competition for Otago for the first time since 2011. The team, coached by Marcelo Rodriguez Ferrere, edged out a very strong team from Victoria in the final, in front of a panel including Sir Kenneth Keith, Judge Bill Hastings and Brigadier Lisa Ferris. They will now represent New Zealand at the regional competition in Hong Kong in March next year.

Nerys Udy represented Otago in the national Kaupapa Māori Moot final held in the Supreme Court before a bench of five judges, including Justice Joe Williams, the first Māori Supreme Court Justice. Abie Faletoesse won the Pasifika Law Students Sentencing Competition held at Canterbury Law School. Te Roopū Whai Pūtake

students performed well in the kapa haka evening at the annual hui-ā-tau for Te Hunga Roia Māori o Aotearoa; and a group from the Pacific Islands Law Students' Association spent a day observing the Pasifika Youth Court in Auckland.

In February, one of our fourth-year students, Hannah Morgan, swam 32km across Foveaux Strait in 8 hours and 43 minutes, raising \$30,000 for the Mental Health Foundation and the Otago University Students' Association. The Summer School Intellectual Property class excitedly followed her progress during one of their lectures. Finally, this year, I was pleased to see a fourth student club formed – the Otago Asian Law Students' Association – which joins Te Roopū Whai Pūtake, PILSA and SOULS. It is good to see students valuing community in the Law Faculty and seeking new ways to make their time here meaningful.

We are always thrilled to hear of the adventures and achievements of our alumni. Samuel Becroft was a finalist in the Legal Research Foundation's Unpublished Student Paper Award for his Honours dissertation on settler-controlled trusts. Several of our graduates are undertaking postgraduate study at prestigious institutions overseas: Alex Allen-Franks, Lucie Greenwood, and Ollie Hailes are all pursuing a PhD at Cambridge; Matt McKillop has received a funded

fellowship at McGill; Henry Benson-Pope is a Fulbright scholar undertaking an LLM at NYU; Blair Shepherd is doing an LLM at Duke University, likewise Sam Cathro at Cambridge. And we had a particularly special May graduation this year when an honorary LLD was conferred on our own Justice Forrie Miller in recognition of all he has achieved in his career and his ongoing support for Otago.

We hope you enjoy reading through all that you will find in here, reacquanting yourself with lecturers and students, and reminiscing of your own time here at this special place. Our inaugural editor, Professor Rex Ahdar, has done a terrific job giving you a glimpse into the life of the Faculty.

For those of you lucky enough to live in Ōtepoti, we enjoy seeing you at Faculty events and invite you to come as and when you can. For those further afield, please let us know when you are coming to or through Dunedin. We would love to catch up with you and welcome you back to the Faculty.

Ngā manaakitanga,
Jessica Palmer



30 September 2019



Queen's Birthday Weekend

2019 featured many 150th Anniversary Celebration events which not only linked 'town and gown', but marked the advances made in the century and a half since the region's pioneering Scottish settlers founded the University.

In addition to a full weekend of University activities at the Dunedin campus, and around the city, the Faculty of Law held its own events. A huge thank you to Professor Nicola Peart for the tremendous planning she undertook to make this day a great success for all, and to all staff, students and guests who joined us.

About 110 guests attended the Faculty's morning events, with registrants' graduation years ranging from 1954 to 2015.

Saturday began with a morning tea on the Richardson Building's tenth floor, where guests also enjoyed looking at a display of law memorabilia and a slide show of photos which went back many years! Neville Marquet, the oldest graduate attending (Neville was in the class of 1954), kindly lent us some lovely albums that contained some wonderful material.

The SOULS Executive offered tours of the Faculty to alumni and Judi Eathorne-Gould of the Law Library also provided historical material for our visitors.

Counsel of Deans

At 10:30 a unique Counsel of Deans took place in the Moot Court lecture theatre, convened most ably by our current Dean, Professor Jessica Palmer.

Professor Palmer began with an account of the earliest decades of the history of law teaching at the University. Then, former Deans, Professors John Smillie, Bruce Harris, Peter Skegg and Stuart Anderson most entertainingly, and at times movingly, spoke for about 15 minutes each on the nature of law school life during their periods at the helm. They also gave insights into the many challenges they faced from the University administration and the profession.

The size and composition of the law student body, the once compulsory nature of nearly the entire LLB curriculum, the expansion of subjects offered, the recruiting of academic staff from all parts of the globe and a dog or two that dutifully accompanied students while the lecture unfolded, were just a few of the subjects covered. There seemed to be an awful lot of smoking done – by staff and students – back in the 1960s and 1970s, even in the halls of learning.

Deans past such as Professors Frank Guest, Peter Sim and Richard Sutton

were most fondly remembered and some delightful anecdotes recalled.

John Smillie gave a quite hilarious account of perhaps the worst football (soccer) team to ever take the field. The Faculty of Law football XI, which participated in the lower echelons of Dunedin club football in the early 1980s, was distinguished by its distinct lack of success. Was the first goal ever scored actually an own goal? A torrent of goals against, and very few for, is perhaps understandable from a side



(From left) Profs Stuart Anderson, Jessica Palmer, John Smillie, Peter Skegg, Bruce Harris

composed of mainly ex-rugby players and some who might charitably be called "athletically challenged." All the speakers recounted a most happy, collegial time.

Former Dean Professor Mark Henagahan was, unfortunately, unable to be there in person, but sent a cheerful and rollicking video clip which was played to smiles and laughter from all in attendance.

Dinner

On Saturday evening about 70 guests joined the Faculty at a formal law alumni dinner at the elegant Dunedin Club. We got underway a little late so those hardy souls who wished to view the 150th fireworks display in the biting cold and rain would not miss out on the start of the dinner. Again, the very busy Dean Jessica Palmer, acted as MC.

Our most senior alumni Neville Marquet, with a little bit of help from his friends, cut the splendid 150th cake.

The visiting trio of alumni judges, Justices Forrie Miller, Christine French and Graham Lang – who had been sitting at the Court of Appeal in Dunedin the previous week – gave us three most uplifting and humorous after-dinner speeches. The combined item was billed, somewhat ambitiously, as "The Three Ronnies".

In his witty reply Professor John Dawson said he could see a future career for each of the justices in the other branches of government, taking the lead from the multi-talented Sir Robert Stout, the University's first law lecturer, who held every high office in the realm (Member of Parliament, Cabinet Minister, Premier and Chief Justice).



The Kiwi entrepreneur

doing his bit for climate change in Africa

By Clare de Lore | Jun 1, 2019

In the heart of Africa, Josh Whale, Otago Law Alumnus (2001-2005), is helping tackle climate change one moto at a time.

Motorbike taxis – commonly known as motos or boda bodas – are the most common form of transport for East Africa's 443 million people. Each day, the region's 2.5 million motos clock up, between them, journeys equivalent to a return trip from Earth to the Sun, and then back again to the Sun. New Zealand lawyer-turned-entrepreneur Josh Whale offers this startling statistic to explain the importance of motos to the region and the significance of his new venture in Rwanda's capital, Kigali.

Although affordable for passengers, motos return less than \$2.50 a day to their drivers, who work an average of 12 hours. Whale and his start-up partners are trialling electric motos. Unlike most battery-powered motorbike taxis elsewhere in the world, these are powerful enough to tackle Kigali's hilly terrain. A clean form of transport, they have the added benefit of increasing drivers' incomes. Whale sees it as a win-win for investors, passengers, drivers and the environment.

Whale grew up in Blenheim and Whakatāne. His parents, John and German-born Sue, met when his father was doing his OE. The couple backpacked and drove a Kombi van from Germany to India before returning to New Zealand where they had Josh and his younger sister, Rebeka.

Tales of his parents' travels and a love of reading – even maps – led Whale to seek adventures around the globe. He and his American wife, Claire Nelson, who was an exchange student at the University of Otago and now works for the US Agency for International Development (USAID), lived and worked in China, the UK and Germany before moving to Rwanda in 2016. Whale has parked his life as a lawyer in favour of the electric moto project and a sideline in promoting native-tree planting to replace exotics that have made their way into the country's lush, green landscape.

Tell me about your early years, when you were a self-described “nerdy, probably know-it-all sort of kid”.

From a very early age, I was drawn to books; aged six, I read *The Lord of the Rings* [by JRR Tolkien]. At some point, Dad got fed up with me always wanting to go to the library or a bookshop, so one day he pulled out a big, beautiful Rand McNally *International Atlas* and told me to read that. I did, and I really got into maps, too, partly from all the Tolkien stuff. We always had the *Listener* and *National Geographic* at home, too. My parents told us tales of their travels, dozens of stories, and that played a big part in why I have ended up living abroad.

When did you become interested in climate change?

When we finished university, Claire and I watched *An Inconvenient Truth* [a documentary about former US Vice President Al Gore's campaign to educate people about global warming]. I had studied Chinese as well as law, so we thought, perhaps naively, we would be able to add something in China. That country was on track then to become the world's biggest emitter of greenhouse gases, and we thought this was where we could add value. Claire was with an NGO and until I was offered a legal position, I did such things

as kindergarten teaching and was even in a laundry-detergent commercial. We thought we'd stay a couple of years, but we ended up staying for five. In 2013, after a stint in London, I quit my law job and went on a “spirit quest”, for want of a better expression.

What was that about?

I did a lot of walking, including the Camino de Santiago trail and trekking in Nepal, and everywhere I went, the climate was completely out of whack. It was inescapable. It was an epiphany and it reaffirmed what I should be doing.

Why Rwanda?

There is a buzzy tech scene, it's English-speaking and exciting things are happening here. For example, they're leapfrogging the old ways of doing things, such as banking, and going straight to mobile phones, no landlines. In some ways, Rwanda is more advanced than Western countries. So, why not try this for motorcycles and leapfrog over petrol? I looked at various countries in the region and Rwanda came out tops. The country has higher fuel prices, so the economics were evident, there's low corruption and it's easier to do business.

Why the focus on moto-taxis?

It seemed exciting that the focus of

cutting-edge renewable energy was shifting to Africa. At the time, there had been so much buzz surrounding Tesla and electric bikes. People in Europe were congratulating themselves on a few thousand electric cars. I looked at what was happening in China with electric vehicles – there were about 200 million electric scooters and electric bikes in China, but the Western narrative was “electric vehicles are something the West will pioneer and should trickle through to places like Africa”. The China example flipped that on its head. It has nothing to do with how rich you are, so long as you design a business model that works. Electric vehicles make sense wherever you have high fuel prices and a lot of people driving a lot of kilometres each day.

What does your start-up involve?

We are making electric motos to replace Rwanda's existing petrol ones. Our pilot has 25 electric motos. There are 2.5 million petrol motos in the region. We are trying to replace them with a cheaper and better alternative, not just because they are clean and green or because of huge subsidies, but because we are simply putting a better version on the road, and that happens to be electric.

In Kigali alone, we have 25,000 motos operating within a 12km radius of the city centre. If you stand by the side of the road, they make up about 60% of everything going past you. You have phenomenal density and concentration, so setting up a charging infrastructure to better suit the moto drivers makes

much more sense than focusing on having a few electric cars scattered here and there. Fuel is trucked here from the coast. It costs twice as much to transport anything from the African coast to [landlocked] Kigali as it does to get it to the coast from, say, China. Fuel is transported on some pretty rough roads, so replacing that with electricity generated right here is very attractive.

What is the deal for the drivers?

Most drivers will rent to buy, as they do now. But a big difference is that the drivers won't have to buy the battery, and that keeps the cost down. We make the battery an energy cost rather than a big up-front hardware cost. They come into the battery-swap station, then a little trolley will take out the spent battery and put in a new one. We check how much power they've used and the driver pays accordingly. It will take about 90 seconds.

What do you do in your downtime?

The lifestyle is like New Zealand in the 80s – hard to get decent wine and cheese, but you can afford a house downtown. We spend a lot of time outdoors and go mountain biking. Rwanda is gorgeous and not very big; it's about the size of Nelson-Marlborough. It ranges from volcanoes, lakes and jungle in the west to savannah in the east – all in a four- or five-hour drive. I'm also involved in a tree-planting venture.

What's does that involve?

A lot of Rwanda's trees are imported, many of them Australian, so naturally I want to get rid of them! Eucalyptus



trees and grevilleas are not great for the ecosystem. We have good friends who run Akagera National Park in the east and they've agreed it would be great if the whole drive there was lined with acacias and not blimmin' Aussies. At the moment, we are a loose collective and we're looking at bringing together the national parks, getting expert botanists in to cultivate the trees, and coming up with an *Edmonds Cookery Book*-style guide to what to plant in Rwanda.

What are some good books to read about Rwanda and its history?

There are several great books about the 1994 genocide, and I try to read a couple of chapters again at this time of the year [when the genocide is being commemorated]. Roméo Dallaire's *Shake Hands with the Devil: The Failure of Humanity in Rwanda* is particularly interesting in dissecting what went wrong. Another is Philip Gourevitch's *We Wish to Inform You That Tomorrow We Will be Killed with Our Families*. Jason Stearns' *Dancing in the Glory of Monsters: The Collapse of the Congo and the Great War of Africa* is about the aftermath of the great war in Africa as it spread into the Congo, in much the same vein as *The Shadow of the Sun*, by Ryszard Kapuscinski.



Alex Perry's *The Rift: A New Africa Breaks Free* is also like *Shadow of the Sun*, and *The State of Africa*, by Martin Meredith, is a really good starter on modern African history. Alex Reader has a new book out called *Africa: A Biography of the Continent*, which I've only just started. Mostly, I read non-fiction, but I'm reading *Wizard of the Crow*, by Ngugi Wa Thiong'o. It's funny and satirical, about a mythical African dictatorship – in the vein of magical realism. *Birds of East Africa: Kenya, Tanzania, Uganda, Rwanda and Burundi*, by Terry Stevenson and John Fanshawe, and *A Guide to the Seashores of the Western Indian Ocean* are excellent, but also create a certain sadness when you think about the universe of life that is there, unknown to most of the world, and that it's probably stuffed. This place is so glorious and it is in deep shit

You've been almost moved to tears talking about this. It's really got to you, hasn't it?

The kids are right; the school protests are right. Greta Thunberg [a 16-year-old Swedish student and climate-change campaigner] is right – we need to panic. We need a revolution and to throw everything we have at it. If you could design a problem to destroy the human race, based on the frog in the pot of boiling water model, climate change is about perfect for taking us out. It doesn't require a moment of pushing a button, it requires doing nothing.



This article was first published in the May 18, 2019 issue of the New Zealand Listener.





Lieutenant Jonathan Rowe

RNZN

After graduating from the University of Otago in 2013, with a BA (Hons) and LLB, I decided to chart a slightly different course and seek a life of travel, adventure and service as a legal officer in the Royal New Zealand Navy.

Over the following six months, I put the law on hold and focused on training to be a naval officer. This involved more than just brutal early starts, physical training, and survival in a life raft, but also leadership training and academic study of international relations. At the conclusion of training, I was humbled to be awarded the Vice Admiral Sir Peter Phipps Trophy for application, perseverance, and positive attitude to training.

After receiving my commission, I joined the New Zealand Defence Force (NZDF) Defence Legal Service, which is a joint unit made up of legal officers from across Navy, Army and Air Force, as well as non-uniformed civil staff.

My first posting was to Auckland, where I was part of a team advising Navy, Army and Air Force command. My responsibilities were varied, spanning military justice and personnel law (the military version of employment law) to operational legal considerations for domestic exercises and personnel deploying on international operations. Particular highlights included flying out to meet a ship in Northern Queensland to assist with a Court of Inquiry (a statutory tribunal empowered to inquire into systemic issues or incidents causing death or serious injury) and a short-notice deployment to Fiji in the wake of Cyclone Winston in 2016.

Posting number 2 was Palmerston North where I held a team leadership position, advising Army and Air Force commanders. I was pleased to be selected to attend an operational law course in Canada and the NZLS litigation skills course.

During my Manawatu stint, the Minister of Foreign Affairs and Trade selected me as a national representative on a small tourist ship in Antarctica for a month. Having been seconded by the Navy, my duties involved monitoring the operator's compliance with the Antarctica (Environmental Protection) Act 1994 and the conditions of their permits to enter Antarctic Specially Protected Areas. This was certainly a real career highlight. I had the opportunity to contribute to the protection of the Antarctic, whilst experiencing first-hand the unique wonder of its rich wildlife. I also was privileged to visit a number of sensitive historical sites—including the huts built by Scott and Shackleton during the Age of Antarctic Exploration.

From Palmerston North, I was deployed on a six-month operational mission to Iraq where I advised on operational and International Humanitarian Law as part of a multi-national coalition of more than 70 nations.

It felt hugely rewarding to be part of a diverse team which was making what I believe was a meaningful contribution to global security. To keep ourselves sane in the compound at Baghdad,



leisure activities included the “climb to glory”: running up and down, 35 times, the seven-story Ba’ath Party Headquarters... in up to 40 degree heat!

This was intended to replicate a famous World War II mountain ascent by the main US element I was working with, the 10th Mountain Division. After winning one of the races (the equivalent of running up and down the Auckland Sky Tower four times), I ended up with the ninth fastest time out of competitors from all nations.

Now based in Wellington, I am currently the Assistant Director of Military Prosecutions. This involves decision making in relation to prosecutions in the Court Martial across Navy, Army and Air Force and appeals to the Court Martial Appeal Court (a court which sits as a bench of three judges in the High Court).

Nearly six years into my career, I reflect with pride on my decision to join Defence Legal Services and be part of an organisation protecting New Zealand and its interests. If asked if I would do it all again, the answer remains a firm ‘yes’.



Tales of a wandering scholar

Rhonda Powell

I visited the University of Otago earlier this year for the 150th anniversary celebrations. I particularly enjoyed the Council of Law Deans, and hearing the stories of what Otago Law Faculty was like back 'in the day', not so long ago. Some things have changed – some have not.

Since my time at Otago (1998-2002), I have lived, worked, and studied in three different countries, taught law in four different universities, worked in two overseas law firms, created and cared for two children, and most recently, started my very own boutique legal practice in Christchurch.

I left New Zealand soon after completing my undergraduate studies. I can remember my impatience to leave – I didn't stick around to graduate, which I now regret. I went straight to London, where I found a flat in Finsbury Park (just in time for the Finsbury Park Mosque raid), and worked as a paralegal.

I had a lot of fun cycling home through North London, taking weekend trips to Europe, and singing in church choirs.

My next step was the University of Nottingham, where I completed an LLM in International Human Rights Law. I loved the course but not the city. I then took up a place on the DPhil programme in Oxford. Oxford was everything you might imagine. Full of eccentric scholars wearing 'sub fusc' and riding bicycles without helmets, debates about legal philosophy in the pub (great pubs for that matter), beautiful gardens, stunning libraries, and awesome lectures and seminars by incredible minds. I crossed paths with some contemporaries from Otago, and met many other interesting people.

At some point, it dawned on me that I needed to write a doctoral thesis in order to leave with my pride intact, and so I did. I relocated to Cambridge, where I tutored law and generally worked in peace, freed from all the distractions I had engaged with in Oxford. There were more eccentric scholars, idiosyncratic library systems, bicycles, gardens and punts. I recall the very painful hobble to the post office to post my doctoral thesis back to Oxford for marking, after spraining my ankle in a ballet class. The lack of ceremony around submission was remarkable. I was envious when I learned that Otago doctoral graduates get a chocolate fish when they submit!

I then spent six weeks in Ecuador doing voluntary work, learning Spanish and travelling, before taking up a position at Boodle Hatfield, a high-end private client law firm in London. This is where my love of trust law started. I was fascinated by both the principled basis of it and the modern application to asset protection and intergenerational wealth transfer.

I followed these same interests in my next stop, Melbourne, where I worked for a regional Victorian firm, mostly advising high-net-worth clients about trusts and succession planning.

Boodle Hatfield was unique in having a

majority of female equity partners and more than one part-time male equity partner (that was 2008). It was progressive then, and still is now. It amazes me that we still need to be having a conversation around discrimination, equal pay and gender equality in 2019. The majority of lawyers are now women but law firms are only just starting to think about how their structures and processes need to adapt. We are behind the times. There is a long way to go.

I returned to New Zealand in 2014 to take up a position as a Lecturer at the University of Canterbury School of Law. I wanted to pursue academic research interests around women's health and my law firm job (and family responsibilities) left me too tired for this.

I introduced a *Gender & the Law* course into the Canterbury LLB curriculum, which has been very popular. However, as it turned out, it was tricky to get things done in a University position too ... so I made the big decision to become self-employed.

I have an interest in issues around women in the legal profession and an ongoing research programme in



issues related to women's health. I'm particularly proud of my role co-leading the *Feminist Judgments Project*, a significant national project with contributors rewriting judgments to demonstrate how gender justice could have been achieved. More recently, I instigated the new *Legal Culture Committee* within the NZLS Canterbury-Westland branch. That is a work in progress.

I started *Athene Trust Law*, named after the goddess of wisdom and strategy, in 2019. With this hat on, I have a (mostly non-contentious) practice specialising in the law of trusts (including the interplay with relationship property). I am the person you consult when there is a tricky trust law issue to get your head around, and you don't have the time or the inclination.

Please look me up when you are in Christchurch!



Deep Fakes

Law graduates Curtis Barnes and Tom Barraclough talk “deepfakes” and explore the questions increasingly realistic audio-visual technology poses for the law.

Technological growth allows humans to create increasingly realistic audio-visual representations.

These representations are the latest in a continuum of a human endeavour as old as we are, one that began with cave art. What makes these new representations interesting and challenging is their unprecedented persuasiveness, and the extent to which they can pervade our increasingly virtual lives. They are extremely commercially valuable. Yet, they also may cause significant harm or loss. Any interest the law may have in these technologies is directed by these two contrasting potentials.

We call these representations “synthetic media”. Unsurprisingly, we call the tools that help generate them “synthetic media technologies”. Currently, the most high-profile examples of synthetic media are so-called “deepfakes”. Deepfakes are both a pressing practical concern and an intriguing academic subject.

Their implications give rise to numerous questions and cut across multiple disciplines, industries, and areas of society. The simplest way to convey

the potential of a deepfake is with the following proposition: imagine ordinary people having the computational capability to make it look like any person (obscure or famous) was doing or saying anything, in any setting, at any time. More or less, this is the direction we are heading in.

Curtis Barnes (LLB, 2015; LLM, 2018) became aware of early examples of this technology in the course of writing for his Master of Laws at Otago throughout 2017. In his thesis Curtis considered an unrelated legal question arising from contemporary computer science.

Cooperating with Tom Barraclough (LLB (Hons), BA, 2014) in July 2018 we applied to the New Zealand Law Foundation’s Information Law and Policy Project for financial support to investigate the subject of synthetic media in its broad context. We predicted that, very soon, things like deepfakes would rise to prominence as one of the next headline issues of emerging technology.

That prediction was accurate. In the course of the 10-month-long research project, examples of synthetic media proliferated greatly. The most affronting

examples began to draw serious media attention. Moreover, they began to draw serious policy attention.

At the start of the research project, no politician or legislature in the world was debating the question of deepfakes. Now, a year later, deepfakes have been reported on by almost every major mainstream news institution. They have been the subject of a United States Congressional hearing, and are the cause for at least half a dozen proposals for legislation across common law jurisdictions. The research project’s major output, *Perception Inception: Preparing for Deepfakes and the Synthetic Media of Tomorrow* lawfoundation.org.nz/wp-content/uploads/2019/05/2018_ILP_5_RESEARCH-REPORT_Perception-Inception-Report-EMBARGOED-TILL-21-May-2019.pdf was one of the most serious and significant reports to be attempted or produced on developing law and policy for these new technologies.

The main theme of our research was that things like deepfakes are integrated and inseparable from other digital audio-visual technologies.

They rely on many of the same techniques, and deal equally in the same fundamental question: what is acceptable and unacceptable deception?

Ultimately, we retained little faith in policy proposals that sought to delineate deepfakes on technical grounds, and subsequently punish or prohibit them. We rejected the growing claim that the law was silent on deepfakes. Rather, we pursued the position that by developing a framework of what synthetic media is and how it is produced, shared, and consumed, there would be much existing law (in New Zealand, at least) which was relevant to the subject.

At the same time, we pressed that the question of how to regulate synthetic media is coloured by the right to free expression to the same extent as any other communicative medium. For the most part, these technologies are not harmful by nature. Already there are a multitude of benign real-world uses, and the potential for untold more in the future. We were concerned that imprecise attempts to suppress “deepfakes”, and their ilk, could unintentionally facilitate repression of other audio-visual mediums. By way of example, it is a short jump from banning “fake videos” (as some proposals suggested) to banning all videos—or more likely and worryingly, any video deemed inconvenient to the authorities of the day.

We thus remain extremely concerned by the way some synthetic media technologies may be used. This includes the potential for political disinformation, as well as interpersonal deception and abuse. Many commentators fear an increased role for deepfakes in disrupting forthcoming elections in America and Europe. Synthetic replicas

of the voices of well-known people are becoming more common and more convincing. Deepfake technologies have already been extensively deployed to depict non-consenting women engaged in pornographic videos. A recent application “undressed” photographs of women by depicting them with their clothes removed, “exposing” algorithmically generated breasts and genitals. The massive popularity of these sorts of nefarious functions presses home that harmful synthetic media is not a distant issue. It is something confronting us now, and there are real victims. Even highly-resourced actresses and celebrities have been unable to remove and prevent the proliferation of deepfake videos of themselves. What hope does this offer then for ordinary citizens?

For this reason, we offered pragmatic recommendations for New Zealand, centred on taking synthetic media seriously. New Zealanders need to know where to turn when harmful synthetic media eventually arrives in earnest on our shores. To this end, we identified a wide range of laws which may apply to synthetic media. We proposed inter-agency cooperation to determine who is responsible for what, and just who will enforce the law in a given scenario. We also proposed the development of critical digital forensics capacities, for which demand greatly outstrips supply all over the world. In other words, New Zealand should be developing the networks and technical skills to identify non-authentic audio-visual information. We also made specific recommendations to consider the applicability of the law of intimate visual recordings, and how it applies to synthetic media.

Our report certainly did not claim to solve the problem of tackling

harmful synthetic media or deepfakes. Nevertheless, we believe it made a significant contribution towards that end. Collectively, we are only at the foot of this wave. Work is accelerating all over the world in an attempt to prepare for its breaking. We hope to remain at the very centre of that work, and we believe New Zealand also may have a leading role, if it wants to. There are so many interesting and important questions which require further investigation. Many go well beyond the limits of traditional legal inquiry. For instance, there are questions arising from the increasing sophistication of audio-visual technologies which operate at the very limits of our perception. There are phenomena which will change the way we see, hear, feel, or the environmental information we perceive. On top of this, we must deal with the increasing sophistication of “virtual humans”, virtual reality, and other technologies yet unknown.

We established the company Brainbox Ltd as a hub for further emerging technologies research conducted from a legal and policy perspective. Brainbox continues to work on the subject of synthetic media and it is developing an extensive network within this field. We are also beginning work on several other important subjects in law and emerging technology. Brainbox is intended to be an administrative centre for talented and imaginative researchers to work together on pressing, multidisciplinary questions concerning technology. We both credit our colleagues and instructors at the University of Otago for instilling in us a passion for seeking out challenging subjects, as well as giving us the critical and legal skills to set about understanding these new frontiers.



Hazardous Research

Dr Ben France-Hudson

I have been part of a two-year interdisciplinary research project (with Emily Grace, planner, and Dr Margaret Kilvington, social scientist) exploring the legal, planning and social implications of introducing regulation to manage risk to existing developments in hazard areas in New Zealand.

The research is funded by Resilience to Nature's Challenges (Kia manawaroa - Ngā Ākina o Te Ao Tūroa) which is, in turn, one of 11 National Science Challenges issuing from the Ministry of Business, Innovation and Employment. Our study culminated in a report, *Reducing risk through the management of existing uses: tensions under the Resource Management Act*, released in September. It is available from gns.cri.nz/static/download/existinguses/SR2019-55-AD-Reducing-risk-through-the-management-of-existing-uses-tensions_FINAL.pdf

Like many countries, New Zealand is currently trying to figure out how to best manage hazard risks arising, for example, from climate change, coast erosion or flooding. A particularly thorny problem is how to reduce the risk to existing communities. It is one thing to plan for a risk when considering a new development: it is quite another to attempt to reduce risk to a community that is already there, especially where the risk is increasing.

Reducing risk to an existing community requires the ability to manage existing uses of land. In some cases this might encompass relatively minor actions, such as controlling the way properties are rebuilt following disaster. In others, it might involve the major step of extinguishing an existing use completely, for example, by way of what is sometimes called a "managed retreat".

Our report highlighted several challenges in this space. A key problem is that the scheme of the RMA is not designed around risk, but around hazards. The focus is on the hazard, rather than the risk posed by the hazard. The consequence of this is that the language of, and outcomes for, risk within the RMA are inconsistent. For local authorities there is no clear path in terms of their responsibilities to manage risk, and their options for doing so. Overall, we suggested that when it comes to managing the risk posed to existing developments, the current regime leads to a lack of clarity and, unsurprisingly, a lack of action.

The Report maintains that further difficulties flow from the decision made, when the RMA was passed, to return to the common law position, namely, that landowners may undertake any activity on their land that they wish, unless it is controlled by a lawful constraint. This appears to have created a reluctance on the part of local government to interfere with what are seen as sacrosanct private property rights. This is problematic as there may be a conflict between property use and risk reduction (which will necessitate a change to the way people have been living, or their ability

to continue to live in an area altogether). Our research asked whether it is possible to modify or extinguish uses under the RMA, with the ultimate conclusion being that it is—although only through rules imposed at the regional level. This, however, leads to a further governance problem between the different levels of local government, because regional councils (who have the power) do not usually impose land use rules; this is the responsibility of territorial authorities.

There is also an overlapping jurisdiction as both regional and territorial governments are responsible for controlling land use to manage natural hazards. The historical record suggests that both levels of government were intended to work together in this space, but this aspiration is bereft of support in the legislation and, to the extent it happens in practice, the outcomes can only be described as ad hoc.

Beyond issues of governance, the Report considered the fact that any decision to extinguish an existing use will interfere with a private property right. This appears to colour both the approach of the legislation and the range of decisions seen as being permissible by local government. Interestingly, the RMA deftly avoids arguments about compensation by prohibiting claims by people affected by planning restrictions imposed under the Act. This extends to rules aimed at reducing risk by extinguishing existing uses (including managed retreat). However, there is a proviso. Where the (extinguishment) provision would make the land incapable of reasonable use and place an unfair and unreasonable

burden on any person, the Environment Court can order that the provision be changed or abandoned, or the local authority may elect to acquire the land (but then, only if the landowner consents and receives Public Works Act compensation).

We argued that, in the context of managed retreat, it will only be where the risk posed by the hazard is significant, that the provisos would not be triggered. This will be particularly difficult where, although the risk is inevitable, the magnitude and the timing of the risk is uncertain, for example, erosion causing by steady sea-level rise.

A particularly thorny problem is how to reduce the risk to existing communities.

Ultimately, while the RMA might be used to move people away from an area at fairly immediate risk of a catastrophic event, it may be impossible to do so where the risk is anticipated, but will not occur for a long time. The paradox is that, currently, local government appears hesitant to act to extinguish existing uses immediately, and yet is more willing to consider their extinguishment as a tool where there is time to consider the problem, engage with the community and impose rules over time. Inaction when immediate and significant risk appears, but action, albeit inefficacious, when the risk is distant and difficult to gauge.



Associate Professor Michael Robertson

Associate Professor Michael Robertson retired at the beginning of 2019 after a long and distinguished career, which began in 1987 at the Faculty of Law. At his farewell at the Faculty Emeritus Prof John Smillie offered some parting reflections and warm congratulations, and we feature photos from a farewell Staff Seminar Michael gave on the jurisprudence of Brian Tamahana.

Michael kindly answered some questions about the Law and his career.

If you had to nominate one book by Stanley Fish what would it be? If you had to nominate one essay or article by Fish what would it be?

The easiest introduction to Fish's work is to be found in his writings for non-academic audiences, such as his *New York Times* opinion pieces. They have recently been collected in a book called *Think Again*. For a deeper dive into his non-academic writing, I would nominate *Winning Arguments*.

As for his academic writing on law, I think that his most accessible material is in books like *The Trouble With Principle* and *There's No Such Thing as Free Speech*. His more difficult stuff is collected in *Doing What Comes Naturally*. An article of his that I always enjoy is "Boutique Multiculturalism" (1997) 23 (2) *Critical Inquiry* 378.

Which law subjects did you most enjoy teaching?

I most enjoyed *Legal Theory* and *Law and Society*, because they were smaller classes and allowed for more fluidity and interaction. Jurisprudence, being compulsory, was a large class and so had to be more formal and structured. In earlier years, I taught the Landlord and Tenant course and a bit of the Property Law course, but I came to enjoy the theory courses more.

Name three of your favourite films. What is the most over-rated film of all time?

My three favourite films, identified by my willingness to view them multiple

times rather than the reverence accorded to them by film scholars, would be: *Cabaret*, *Appaloosa*, and *The Fabulous Baker Boys*. The over-rated category is trickier, since in the past I have written off films that I later came to appreciate when I knew a bit more about the genre (*The Umbrellas of Cherbourg* (1964), or viewed them later in life (*8 ½* (1963)). However, nothing would induce me to watch *Celine and Julie Go Boating* (1974) again.

Which philosophers and thinkers influenced you the most in your career?

Ludwig Wittgenstein, who I was working on before I shifted from philosophy to law; Stanley Fish, who combined philosophy, politics and law; Paddy Ireland, who combined history, politics and law in his studies of the corporation.

What has changed the most about universities and academic life over the 32 years you taught?

The biggest change for me was the computer and word processing. Before computers arrived I wrote my lectures on lined paper with a fountain pen. Textual changes literally involved cutting and pasting (or sellotaping). Word processing programmes not only made it easier to write and revise; they also made it easier to compose (outline view is a great tool.) At the end of my time at Otago when I looked up from



the lecturn I saw not students but ranks of raised laptop lids. Of course, what was on the students' screens was unknown to me.

If you were starting out again and had to choose another completely different career or vocation, what would you have chosen?

I don't think that I am suited for anything other than academic work. I don't seem able to force myself to work on anything that doesn't interest me, and academic work enables me to work only on what interests me. I realise how privileged academics are in that regard, and I have always been very grateful for the life Otago University gave me.

What is your favourite kind of music? Is Rush the greatest Canadian rock band of all time?

I'm a Leonard Cohen fan, and Joni Mitchell, if we are sticking with Canadians. Sorry, I'm not a Rush fan [the Editor gasps]. I like Gillian Welch and David Rawlings too. Just before I left New Zealand, I heard Marlon Williams and Don McGlashan at the Regent and thought they were both great.



Critic & Conscience Award

Professor Andrew Geddis

It is not a widely known fact that under the Education Act 1989, institutions wishing to be recognised as a University must “accept a role as critic and conscience of society.” Exactly what that role entails the statute does not say. Rather, it is something that those who work within each University must figure out for themselves.

Otago Law Faculty’s Professor Andrew Geddis spends a lot of his time doing just that, a fact recognised in 2019 when Universities New Zealand conferred on him its Critic and Conscience of Society Award.

Supplemented by \$50,000 in research funding from the Gama Foundation, this award is intended to encourage the academic staff at New Zealand universities to act as critic and conscience of society by providing the public with independent, expert commentary on issues affecting the New Zealand community and future generations.

“Receiving this award was a real honour. I’m very grateful for both the recognition and for the opportunity to use the research funding to do some good,” Professor Geddis says.

When conferring the 2019 award, the award judges noted that Professor Geddis has made an outstanding contribution to drawing public attention to instances of the abuse of public power in New Zealand and to preventing its continuation.

“He has not been the critic who carps negatively from the side line. He has played a constructive role by consistently articulating solutions to the issues he has raised and, although he is reluctant to claim the credit, some of his proposed solutions have been taken up and implemented.”

Doing so is something Professor Geddis sees as being a centrally important part of his role as an engaged legal academic.

“My areas of research interest cover public law, human rights and the relationship of individual citizens with their State. Virtually every day there is something in the news that my academic work touches on and when that happens I feel it is part-and-parcel of my job to say what I think about it as an academic.”

Over the last two years this has included his denouncing legislation that prevented family members of adult disabled persons from obtaining legal remedies for discriminatory treatment by the government. He also supported the call for an inquiry into the issues raised by Nicky Hager in his book *Hit and Run* and criticised the way Hager was treated by police.

Professor Geddis criticised the legislative ban on prisoner voting; called for reform of the legal controls on using money to influence election campaigns;

pointed out the unjust consequences of some applications of the “three strikes” law; the police’s unlawful use of a breath alcohol checkpoint to gather information about people attending an Exit International meeting and advised those stopped on their legal options; called for Housing NZ to compensate tenants whose eviction was based on meth contamination guidelines subsequently shown to be misleading; and called out then Deputy Prime Minister Paula Bennett for proposing that police be permitted to search gang members’ houses at will for firearms and for saying that gang members have “fewer human rights than others”.

Professor Geddis hastens to draw a distinction between giving his personal opinion on issues such as these and providing academic commentary on them.

“When commenting, I’m trying to do so from a point-of-view that is informed by my disciplinary knowledge. There’s plenty of folk out there giving their gut-level reactions to any topic that comes along. What I try to add is information about how the law applies, or should be applying, to the issue at hand.

“That doesn’t mean I don’t have my own thoughts on issues – of course I do! But it’s important as an academic commentator not to simply clothe my own personal views in the guise of expertise. That would be to take bad-faith advantage of what is a quite privileged social position.”

Speaking out on issues takes a number of forms and Professor Geddis says he’s probably approached by various media outlets for comment well over a hundred times a year.

“I really don’t keep count anymore.”

Taking the time to respond to such inquiries in a careful fashion is important, he says.

“Journalism is a very hard game to be in today – there’s pressure to produce lots of stories very quickly so any help that can be given to ensure the issues are dealt with accurately and in an informed way is doing society a big favour.”

In addition to responding to the media, Professor Geddis also frequently writes public commentary off his own bat. He helped found and co-edits the pundit.co.nz website, which hosts regular commentary from a range of public figures. He also contributes regular posts to thespinoff.co.nz and radionz.co.nz websites.

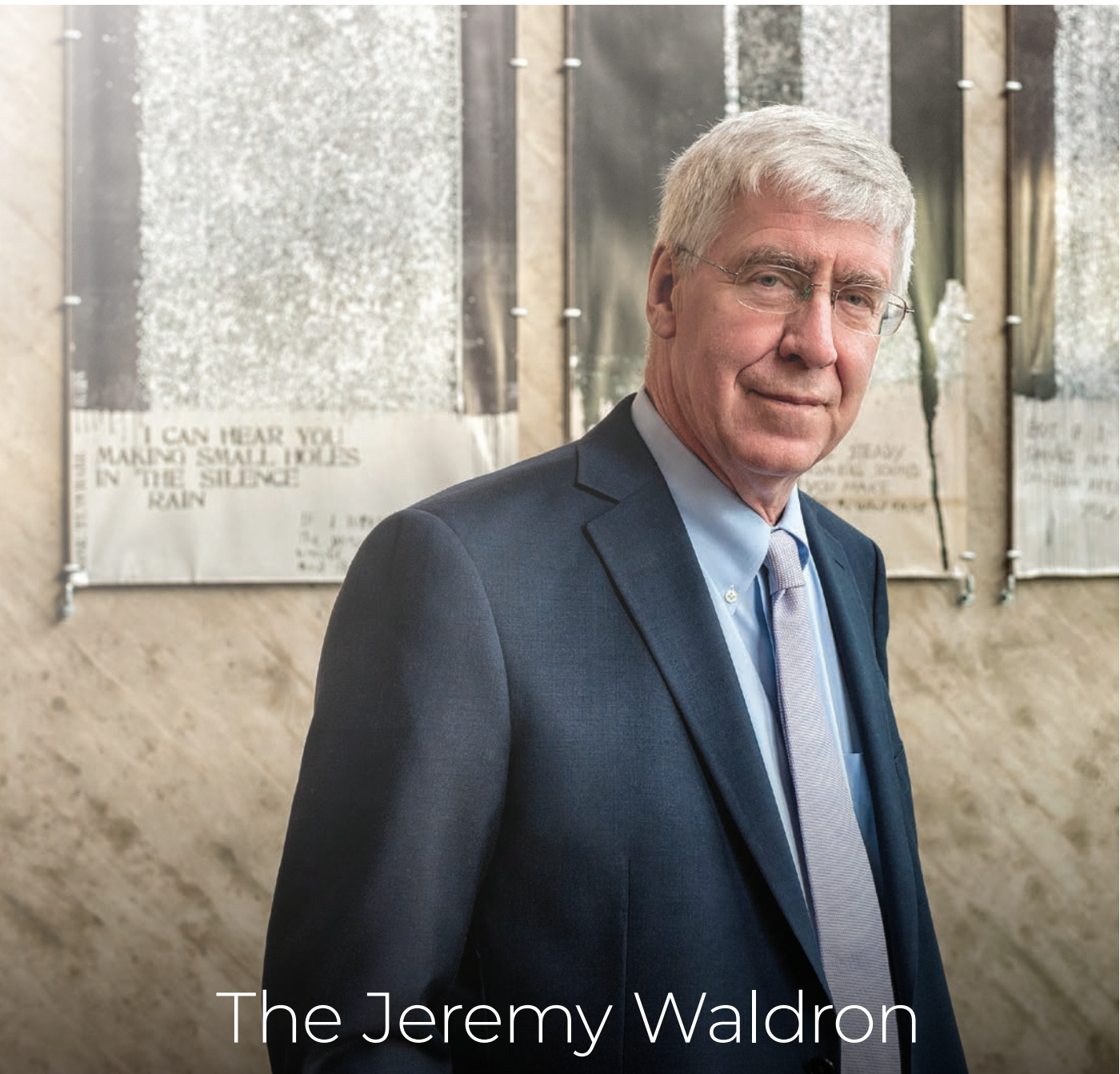
Virtually every day there is something in the news that my academic work touches on

“Writing commentary on a current issue is a great way to force myself to clarify what I think about it and then explain those thoughts in a relatively accessible way. That’s actually really useful both for my wider research agenda and also for being able to teach material in class. I also like to think it sometimes might be useful for those who read it!”

And what plans does he have for the \$50,000 research fund?

“I’d like to draw together some of my Otago Faculty colleagues who are doing fantastic research on important issues for our society: climate change; constitutional reform; access to justice; criminal justice reform; and so on. The funding can be used to foster cross-collaboration on these topics to produce some concrete proposals for how the law should look to help fix these problems.

“I’ve had my say on lots of things. Now I’d like to use this money to help more Otago voices to be heard.”



The Jeremy Waldron

Chair of Jurisprudence

Prof Jeremy Waldron in the lobby of the Richardson Building (in front of the Ralph Hotere artwork)

The Faculty of Law is delighted to have a new Chair, named after distinguished Otago alumnus Professor Jeremy Waldron (University Professor at NYU School of Law). This is the first named Chair in the Faculty's history and one of very few at Otago.

The Jeremy Waldron Chair of Jurisprudence was made possible through the most generous support of Mr Noel Carroll, an Otago LLB graduate and a former part-time law lecturer at the Faculty for many years.

"Noel's collaboration with the former Dean of the Faculty, Professor Mark Henaghan, led to the establishment of the chair and is greatly appreciated," explained Dr Royden Somerville QC, the Chancellor of Otago University (and another Otago alumnus).

"The three have strong links. They go back to the 1970s in the Law Faculty when Noel was a lecturer, and Jeremy and Mark were both law students."

Jeremy's prodigious and influential corpus of work includes: *One Another's Equals: The Basis of Human Equality* (Harvard University Press, 2017); *Political Political Theory* (Harvard University Press, 2016); *The Harm in Hate Speech* (Harvard University Press, 2012); *The Rule of Law and the Measure of Property* (Cambridge University Press, 2012); *Torture, Terror, and Trade-Offs: Philosophy for the White House* (Oxford University Press, 2010) and *God, Locke, and Equality: Christian Foundations of Locke's Political Thought* (Cambridge University Press, 2002). In 2005, Jeremy's alma mater recognised his outstanding



(From left) Dr Royden Somerville QC, Mr Noel Carroll, and Prof Mark Henaghan at the signing of the deed in 2018 to establish the Chair

scholarship by awarding him an honorary LL.D. That same year, Jeremy delivered the *FW Guest Memorial Lecture* on "The Half-Life of Treaties: Waitangi, *Rebus Sic Stantibus*".

Faculty of Law Dean Professor Jessica Palmer says Professor Waldron is a world-renowned legal scholar, who still regularly visits Otago to speak to students and staff.

"It is fitting that this Chair acknowledges both the enormous contribution he has made to legal philosophy and that Otago was where he began.

"Many of our older graduates benefitted from Noel's many years of teaching while he was in practice, and our future students will now also benefit from this gesture ensuring that jurisprudence will always be an important aspect of the Otago law experience," she says.

Noel Carroll explains his desire to support the Chair is derived from his interest in Bioethics:

"Two years into my retirement, the Otago University Bioethics Centre introduced me to Health Sciences and Humanities (Philosophy and Law)

interdisciplinary study. The Centre's lively weekly public seminars continue to emphasise to me that there is a common well in philosophy driving aspirational ethics in medicine, law and other disciplines. Last year, Jeremy delivered a public lecture on the philosophical basis of migration law. As law and medicine grow more specialised I expect it will be increasingly refreshing and helpful to look to broader philosophy for guiding principles. In Jeremy's stellar career, Otago students have both a common heritage and much to aspire to."

Jurisprudence is still a core paper of the Otago law degree, despite no longer being a subject mandated by the Council of Legal Education for the LLB. The Chair will be a professor (or associate professor) who will teach and research in jurisprudence and be a permanent academic member of the Faculty. A short-list of candidates for the Chair is nearly completed, with a view to an appointment being made in 2020.



FW Guest Memorial Lecture 2019

This year's annual lecture in honour of Professor Frank Guest, the first full-time Dean of Law, was given by Professor David Fox, Professor of Common Law at the Faculty of Law, University of Edinburgh.

David is from Dunedin and completed his LLB (Hons) here in 1990, and undertook a brief stint as an Assistant Lecturer before heading to England to do a PhD at the University of Cambridge. Prior to taking up his chair at Edinburgh he taught at the University of East Anglia and St John's College, Cambridge University.

The title of his lecture, presented in the



Moot Court on 24 July, was "The Legal Formation of New Zealand's Monetary Sovereignty".

One of the important indicia of sovereignty is the power of a state to issue its own currency and control its monetary system.

David took us back into history as far as the Roman Emperor Constantine, where he explored the importance of genuine coinage and the seriousness with which the Roman authorities treated the treasonous crime of counterfeiting. Next, we delved into the political philosophy of Jean Bodin and his claim that coinage was a distinctive mark of an indivisible sovereign power.

We then learnt that New Zealand's early colonial period largely relied, so far as money matters were concerned, upon the British pound; Australia and New Zealand were inextricably linked to the monetary system of the UK. All three were tied to the gold standard.

When did the emergence of monetary sovereignty occur then? David explained that this occurred in the early 1930s.

"Between 1933 and 1934 the financial stresses of the world economic depression finally broke this country's legal connection with the monetary system of the United Kingdom."

From that time, the NZ Government took over the task of running the system from the private banks and this state monopoly (under the auspices of the Reserve Bank) continues to the present day.

UNIVERSITY OF OTAGO
FACULTY OF LAW

Presents the
2019 FW Guest Memorial Lecture

The legal formation of New Zealand's monetary sovereignty

Professor David Fox

Professor of Common Law, University of Edinburgh

Professor David Fox is a graduate of the Otago Law Faculty. Before taking the chair at Edinburgh, Professor Fox was for many years a fellow at St John's College, Oxford. Professor Fox's research interests touch on most aspects of private law, concentrating on property, trusts and monetary law. His research interests have a strong historical and comparative focus. They concentrate on the formation of modern trust and property doctrine in common law systems, and on the private law relating to money.

Wednesday 24 July

**Moot Court
Lecture Theatre**

3.30pm – 6.30pm

otago.ac.nz/law

Inaugural Professorial Lecture of

Professor Jessica Palmer



My research is in the fields of Equity, Restitution and Contract Law. A large part of my recent work has concerned the rights of both beneficiaries and third parties to trust property, particularly in the context of New Zealanders' penchant for creating discretionary trusts while retaining significant powers of control, and an increasing willingness on the part of the courts to recognise avenues in to the trust fortification.

One of the themes of my writing is to warn against a view of Equity as primarily dispensation of discretionary justice on the individual case. Such an approach overlooks the development of equity over several centuries and many cases since its early formation in to a body of principles that places value on notions of certainty, consistency and coherence to achieve justice.

In the lecture, I drew on the law of trusts, and specifically the currently controversial examples of beneficiaries' rights to trust information and constructive trusts on express trusts to make this larger point and demonstrate that an eye must be kept on principle at all times if people's rights, particularly in property, are not to be unjustly overridden and the law rendered incoherent and confused.

In recent times, much of my focus has moved to the wider Law Faculty as a whole, following my appointment as Dean in April last year. I am now occupied with ensuring that Faculty members have the support and resources they need to reflect and think critically about the law and how

it functions, and to be able to teach it well for the benefit of our students, the wider legal community and the general public.

In my *IPL*, I sought to bring these two strands together: a journey into some of the issues currently posing a challenge to Equity as a coherent and responsive body of law; and a reflection on the role of academic lawyers and the modern law school. I argued, with regard to the first theme, that the alluring nature of discretionary justice must be treated with caution and, with regard to the

second, that the academic voice that sounds that caution really matters.

Of course, it wasn't all trusts and constructs. There were also stories on the difficulties of striking up interesting conversations at drinks functions, house renovations without written contracts, and conference showdowns between a father and daughter. I was very grateful for a generous audience and a beautiful waiata from Te Roopū Whai Pūtaka tauria.



The Ratio of Strictly Obiter

Strictly Obiter is a very popular law blog (and Twitter feed) described by its anonymous creator as: “Unnecessary thoughts about the law from a young lawyer in New Zealand. All thoughts wildly unrepresentative of any employer. Also wildly unrepresentative of sound legal advice.” The author is an Otago Law alumnus and we thank him for answering these questions devised by Associate Professor Barry Allan. We reproduce (with permission) a couple of his excellent posts.

When did you start Strictly Obiter - the blog and the Twitter feed? What motivated you?

Steve Braunias wrote something mean but very accurate about me when he covered a trial that I had no business junioring on. That really turned me on to his court writing and I read all of it I could find. I took an afternoon off work in 2017 to go to watch the hearing where Gareth Morgan tried to get a place on a televised election debate. Venning J was foolish enough to let me take notes from the public gallery. Afterwards I wrote a piece about what happened at the hearing called “With apologies to Steve Braunias”. I was vain and self-obsessed enough to think other people might want to read it so I started the blog. It took a while to figure out what I wanted it to be but I'd like to think it's developing a theme. I want to write about the law the way I talk about the law: too informal, too much, definitely too niche, but hopefully entertaining for about half a dozen people.

The Twitter account came second—at first to try to promote the blog, but now it's a vent for every inane law-related thought I have.

Were these your first forays into anonymous online commentary?

I ran a very bad parody Twitter account about the Otago Law Faculty while I worked there following graduation. No one followed it and I have since deleted it. I have published a very few pieces under my own name in reputable places but one of the great drawbacks of the *New Zealand Law Review* is that you're not allowed to swear.

How well is the secret of your identity kept?

Poorly. Twitter simply acts as a record of everything I bug my colleagues with anyway. When they started to see it written down they figured it out. Then, apparently, if you poke fun at senior court judges they want to know who wrote something and the difficulty with them is they have ways of finding out. Plus, I'm generally poor at keeping secrets.

Now I figure notional anonymity serves two purposes. First, a subconscious reminder to people that when I'm writing and tweeting it's only my personal view, not that of my employer. Second, a cachet of (very small)

authority that I wouldn't deserve otherwise. People that actually know me know that no one should care what I have to say about the law: I have no subject expertise other than the biographical history of mid-century Court of Appeal judges.

Has Strictly Obiter led to fame or fortune? Interesting encounters?

Very little fame, and certainly no fortune. The third-best thing to result from it was Palmer J maybe having a friendly go at me in a judgment he wrote when we disagreed about the application of *Sena v Police* [2019] NZSC 55 to sentencing appeals. That's as close as I'll come to ever being cited in a judgment. The second-best thing was an invitation for coffee from a judge who, to his great discredit, claimed to like my work. The best thing was being bailed up by someone very unhappy about some things I tweeted about Mark Lundy.

Do you find Strictly Obiter life-changing or at least satisfying? In what way?

I wish I could say that a ruthless commercial drive to create content means that my law-tragic writing is some sort of act, but, unfortunately, I'd be doing this even if no one read it. In that way, it's certainly not life-changing, though people can now make their own grim assessment of how much of a life I had in the first place.

It's satisfying in the sense that I

genuinely think the law is an interesting, story-filled, technical and academic sprawl, with this tremendous capacity for humour. That's both “funny haha” and just recognising the occasional absurdity of a legal system that takes itself very seriously. The blog and my Twitter account try to approach law from that viewpoint and share it with others. If people get to feel a sense of that from what I write then I'd be happy about that. In saying that, it's all tremendously niche and trivial. So many of my peers are using the law to accomplish concrete things and make a practical difference for others. This magazine is likely to be full of them. Meanwhile, I'm defining the highest court in New Zealand based on altitude above sea level. It's vitally important to keep a sense of perspective about that.

How is life out there in what some like to call ‘the real world’?

I'm interested in appellate advocacy and judicial review and I'm lucky enough that my day job lets me appear as counsel on those matters, even as a still comparatively junior lawyer. But the practice of law is tough – it's full of stress and anxiety and people who never learned from the Mark Henaghan to follow the Otago way. You've got to be patient, be kind, and have an outlet that may or may not involve writing law puns. The practice of law is worth it, but I'm convinced all lawyers need to just take it down a notch, me included.

Alternative law-related names for famous artworks

Strictly Obiter, 30 July 2018



Da Vinci's “Expression of a judge who doesn't say anything during your entire oral submissions.”



Grant Wood's “The partners are pleased to announce this year's salary increases.”



Da Vinci's “Late night at the office before they abolished the working late dinner allowance.”

Famous novels as written by lawyers

Strictly Obiter, 26 February 2018

1. Pride and Without Prejudice
2. Great Expectation Damages
3. To Cause Bodily Injury That Is Known To be Likely To Cause Death, While Reckless As To Whether Death Ensues To a Mockingbird
4. Murder on the Orient Expressio Unius Est Exclusio Alterius
5. The Grapes of Wrotham Park Damages
6. Harry Potter and the Interlocutory Order of the Phoenix
7. The Anton Pillers of the Earth
8. May It Please the Court, It's Me Margaret
9. Mocking J
10. Of Mice and Mens Rea

Art in Law XVII

The latest exhibition in the Art in Law series is *Art in Law XVII: Floor Talk*, and sees the welcome return of the programme to the Faculty and the rekindling of the relationship with the Dunedin School of Art at Otago Polytechnic. The School of Art is NZ's oldest art school dating back to 1870, following one year later in the University's footsteps in fostering inquiring minds.

The rationale behind Art in Law has always been to find synergy between the Faculty's bare walls in the Richardson Building and the wealth of talent at the School of Art, but the programme has been on hiatus since 2015. The urgency to ensure the Faculty looked in ship-shape for 150th Celebrations in June provided the catalyst to restart the programme and the relationship, to great acclaim and success.

The generosity of time and vision from key personnel at the School of Art (in particular Marion Wassenaar, who curated *Floor Talk* and Head of School, Bridie Lonie) saw *Floor Talk* select some choice pieces from the School's permanent collection. *Floor Talk* "seeks to engage in dialogue relevant to the law community with works that span the past, present and future." The works—displayed in the ninth and tenth floors—include pieces from the award-winning Metiria Turei, now a research fellow with the Faculty, as well as Carlos Carbrera, Bat & Emboss, Madison Kelly, Justin Spiers, Jodie Gibson and Elaine Mitchell.

It has been a wonderful development and the Faculty looks forward to enjoying the fruits of the partnership in years to come.

Marcelo Rodriguez Ferrere
Chair, Space and Design Committee



Elaine Mitchell, 'Vestigia A Ante Diluvian'



Neil Emmerson, 'Panama Papers'



Elaine Mitchell, 'Vestigia A Ante Diluvian'

Arrivals

Dr Lili Song

I joined the Otago Faculty of Law as a Lecturer in February 2019. Prior to coming to Otago I taught law at the University of the South Pacific in Vanuatu for just under three years. I have also held research or visiting positions at Oxford University, Melbourne University, the University of Michigan, the Australian National University, the Humanities Institute in Myanmar, and Northwestern University, Illinois.

I was born and raised in China's subtropical Guangxi Zhuang Autonomous Region, and received my LLB from Shanghai University of Finance and Economics, a Master of International Law from East China University of Political Science and Law and my PhD in law from Victoria University of Wellington.



Before embarking upon my PhD in 2011, I worked as a lawyer at an international law firm and then as an in-house counsel at an international commercial bank, both in Shanghai. I am qualified to practise law in China.

In my spare time I enjoy travelling, hiking and Muay Thai. I speak English, Cantonese and Mandarin Chinese. I am learning French and te reo Māori.

My main research area is Refugee Law. I first became interested in Refugee Law in 2007, when I travelled abroad for the first time; to North Korea by train from China's north-eastern Jilin province. In hindsight, North Korea was indeed a very odd choice for a first OE!

I had read about North Koreans in China and what I saw and experienced in North Korea made me wonder if they ought properly to be classified as refugees in China. That question became the central research question for my PhD. My dissertation will be published as a forthcoming book by Cambridge University Press in 2020, and is entitled *Chinese Refugee Law and Policy*.

I also have research interests in the Law of the Sea, Pacific Law, Chinese Law relating to the treatment of foreigners and Public International Law issues relating to China and South Pacific island states. My fieldwork has taken me to Myanmar, South Korea, India, the Cook Islands, and Fiji, owing to the support of generous grants from institutions in NZ, South Korea, Australia, China and Vanuatu.

I am currently lecturing on Contract Law, a subject I greatly enjoy teaching. Many contract law cases tell wonderful stories. My teaching in this area has also inspired me to work on a paper about unconscionable contracts in South Pacific island states. I look forward to fishing out a few interesting stories through this project.

I will also teach a paper on Immigration and Refugee Law in the second semester of 2020. This is an area of law that is close to my heart because I have not only seen but also experienced the impact of this law on people, some of whom are struggling and desperate. I hope to inspire my students to think critically about how Immigration and Refugee Law can better serve the needs of our society. What I really enjoy in my teaching is exploring the stories of real people behind every case and I always try to put the law into its human context.



Dr Stephen Young joined us as a lecturer of law in early 2019. His research and teaching areas are in Torts, Law and Indigenous Peoples, and International Human Rights Law.

Where are you from and what brought you to Otago?

I grew up outside of Chicago, Illinois. I attended Bucknell University for my undergraduate degrees in music and philosophy. I then made my way to Colorado, where I obtained a MA in philosophy and completed a JD. After law school, I worked for a few years as a civil litigator focusing primarily on tort disputes in Denver, Colorado. Before joining the Otago Faculty of Law, I was a Teaching Fellow at the University of New South Wales Law School



where I also completed my PhD. My dissertation focused on understanding how Indigenous peoples have been claiming free, prior and informed consent – an international human right – against natural resource development projects in various jurisdictions. (Look for it in book form soon!) While Sydney is an amazing city, I missed the mountains and access to the outdoors, which I grew fond of while living in Colorado. When I saw that the University of Otago was hiring, I jumped at the opportunity to come to New Zealand. I'm thrilled to be here.

How did you become interested in Law and Indigenous Peoples?

Before I entered law school, I was interested in some philosophical issues, like the interrelation of epistemologies and normative fields. Lawyers tend not to dwell too much on those issues, but in my last year of law school, I was lucky enough to take a seminar with Charles Wilkinson, who co-authored *Cases and Materials on Federal Indian Law*. In that seminar, I realised that many cases between the US government and Indian tribes were being expressed through a particular western/legal epistemology that failed to appreciate the unique perspective and concerns of the tribes. After graduation, I dedicated some pro bono



time to working with an NGO. One of our projects was to articulate how Indigenous peoples' rights of free, prior and informed consent could work. That project got me thinking about different legal lenses and their limitations, which inspired me to start a PhD in Australia. The opportunity to continue thinking about these tough and sensitive issues, while working with and alongside brilliant minds and students at the University of Otago, has been amazing.

How has your first year been?

Moving to Dunedin has been wonderful. It is so nice to be able to bike around town, quickly access trails and never worry about being stuck in rush-hour traffic. My experience with the Law Faculty has surpassed my expectation. Our administrative staff is excellent and my colleagues have been immensely helpful in getting situated. I'm also immensely thankful that I did not have to teach in semester 1, so I could get situated and focus on publishing. Now that I've started lecturing, I'm happy to say that Otago's law students are great. On a more personal note, my wife and I recently found out that she's expecting a baby. We're thrilled and looking forward to welcoming a young Young into our family!



Retirements and Departures



Professor Geoffrey Hall

Professor Geoffrey Hall retired in early 2019. Geoff began his long and distinguished career at the Faculty in 1975. Over the course of his career he taught many subjects, including Constitutional Law, Civil Liberties, Criminology, Criminal Justice, and Sentencing. He is most noted for his seminal works on sentencing where the multi-volume *Hall's Sentencing* is the standard work for judges and counsel. He is also co-author of the multi-volume, Beecroft and Hall's *Transport Law*. Geoff's Inaugural Professorial Lecture had the memorable title, "Bloody idiots!: Have the drunks behind the wheel reached the crossroads?". He has also been, and continues to be, a prominent Judicial Control Authority for the Horse Racing Industry.



Associate Professor Michael Robertson

Associate Professor Michael Robertson also retired in early 2019. Although he hails from New Zealand, Michael joined us in 1987 from Canada and went on to teach Jurisprudence, Property law, Landlord and Tenant, Law and Society and Legal Theory. Michael is featured in the magazine on p 20.



Dr Jesse Wall

Dr Jesse Wall joined us in 2014 following the completion of postgraduate degrees at Oxford University as a Rhodes Scholar, as well as a stint as a lecturer in law and fellow at Merton College. He taught Law and Medicine, Criminal Law and Jurisprudence at Otago. While at Otago Jesse was awarded an Early Career Award for Distinction in Research and published a monograph entitled *Being and Owning: The Body, Bodily Material and the Law* (Oxford UP 2015). He departed this year and is now lecturing at the University of Auckland School of Law.

Research Centre News



Legal Issues Centre

Bridgette Toy-Cronin

The Legal Issues Centre is an interdisciplinary research centre based at the University of Otago that undertakes research on access to justice with the goal of working towards a justice system that is accessible, affordable, efficient, fair and just for all New Zealanders. It conducts independent, world-leading research on New Zealand's justice system in order to inform and influence policy and conduct, for the benefit of all New Zealanders.

The Legal Issues Centre was established in 2007 by a generous donation from Marilyn and Grant Nelson (The Gama Foundation) and the University of Otago Foundation Trust.

Research Projects

This year saw significant progress by the University of Otago Legal Issues Centre across its three research themes: Aotearoa's future courts, litigation in civil courts and accessing legal services.

Aotearoa's Future Courts

One project, co-funded by the New Zealand Law Foundation's Information Law and Policy project, involves New Zealand's first look at the potential impact of online courts. Their arrival may see a significant rise in claimants appearing without a lawyer, which would raise significant issues about access to justice.

To understand how people might translate disputes into the language of justice without legal help, the Centre ran an innovative experiment involving lawyers and laypeople. It compared how each group describes disputes by asking them to conduct mock client interviews and file claims in a model online court. Centre Director, Dr Bridgette Toy-Cronin (pictured on p.37) explained:

"For lawyers, reviewing disputes

through the eyes of the law is as natural as breathing; but for most lay people it's very foggy. If they don't know what the online court wants to know or how to say it, the justice of their case may be overlooked, a poor result even if they and the Government have saved money in the process."

Litigating in the Civil Courts

Bridgette is participating in a multidisciplinary Marsden-funded study, Eviction and its Consequences. The project uses social science methods to study the termination of tenancies for unpaid rent and the enforcement of those decisions.

Accessing Legal Services

We have begun looking at the price of litigation services. Centre staff have been preparing background papers about New Zealand's market for dispute resolution services. The first of these 2019 publications, a working paper, Accessing Legal Services: The Price of Litigation Services, explores how the legal services market operates. A second paper will be published in the NZLJ by Bridgette looking at the international literature. In

2020, the Centre will employ a post-doctoral fellow to study how pricing reform could make litigation more accessible. The Centre's online legal information project explores ways to raise NZ's online legal information game.

"Self-help, with assistance from community services, is becoming the most vital bridge across the nation's justice gap," she says.



On 25 July, we convened an online legal information forum in Wellington in what could be the first step towards greater co-operation among those entities that provide legal assistance, and who aspire to do so online. The 16 participants included the Citizens Advice Bureau, Community Law, the Ministry of Business, Innovation and Employment, the NZLII and the NZ Law Society, as well as individuals from the social-entrepreneurial sector. We are continuing our series of animated videos to help people understand legal processes, which it launched in 2018: see the Legal Issues Centre YouTube channel.

Policy wins

Following a Centre and NZLS proposal, the Rules Committee expressed its support for unbundling legal services as a means to promote access to justice.

Events

Explorations in Civil Justice

On 2 May, 2019, at the Faculty of Law our annual Explorations in Civil Justice event explored the question, Is Online Dispute Resolution Our Legal Future? Katarina Palmgren, a Court Legal Advisor at the Magistrates' Court of Victoria and an online civil dispute resolution expert, surveyed developments in global online dispute resolution. Michael Heron QC also spoke

about how civil lawyers might respond to an online future. The talk is available on YouTube.

Winter Symposium: Rethinking civil justice in Aotearoa – how to make it accessible

On 24 July, the Beehive was the setting of an interrogation of our civil justice system during a University of Otago Winter Symposium. Bridgette Toy-Cronin was joined by Justice Forrest Miller of the Court of Appeal, and Leo Watson, part-time lecturer at the Faculty of Law. In a frank discussion, the panelists highlighted such issues as the dwindling pool of legal aid specialists, the potential responsibility on lawyers to lower costs, the ramifications of commercial and digital disruption for justice, trade-offs between efficiency and justice and the merits of innovations such as the court-controlled litigation in the Christchurch Earthquake court lists. The panel identified a need for more data, research and community engagement and better incorporation of tikanga Māori.

LLM Scholars

The UOLIC teamed up with Ngā Pae o te Maramatanga to promote Māori postgraduate research into Māori access to justice issues. LLM candidates, Mhiata Pirini and Margaret Courtney, are underway with their research.

A2J Connect

We established a student group, Access to Justice (A2J) Connect, which senior law students may join. The students receive training in access to justice issues and professional skills, while contributing to the Centre's work. In its first year, the group reviewed and user-tested NZ's online legal information.

Centre for Law & Emerging Technologies NZLF

Artificial Intelligence and the Law

The main focus of the Centre's work in 2019 was the *Artificial Intelligence and Law Project*. The three-year multi-disciplinary research project, funded by the New Zealand Law Foundation, produced its first major output this year: an 86-page report into the use of predictive algorithms in government.

The report was well received, and attracted a lot of media attention, including an interview with Centre Director, Associate Professor **Colin Gavaghan** on RNZ's *Nine to Noon* show.

The project itself has been gaining recognition internationally; it was cited in a January 2019 report by the Library of Congress, the official research resource for the US Congress and de facto national library of the US. It was also cited in a recently published Horizon Scanning report by The Australian Council of Learned Academies (ACOLA).

Joy Liddicoat was employed full-time on the project. She was very active in coordinating research workshops and producing research outputs, including an article in the *NZLJ* and for the 2019

edition of Global Information Society Watch. Joy developed and co-delivered a CPD-compliant workshop for the In-house Lawyers Association of New Zealand annual conference. She gave numerous presentations on artificial



intelligence and employment, including to the University's AI and Society Forum, to the NZ Law Librarians' annual conference, and Dunedin's Women You Can Bank On event.

Joy and Colin both appeared as panellists and chairs at the Identity Conference, organised by Victoria

University of Wellington, the Department of Internal Affairs – Te Tari Taiwhenua, the Office of the Privacy Commissioner and Digital Identity New Zealand. Finally, Colin delivered a seminar on the project, entitled 'Thinking outside the (black) box', as part of the Inland Revenue's "Future thinking" series.

The Project has now moved into its second phase, which involves researching the impacts of AI for work and employment. The project held a two-day workshop in late September, at which a range of experts and stakeholders from academia, the legal profession, government, industry and the trade unions discussed the many implications of increased AI use.

'Deep Fakes'

The Centre was delighted to resume working with Tom Barraclough and Curtis Barnes, welcome them as affiliates, and help support their NZLF-funded research into 'deepfakes': see the feature article at pp 16-17. The Centre has already started working with Tom and Curtis on their next project.

Reproductive and genetic technologies

These continue to be a prominent focus of the Centre's interests and energies. Colin is the Deputy Chair of ACART, the statutory regulator for

assisted reproductive technologies. He has been significantly involved in drafting consultations and guidelines for gamete and embryo donation, and on posthumous reproduction (where one of the genetic parents—realistically, the sperm donor—has died before conception.) In May, he was interviewed by TV3 about a controversy involving a 'freelance' sperm donor. Colin set out his thinking further in a blog post on *Pundit*, that was picked up by *The Spinoff*.

Dr **Jeanne Snelling** was a Special Contributor to the Royal Society's technical paper on Gene Editing Scenarios in Healthcare: Technical Paper (August 2019) royalsociety.org.nz/gene-editing. She co-authored (with Mike King of the Otago Bioethics Centre) a blog post for the influential *Journal of Medical Ethics*. In July, she was interviewed for a *Stuff* article about posthumous reproduction (www.stuff.co.nz/national/health/113394394/a-baby-after-death-ministry-of-health-asks-if-posthumous-reproduction-is-acceptable-to-kiwis), and was also interviewed by Duncan Garner for the *AM Show* about 'designer babies.'

Visitors

The Centre was delighted to host two visitors during 2019: Hin Yan Liu (University of Copenhagen) and Jon Danaher (University of Galway). Both

are currently collaborating with Centre staff on research that we look forward to publishing in 2020.

Publications

J Liddicoat and C Gavaghan (with AS Knott, J Maclaurin and J Zerilli), "The use of algorithms in the New Zealand public sector" [2019] *NZ Law Journal* 27-32

J Liddicoat and C Gavaghan (with A Knott), "Beyond the hype: AI and the law", *LawTalk* (8 March 2019) www.lawsociety.org.nz/practice-resources/the-business-of-law/future-of-law/beyond-the-hype-ai-and-the-law

C Gavaghan and J Snelling (with An Ballantyne), "Doctors' rights to conscientiously object to refer patients to abortion service providers" (2019) 132 (no 1499) *NZ Medical Journal*

J Snelling, "Sexual health, Reproductive Capacity, and Adults with Impaired Capacity" in I Reuvecamp and J Dawson (eds) *Mental Capacity in New Zealand* (Thomson Reuters, 2019). See p 45.

Teaching and supervision

The Law & Emerging Technologies paper (LAWS 428) continues to thrive, with almost 170 students signing up in 2019. In June, Holly Moffett became the inaugural winner of the Gallaway Cook Allan Prize for best writing in law and

emerging technologies, for her essay on regulation of 3D-printed guns. We are very grateful to GCA's generosity in sponsoring this award.

In April, Colin and Jeanne started co-supervising a new PhD student, Louise Wilsden, who will be working on a review of New Zealand's regulatory framework for health data privacy in an age of big data and predictive analytics. Colin also co-supervised Hannah Foreman's MBHL thesis on cerebral organoids (mini-brains!); supervised LLB Hons dissertations on regulating the digital economy (Raffie Darroch), and confidentiality and genetic information (Libby Hadlow).

And finally

Next year will be the tenth anniversary of the Centre commencing its activities, and some exciting plans are already in the works to commemorate that. Watch this space!



Children's Issues

Centre

(From left: Megan Collop, Nicola Taylor, Mark Henaghan)

Law gained a valuable addition in February when the Children's Issues Centre moved into the Faculty.

Now in its 24th year, the Centre continues to play a significant role in undertaking socio-legal research to benefit New Zealand's family justice system under the leadership of Associate Professor Nicola Taylor (Director), Dr Megan Collop (Senior Research Fellow) and Nicola Liebergreen (Assistant Research Fellow).

Nicola has recently gained significant appointments relevant to her work with the Centre. In August 2018 the Minister of Justice named her a member of the Expert Reference Group to the Independent Panel reviewing the 2014 NZ family justice reforms. In April 2019 the Principal Family Court Judge appointed Nicola as an academic member of the Family Court Judges' Education Committee.

Research Projects

The Centre is involved in a range of important, ongoing research initiatives.

Parenting Arrangements After Separation: Evaluating the 2014 NZ Family Law Reforms (funded by the NZ Law Foundation).

This project evaluates the family law reforms introduced in March 2014. Phase One (2014 to 2015) involved initial scoping, consultation and planning for an evaluative research strategy, while Phase Two (2016 to 2020) involves a large-scale, nationwide, mixed-method research project. This second phase will explore 656 parents' and 364 professionals' perceptions and experiences of post-separation family dispute resolution processes regarding decisions about children's care arrangements which occurred after 31 March, 2014.

Data has been collected via online surveys and telephone interviews to determine how the new family justice system is working for parents and professionals, as well as to better understand the various dispute resolution pathways parents take to make post-separation parenting arrangements. The findings helped to inform the 2019 Report of the Independent Panel appointed by the Minister of Justice to address concerns about, and flaws in, the 2014 reforms. The Centre's research reports for this project are available at otago.ac.nz/cic/research.

Relationship Property Division in New Zealand (funded by the Michael and Suzanne Borrin Foundation)

The Law Commission recently examined the Property (Relationships) Act 1976 (PRA) to see if it still meets the needs of families when determining how property should be divided at the end of a relationship given the dramatic demographic and social changes since 1976.

To help inform the Law Commission's Final Report, the Centre undertook a two-phase study aimed at establishing if the PRA still reflects society's values and attitudes as to what is fair in the context of relationship separation (Phase 1: 2017-2018). This involved a nationwide 2018 telephone survey with a representative sample of 1011 members of the public, aged 18 and over, plus booster interviews with 150 Māori, 100 Pacific and 100 Asian people.

A second phase, which began this year, will explore how separated couples divide their property and resolve any property disputes. Utilising an online survey and interviews, this current phase addresses how separated couples are making decisions about their post-separation relationship property division. Findings will be reported in 2021.

Beyond Safety: Ethical Practice Involving Children (EPIC) (funded by an Australian Research Council Discovery Grant)

Nicola is contributing to this study that aims to strengthen policy and practice concerning 'child-safe' organisations through the role of ethical practice in improving children's safety and well-being. Three institutional contexts – schools, residential care and disability services – are being explored. An analysis of key child safety policy, and related documents in different international jurisdictions (including Australia, NZ, the UK and Ireland), has also been undertaken.

Teaching

A new Summer School paper for Law students, *Children and the Family Justice System*, will be offered in Auckland from January to February 2020. Taught by Nicola and Megan, this paper examines how children's participation, safety and well-being are respected and promoted in the family justice system, particularly in the context of parental separation when issues including day-to-day care, contact, guardianship, high parental conflict, relocation and international child abduction may arise.

The impact of socio-legal research on legal policy and practice will be considered, as well as current and future directions in New Zealand's out-of-court and Family Court dispute resolution pathways. In 2021, the paper will be offered at the Dunedin campus for one semester.

New Books

Dr Anna High



Dr Anna High has published a socio-legal analysis of organized care for Chinese gu'er – which means orphaned and abandoned children, literally “lonely children” – with Routledge.

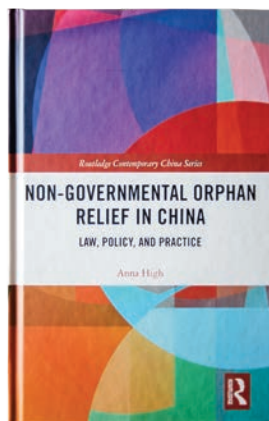
Anna began the research which underpins the book in 2009 while taking a DPhil at the University of Oxford, funded by the Rhodes Trust and the Mustard Seed Foundation. In 2017, she returned to China as a Henry Luce Foundation/American Council of Learned Societies postdoctoral fellow to update and expand her analysis.

Based on field studies and in-depth interviews across rural and urban China, Anna's book is the first full-length book to examine the history, development, and extra-legal regulation of private orphanages and foster homes in China.

The book describes the context in which abandonment occurs and the care provided to children unlikely to be adopted because of their disability. It

also explores the various faith groups and humanitarian workers providing this care in private orphanages and foster homes in response to perceived deficiencies in the state orphanage system, in the context of a broader societal shift from “welfare Statism” to “welfare pluralism”.

Formal law and policy has not always kept pace with this shift, and this study demonstrates that, in practice, state



regulation of these unauthorised care providers has mostly centred on local-level negotiations, hidden rules, and discretion – with mixed outcomes for children. However, there has also been a recent shift towards tighter state control and clearer laws, policies, and standards.

This timely research sheds light on the life-paths and stories of today's “lonely children” and the changing terrain of civil society, humanitarianism, policy-making, and state power in modern China. As such, this book will appeal

to students and scholars of Asian and Chinese studies, law and society, NGOs, and comparative social and child welfare.

Dr Stephen Young



Dr Stephen Young's forthcoming book considers how individuals and communities claim the right of free, prior and informed consent (FPIC) as Indigenous peoples. The basic notion of FPIC is that states should seek Indigenous peoples' consent before taking actions that will have an impact on them, their territories or their livelihoods.

FPIC is an important development for Indigenous peoples, their advocates and supporters because one might assume that, where states recognise it, Indigenous peoples will have the ability to control how non-Indigenous laws and actions will affect them.

But who exactly are the Indigenous peoples that are the subjects of this discourse?



INDIGENOUS PEOPLES, CONSENT AND RIGHTS TROUBLING SUBJECTS

Stephen Young



Stephen's book argues that the subject status of Indigenous peoples emerged out of international law in the late 1970s and early 1980s. Through case studies on the Philippines, Australia and the Inter-American Court of Human Rights, he considers how self-identifying Indigenous peoples, scholars, UN institutions and NGOs dispersed that subject-status and associated rights discourse through international and national legal contexts.

These case studies show that those who claim international human rights as Indigenous peoples are involved in struggles to be identifiable subjects of international law. It is only by depending on others that human rights claimants become identifiable Indigenous peoples, which is not beyond contestation.

Accordingly, if they depend on others to identify them in a particular way to claim human rights, claiming human rights does not provide them with control over, or emancipation from, a state-based legal system. Furthermore, by depending upon others, they cannot control how non-Indigenous laws and actions will affect them. Instead, they become dependent on

others—including state-based legal systems, international legal discourse, NGOs—in the hopes of contesting state actors' decisions.

While this book squarely addresses the limitations of international human rights law, it nevertheless provides a conceptual framework for rethinking the promise and power of Indigenous peoples' rights.

Mental Capacity Law in New Zealand

Edited by Iris Reuecamp and John Dawson (Thomson Reuters 2019)

Mental Capacity Law in New Zealand, edited by two Otago alumni, provides extensive discussion of the law on people's ability to make decisions about their medical treatment, entry into rest home care, selling their house, making a will, getting married, entering a contract, and a host of other important life decisions. A person might lack capacity in such matters for many reasons: learning or intellectual disability, head injury, stroke, dementia, or some other serious psychological condition. As a consequence, they might not be able to understand, retain, or process information relevant to the decision, or grasp the implications, or communicate their decision.

Many legal questions arise as to how a person's capacity is to be assessed, and who should then be appointed to make decisions on their behalf. The law in this area needs to be relevant and robust. Prof Dawson explains:



“A big question is whether the law can continue to rely so heavily on the basic decency of New Zealand families and whānau, to monitor, for example, the performance of one family member who holds an enduring power of attorney over a parent's property to the exclusion of other family members. This book asks if more formal mechanisms to prevent abuse are required, and what those mechanisms might be. Could new online processes help, by requiring the filing of basic financial accounts. Should some public agency have oversight over the process, and would that be effective?”

Animal Welfare

otago.ac.nz/news/news/otago711115
Thursday 16 May 2019



Marcelo Rodriguez Ferrere

Research released in May, 2019, by the University of Otago's Faculty of Law and Bioethics Centre, funded by the New Zealand Law Foundation, questioned whether New Zealand's "world-leading" animal welfare system adequately protects our furry friends – it also argued the agencies charged with protecting animals need more funding.

In the report *Animal Welfare in New Zealand; Oversight, Compliance and Enforcement*, researchers evaluate how the Ministry for Primary Industries' (MPI) animal welfare compliance arm and the Royal Society for the Prevention of Cruelty to Animals (RNZSPCA) enforce the Animal Welfare Act (1999).

"While our findings suggest MPI and RNZSPCA generally use their resources effectively and efficiently for enforcement purposes, we concluded resource constraints prevent more prosecutions occurring," co-author Marcelo Rodriguez Ferrere says.

The MPI received NZ\$660 million in its allocated annual budget for the 2018–19 financial year, but of this only NZ\$10.8 million (1.6 per cent) was allocated to all aspects of animal welfare enforcement, education, and policy advice.

This meant in 2018 the MPI recommended prosecution in 26 cases (or two per cent) of the 1,190 complaints it received; a significantly lower rate than other criminal offending.

Similarly, in 2017–2018 the RNZSPCA inspectorate cost more than NZ\$9 million to run and received NZ\$400,000 from the government. While it responded to 15,584 complaints only 62 formal prosecutions (0.4 per cent of complaints received) were made.

"Only the most egregious breaches of the Act lead to prosecutorial action. We wanted to find out more about why prosecutions remain low and are only ever initiated where there is a particular degree of severity involved," he says.

The report argues the direct effect of the under-resourcing of the sector is that neither MPI nor the RNZSPCA have the capacity to engage in proactive enforcement. Instead, both agencies rely upon reactive enforcement through public compliance monitoring (i.e. complaints and reporting of offending from the public) and in some instances, industry self-regulation.

"Self-regulation, such as self-monitoring of compliance by rodeo and animal racing industries, appears to have filled the gap that under-resourcing has created. This is inadequate. It creates confusion with parallel enforcement systems and

standards, and there is insufficient independent oversight," Rodriguez Ferrere says.

The report's authors used several examples to illustrate the "sociology of denial" peculiar to animal welfare offending that allows the public to exhibit wilful blindness when confronted by animal cruelty.

In rural communities, it is easier for those in charge of animals to conceal offending. Even when offending is detected, there are many reasons why the public – and even Animal Welfare Inspectors – may elect not to report animal welfare concerns.

Improvements to increase detection of animal welfare offending in situations of domestic violence – such as those suggested by the "Pets as Pawns" study and the First Strike Working Group – or to allow for better protection for whistle-blowers are laudable, but they do not address the core of the issue, namely that it still relies upon public compliance monitoring, the researchers say.

The report argues that there is insufficient independent representation of the interests of animals in our animal welfare system. Both the RNZSPCA and MPI face limitations to their capacity to provide this – the RNZSPCA because it is partly an enforcement body under the Act, and MPI because it is partly tasked with protecting and advancing New Zealand's primary industries rather than solely focusing on animal welfare.

Children and the environment are both represented by

independent Commissioners who advocate for their interests and offer an independent voice with political authority: the report recommends a Commissioner for Animals be established to provide this.

The report recommends:

- An increase in state resourcing for enforcement of the Act, specifically an increase in funding for both MPI and RNZSPCA.
- That the increase in funding for RNZSPCA be devoted solely to its enforcement functions, and increased oversight and accountability for these functions.
- That there be a Public or Government Inquiry into the adequacy of animal welfare enforcement in New Zealand. Among other things, it should address the level of public funding provided to animal welfare enforcement.
- The establishment of an independent Office of the Commissioner for Animals in New Zealand.

The research was the result of a research grant from the New Zealand Law Foundation – *Te Manatū a Ture o Aotearoa* – an independent charitable trust that provides grants for legal research, public education on legal matters, and legal training.

Only the most egregious breaches of the Act lead to prosecutorial action. We wanted to find out more ...

Te Roopū Whai Pūtake



Tēnā koutou ngā hoa ako,

The TRWP whānau has spent the year filling our kete with knowledge, extending and strengthening our whanaungatanga links, and continuing to whakanui Te Ao Māori. All in all this has made for a very busy calendar!

We opened the academic year by welcoming our new first-year students with a breakfast in the Faculty, as well as celebrating those who were accepted into second-year for 2019 with the infamous dessert night at the Lone Star.

To further build new connections, we then organised a wānanga at the local kura kaupapa, which was a great opportunity to meet other TRWP members and engage in kōrero about relevant issues to our degree. Our study nights and inter-roopū shield events also provided great opportunities for our TRWP whānau to get to know each other, as well as have a lot of fun.

TRWP were also present to tautoko the Dean, Professor Jessica Palmer, in her Inaugural Professorial Lecture. A massive mihi atu ki a ia for her support of our roopū.

The second semester was just as busy, the first major event being Te Hunga Roia o Aotearoa hui-ā-tau. With the Wellington conference a five-minute hikoi away from the Supreme Court and Parliament, there was no escaping the awe of our top legal professionals.

The August graduation also saw six of our incredible tuakana return to the Faculty and let the roopū celebrate their success; it is always an inspiring experience to tautoko those who have led us on our journey.

Our Otago Māori Moot winner, Nerys Udy, delivered spectacularly at the final

in the Supreme Court. For the first time in recent history, TRWP performed a kapa haka bracket (fully equipped with an original haka) to the other roopū. This new experience taught us an important lesson: the smallest roopū can have the loudest voice. We arrived back with our whānau bonds strengthened even further. Mauri ora!

With sponsorship from Anderson Lloyd, taura from all over the Law Faculty immersed themselves in the vibrancy of tikanga at Araiteuru marae for the 2019 noho marae. There we learned the importance of speaking from the heart, of the power of the marae in creating connections, and also an engaging kōrero by the tangata whenua.

The future of TRWP continues to grow brighter, and we continue to see amazing taura come through and do amazing mahi. Bring on 2020! Ngā mihi.



PILSA

(Pacific Islands Law Students' Association)



Talofa lava, Kia orana, Malo e lelei, Fakaalofa lahi atu, Bula vinaka, Malo ni, Halo ola keta, Mauri, Fakatalofa atu and Warm Pacific Greetings!

2019 a year of exponential growth for PILSA.

We started the year with our annual Pacific Law Welcoming, with Professor Jessica Palmer attending as Dean for the first time. The turnout was great, with lots of first-year law students showing up to sign up for PILSA as well as several returning senior law students.

Faculty lecturers and student representatives from almost every Pasifika student association at the University also attended. It was a fitting to start the year, and I felt especially privileged to welcome new students into our Pacific community here at the university as President of PILSA.

Since then we have had our annual events such as our interview skills workshop with Gallaway Cook Allan, the PILSA Public Lecture given by Talissa Koteka, as well as a change from our mentoring breakfast to a 'Life After Law School' panel session event sponsored by IPLS. Our 'PILSA Buddies' mentoring programme – which was sponsored this year by the College of Law – continues to thrive, with our group sessions being a major hit twice a semester. Our collaborative beach clean-up event with SOULS, sponsored by Bell Gully, was also pretty popular! Our inter-university competition with the University of Canterbury Pacific Law Students' Society was hosted in Christchurch in August, with Otago PILSA winning for the third year in a row. Malo lava once again to Abie Faletose for bringing that shield back to our campus!

We've also added a number of new events to our calendar this year. We commenced our weekly LAWS 101 help sessions, which see the PILSA Executive members (as well as a few other senior Pasifika law students) rotate each Wednesday to provide help to any Pacific first-year law students wanting guidance. We've also included into our calendar: a PILSA Pep-Talk Session, a PILSA sports day, a PILSA climate-change talk with a Pacific Climate Warrior, and a Pasifika-Youth Court visit to Auckland.

This year PILSA also performed at the University's 150th Anniversary Pacific Student Koneseti (concert). Check out the video of our siva (dance) on our Facebook page (@PILSAOtago)!

Our last event was a korero with Faculty administration staff, which we hosted with our good friends from Te Roopū Whai Putake. Following that we launched our PILSA merchandise release, the sale of our reusable tote bags and held our 2020 Elections!

Because of the generosity of our sponsors, we have been able to run these events to create a tightknit community for Otago Pasifika law students. We hope the bond that PILSA encourages between peers continues into the legal profession.

We thank our members, the Faculty of Law, the Pacific Islands Centre and all our supporters and sponsors for their never-ending alofa, and for allowing us to add a dash of Pacific flair to the Otago Law Faculty.

Ia manuia,

Tausala Fruean
2019 PILSA President

SOULS

The Society of Otago University Law Students

The Society of Otago University Law Students (SOULS) had another great year and we've managed to have a decent nudge at the goals we set at the start of 2019. Again, we cracked the 1000 membership barrier. We revamped our social media outreach, with strong support on the SOULS Facebook page, a website with fresh new content and a healthy Instagram following too.

This year saw the return of the 'new' Law Camp. The engagement from the Second-Year cohort has been immense in all the events we ran, boding well for future years. This reflects a job well done by the social reps and the many helpers who gave up their weekends. The rest of the social calendar was jam-packed. Matt Jackson put together some superb education and welfare initiatives this year, including introducing two new events: a Queer Support Panel and a Men's Mental Health Breakfast in Wellness Week. The mentoring programme has grown, with a record number of mentors and mentees. Keep an eye out for the Facebook pages regarding individual law papers. These are a great chance to collaborate with other students over difficult and contentious areas of the law.

Turning to sports, the Swans (netball) continued to rally good numbers week-in, week-out, and the Seahawks (basketball) have had another solid season. Both teams put on good displays against LAWSOC. Our star player, Jerry, is here for another year so it is likely this trend will continue. Unfortunately, the Vultures (rugby) did not have a grade to play in this year. However, we still fronted up against COMSA, Surveying and AU Prems/Dent in the Inter-Faculty clash.



Both Junior and Senior Legal Competitions attracted high participation levels this year. I was lucky enough to travel with Otago's finest competitors to the ALSA conference in July, and to the NZLSA conference in September. All competitors represented Otago with pride, but a special mention must go to Erin Gourley and Isabella Hawkins who made it to the National Mooting Final. They are very much a 'dream team' and will be tough to beat in 2020. The Anderson Lloyd Noho Marae trip was at full capacity this year. The student interest continues to grow annually. Thank you to Te Roopū Whai Pūtake and, in particular Noah Kemp, for organising this fantastic trip.

I must thank a few people. Firstly, my thanks to the Otago Law Faculty. It has taken me a full four years at law school to realise how lucky we are to have come to Otago. If you spend enough time with me, you are no doubt sick of me saying that—but it's true! Our staff are dedicated to providing the best legal education and that is something we should not take for granted. Family Law might have had a hiatus in 2019, but there were still a heap of decent papers out there and some passionate academics to make up for it. Secondly, I must congratulate the members of SOULS. Your loyalty, dedication, and commitment to the organisation and its events is inspiring. Whether it was coming to Law Ball, Wellness Week, shooting some hoops on a Wednesday night with the Seahawks, or just genuinely being a good sort, I appreciate it. The friends you make at Otago Law School will be yours for life. Only we know the troubles of Second-Year Law, the views from 9th floor in the Law Library, the inconvenience of the 7th-floor bathroom always being locked, and the painful hours spent in Archway 4. Finally, I don't think I can express how grateful I am to every one of my Executive. We became a close, banterous, family-type group. Every one of you went above and beyond, multiple times, for the greater good of SOULS.

It has been a real pleasure serving as President in 2019. Congratulations to the finalists who will be completing in November. Getting through Law School is a hell of an achievement in itself. I wish you all the best for the future and I cannot wait to see where you all end up (Vivian Griffiths for Prime Minister in 2035?).



Dunedin is a special place and we should make the most of our last little bit of time here. To everyone, the best of luck for the upcoming exam period. Get out and enjoy the sun, watch some Netflix or head out to the beach and take advantage of some Duffers stunnies.

Teddy Rose
President of SOULS, 2019

Student Achievements



Erin Gourley and Isabella Hawkins

Savanna Gaskell and Meghan Laing

represented Otago at the New Zealand Red Cross International Humanitarian Law Moot and won the competition for the first time since 2011. The team, coached by Marcelo Rodriguez Ferrere, edged out very strong team from Victoria in the final, in front of a panel including Sir Kenneth Keith, Judge Bill Hastings and Brigadier Lisa Ferris.

They will represent New Zealand at the regional competition in Hong Kong in March 2020.

Erin Gourley and Isabella Hawkins made it to the National Mooting Final.

Nerys Udy (Ngāi Tahu) represented Otago in the national Kaupapa Māori Moot final held in the Supreme Court before a bench of five judges, including Justice Joe Williams, the first Māori Supreme Court Justice.

Abie Faletoes won the Pasifika Law Students Sentencing Competition, held at Canterbury University Law School.

Te Roopū Whai Pūtake students performed well in the kapa haka evening at the annual hui-ā-tau for Te Hunga Roia Māori o Aotearoa; and a contingent from PILSA (Pacific Islands Law Students' Association) spent a day observing the Pasifika Youth Court in Auckland.

In February, **Hannah Morgan**, a fourth-year LLB student swam 32km across Foveaux Strait in 8 hours and 46 minutes, raising \$30,000 for the Mental Health Foundation and the Otago University Students' Association.



Nerys Udy



Hannah Morgan

Postgraduate law degrees awarded



Sarah Butcher

Professor Mark Henaghan received an LLD in December 2019 for his scholarship on family law and policy, children's law, as well as his writings on other areas of law.

Justice Forrest Miller (BA, LLB (Hons) Otago) was awarded an honorary LLD in May 2019.

Fiona Miller graduated with a PhD for her thesis entitled "Children's Right to Consent to Medical, Surgical and Dental Treatment: Qualitative Research with Health Professionals, Parents and Children in New Zealand."



Ruth Jeffery

Sarah Butcher was awarded her PhD. Her thesis was entitled "Privacy and leaving your past behind: The effect on the right to a private life by prior publication of words, photos and other personal information."

Ruth Jeffery received her PhD. Her thesis was entitled "Defining the parameters of the employee-employer relationship in the presence of mental health disorders."



Justice Forrie Miller

Lee-Anne James graduated with an LLM, her dissertation was entitled "Parental alienation of children in care disputes."

Alumni News

Josh Whale appeared in a *NZ Listener* (18 May 2019) feature article recounting his work as a social entrepreneur in Rwanda. His development of electric motorbike taxis is helping to tackle climate change.



Brenda McKinney, a Fulbright scholar, completed an LLM at Otago, graduating in 2016. She is now Legislative Counsel to the Speaker at the New York City Council. "I work on the Committee on Women and Gender Equity and also the Committee on Cultural Affairs, Libraries and International Intergroup Relations, so I mostly focus on issues related to women's rights, museums (via cultural affairs), and libraries."

Ben Bielski is working for Oranga Tamariki (Ministry for Children) in Wellington as a Youth Justice Principal Advisor and project manager, trying to find ways to lower the rates of youth offending.

Miranda Zander completed an LLB, BA, and Postgraduate Diploma (Childrens' Issues) in 2007 at Otago and an LLM (Merit) from Victoria University.

"I now find myself using my BATNA negotiation skills with our daughters' bedtimes and eating habits." She is also a Marriage and Civil Union Celebrant in Wellington and has officiated at more than 190 weddings. Miranda says 'celebrant-ing' is an excellent way to network and foster relationships within the event industry, as well as crisis manage every conceivable issue that might pop up. For the last 10 years she has also been Legal Counsel for a management consultancy based in London, which she describes as an "interesting study in flexible working and in many interesting international jurisdictions."



Blair Shepherd will be the sole New Zealander in a class of 100 LLM students from 41 countries at Duke University School of Law, which is in the US state of North Carolina. Blair's primary academic focuses will be on international arbitration, international trade and climate change.

Henry Benson-Pope was awarded a Fulbright New Zealand General Graduate Award to study in the United States. Henry worked as a prosecutor in the Manukau Crown Solicitors Office for the past three and a half years. In August, he began studying for a LLM at NYU School of Law (and trying out for the New York Knicks! (Editor))



Tom English was an LLB student from 2008 until 2012. He is a medical doctor, and is currently training in psychiatry while working in Melbourne at Thomas Embling Hospital (Victoria's forensic mental health hospital).

Stephanie Pettigrew studied law at Otago 1997-2001 and is now a partner at Marks and Worth Lawyers in Dunedin, specialising in family property law. Stephanie is also a trustee of Presbyterian Support Otago.



Shaun Maloney was in the graduating class of 2006 and currently works as a litigator in the Cayman Islands. He is about to move to the Channel Islands. "I deal with high-value international disputes, trusts and insolvency. Since I mainly focused on the criminal side at law school it's not what I imagined I'd be doing, but I don't regret a thing."

Mikayla Zandstra is Legal Manager at RAK Ceramics (one of the world's largest ceramic companies), in Ras Al Khaimah, United Arab Emirates.



Saskia Righarts Studied law and psychology at Otago between 1996 and 2001 and worked in the Faculty of Law from 2008 to 2013. "Great years! Currently I am the chief advisor at Central Otago District Council and a member of the first ever all female executive council team."

Andrew Row "After graduating from Otago, I was lucky enough to clerk for Justice Glazebrook at the NZ Supreme Court. Little did I know my Otago law degree would take me across the world and enable me to work for the United States judiciary too". After clerking at the NZ Supreme Court he attended Harvard Law School, gaining an LLM. After passing the California and New York bar exams he practised First Amendment (free speech and freedom of religion) law in San Francisco. He now lives in South Carolina and is clerking at the United States Court of Appeals for the Fourth Circuit. "I'm thankful for all the continued support I've had from the Faculty in pursuing my goals."

Laura Ashworth-Cape is a Legal Counsel at Arsenal Football Club in London, providing general in-house and data protection advice across the Club's commercial and operational departments. [The Editor wants it on record that the Law Faculty in no way supports or endorses Arsenal FC]



Elsa Wylie is at Columbia University doing an LLM. "I'm advocating for Columbia to become Carbon Neutral by 2025 by changing campus policies around food waste, beef and single use plastic bags, and divesting from fossil fuels. I will also be focusing on hate speech and freedom of the press, and protecting civil liberties, particularly in relation to climate migration."

John Steenhof studied law at Otago from 1996 to 2000. He is now managing director of the Human Rights Law Alliance, a not-for-profit based in Canberra, ACT, and specialises in religious freedom litigation. He is also a consultant at Steenhof Brothers based in Perth, WA, a commercial advisory and litigation firm.



Anne Lim has worked at Kensington Swan for almost two years. Anne started out as a graduate in Corporate and Commercial and subsequently worked as a solicitor in the Construction and Major Projects team. From October 2019, she will join the NZ Police's Justice and Transport Policy team. "I am excited about the opportunity to contribute to areas I have always been interested in, for example, firearms control, the criminal justice system, and other issues relevant to offenders and police."

Andrew Golightly is Managing Partner at MWIS Lawyers (Marsden Woods Inskip Smith) Whangarei. Two other partners at this firm are Otago alumni: Mike Smith and Danny Tuato'o. Andrew is also a director on the Board of New Zealand Rugby.



Brian Geary has been a lawyer since 1971. He specialises in property law, family trusts, wills and estates and immigration law. Brian is a Wellington-based sole practitioner, and is now semi-retired but is still practising at Paraparaumu and Waikanae.

Marian Evans is working on #directedbywomen #aotearoa, as part of a lifetime spent working for gender equity in the arts, and also conducting various enquiries into other kinds of violence against women.

Katie Burgess was admitted as a Barrister and Solicitor of the High Court of New Zealand on 27 August 2019 by Justice Helen Cull. "A massive thank you to my moving counsel, Anne Henderson, and the team at AWS Legal for hiring me."

Visitors

Lord Thomas of Cwmgiedd, NZ Law Foundation Distinguished Visiting Fellow 2019, gave a public lecture on "The effect of the digital revolution on the courts and the legal profession," and a related staff seminar on "The effect of the digital revolution on legal education"

Sir Kim Workman gave a public lecture on the topic, "Journey Towards Justice."

Professor David Fox (Faculty of Law, Edinburgh University) delivered the 2019 FW Guest Memorial Lecture on "The Legal Formation of New Zealand's Monetary Sovereignty" [see pp 26–27]

The Rt Hon Trevor Mallard, Speaker of the House of Representatives, gave a guest lecture to the Law and the Democratic Process class

Dr John Danaher (Senior Lecturer, School of Law, National University of Ireland, Galway) delivered a public lecture on "Automation, Space and Utopia"

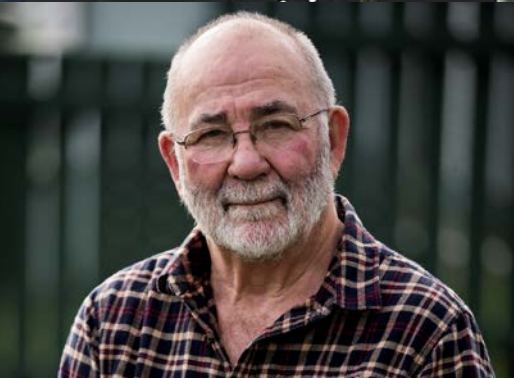
Professor Dan Meagher (Deakin University School of Law) delivered a staff seminar on "The Case Against the 'Always Speaking' Approach to Statutes"

Professor Prue Vines (School of Law, UNSW) spoke to staff on the methodology for successful curriculum reform at the Faculty Retreat at the start of the year

Justice Matthew Palmer gave a guest lecture to the Public Law class

Talissa Koteka, Office of the Prime Minister of the Cook Islands (and Otago law graduate) gave the annual PILSA Lecture on "Island living, football, climate change and law" [see pp 50–51]

Tiana Epati, President of the New Zealand Law Society, gave a guest lecture to the Criminal Law class and the Criminal Justice class



(From top) Lord Thomas, Tiana Epati, Sir Kim Workman, Prue Vines



Professor Ulla Glaesser, European University Viadrina Frankfurt (Oder), presented a staff seminar on “The changing landscape of dispute resolution in the European Union”

Alex Latu (Senior Associate, Addisons, Sydney, and an Otago LLB (Hons) graduate) gave a staff seminar on “Internet intermediaries and online publications: liability and limits in defamation”

Andrew Riseley, General Counsel (Regulation) at the Commerce Commission, gave a guest lecture to the Energy Law class

Professor Judith Cashmore AO, Professor of Socio-Legal Research and Policy, The University of Sydney Law School, presented a seminar at the Children’s Issues Centre

John Edwards, the Privacy Commissioner, spoke to the Information and Data Protection Law class

Brendan Brown (Partner, Russell McVeagh) gave a guest lecture to the Advance Tax class

David Ireland (Partner, Kensington Swan) gave a guest lecture to the Securities Market Regulation class

Julie Copley (Lecturer, School of Law and Justice, The University of Southern Queensland) spent time in residence during the summer doing research on legal philosophy

Dr Joe McIntyre (Senior Lecturer, The University of South Australia) was a Research Visitor with the Legal Issues Centre in the second semester

Toby Sharpe (Partner, Bell Gully) gave a guest talk to the Securities Market Regulation class

(From top) Justice Matthew Palmer, Talissa Koteka, Rt Hon Trevor Mallard, John Danaher, John Edwards

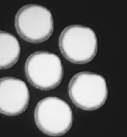
Malcolm Black

On 10 May, 2019, Malcolm Black ONZM passed away far too early at age 58.

Malcolm was an Otago LLB graduate of the class of 1984. He returned from legal practice to lecture briefly and was a much-liked Assistant Lecturer at the Faculty of Law from 1991 to 1992.

The Editor fondly remembers teaching Contract Law with him and what a pleasure it was to have Malcolm’s smiling presence as a bright, popular and energetic colleague. He fitted in so smoothly and it was a disappointment to me when he decided to move back up to Auckland to pursue a niche legal practice.

Malcolm is most famous for being the lead singer in the Netherworld Dancing Toys, and few New Zealanders will not instantly recognise the band’s 1985 hit *For Today*, which reached number three on the charts, and earned the band a 1985 Silver Scroll Award.



In the advice, mentoring and management of musicians Malcolm's list of clients reads like a who's who of the New Zealand music industry, and featured artists from the Flying Nun stable of bands, and many others. He worked for many years for Sony Records in artist development and helped nurture the international musical careers of singers such as Bic Runga, Brooke Fraser and Che Fu.

He was also approached by Neil Finn to manage the internationally recognised artist via the company Meniscus Media, which he formed with Mike Bradshaw.

He also set up his own label, Heartmusic, with his former partner, artist Tracey Tawhiao (who Malcolm met when lecturing at Otago).

More recently he had worked as managing director and shareholder of Les Mills Music Licensing Ltd and Les Mills Media Ltd.

Malcolm carved out a very successful practice as a specialist music and entertainment lawyer in his own boutique law firm (Sinclair Black). The *NZ Musician magazine* notes that

from 1992 onwards he generously contributed a series of "The Musician and the Law" articles to that magazine, stating that his aim with the column was "...to heighten Kiwi musicians' awareness of how the music industry works, i.e. 'the rules of the game', with a view to maximising the monetary rewards they receive."

In an interview with Grant Smithies ("Kiwi music inspiration Malcolm Black on leaving early, without fear", *Stuff*, 19 May 2019), Malcolm was asked what the chief lessons he learned in his professional career were. In reply Malcolm said "that you should always treat people well and do the best job you can."

"If you do that, people trust you and good things flow back to you."

Malcolm was made an Officer of the New Zealand Order of Merit, in recognition of his decades of significant work for the music industry, in the 2019 New Year Honours. Malcolm is survived by his wife Julia and four daughters Ruby, Awhina, Cilla and Martha, and a great many friends.



Otago Law Review

FW Guest Memorial Lecture 2017

Hadley v Baxendale

The Hon Justice James Edelman and Lauren Bourke

22nd Annual New Zealand Law Foundation

Ethel Benjamin Commemorative Address 2018

Generations of Disadvantage: A View from the District Court Bench
Judge Jan-Marie Doogue, Chief District Court Judge for New Zealand

Inaugural Professorial Lecture

Criminal Attempts: How Close is too Close?

Margaret Briggs

Articles

Nurturing Tradition in Dunedin: Courthouses, Lawyers, and Justice
Jane Adams and Bridgette Toy-Cronin

Is Preventive Use of Community Treatment Orders Lawful in New Zealand?

Alex Christie

Retrieval and Use of Sperm after Death: In the Matter of Lee (Deceased) and Long (Applicant) [2017] NZHC 3263

Neil Maddox

Book Review

Feminist Judgments of Aotearoa New Zealand: Te Rino: A Two-Stranded Rope

Anna High

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Being awarded the Law Alumni Scholarship has lessened the financial strain on my whānau and has allowed me to start my journey here studying and getting the degree I want. As a young Māori woman, I hope to give back to my iwi, my people and my whānau especially through ways I can show them how my hard work and gratitude has paid off.

– Destiny Baker, Ngāi Tūhoe and Ngāti Tūwharetoa
(2019 Otago Law Alumni Scholarship recipient)

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