UNIVERSITY OF TORONTO FACULTY OF LAW

nexus

SPRING/SUMMER 2003

LAW AND THE DEVELOPING WORLD

Can law alleviate despair?

PROBING THE KENYAN JUDICIAL SYSTEM

AFTER IRAQ – A REALITY CHECK

HIV/AIDS IN AFRICA

UNIVERSITY OF TORONTO FACULTY OF LAW

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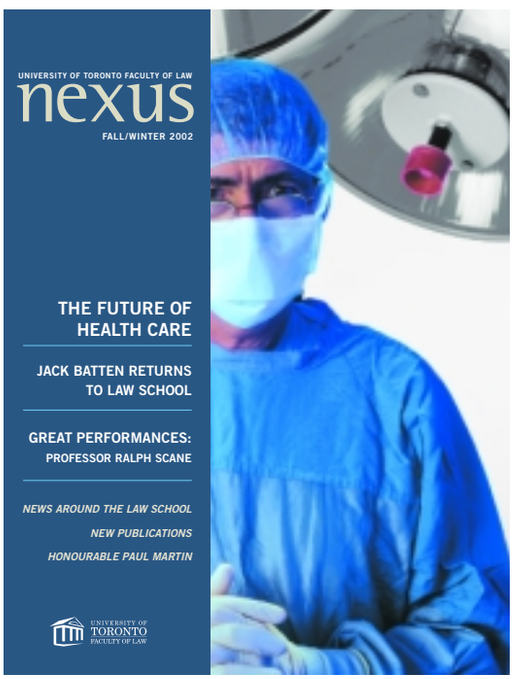

Bronze Medal Winner of the CCAE PRIX D'EXCELLENCE award for Best Magazine

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Message From the Dean

Over the last several years, the monumental challenges of the developing world have increasingly occupied the intellectual energies of the Faculty's professors and students.

That lawyers have a significant role to play in ameliorating the wrenching disparities in the levels of poverty, education, health, and freedom that characterize the developing and the developed countries of the world is becoming increasingly clear to development scholars and policy-advisers. After all, it is lawyers who are charged with the task of designing the basic institutions that support freedom and wealth creation. It is hard to imagine functioning democracies, let alone functioning markets, without institutions and rules that discipline and guide human behaviour. It is this insight that has fuelled the interest of many international organizations (both governmental and non-governmental) in the possibilities for law.

Against this backdrop, it is not at all surprising that the Faculty of Law has committed itself to the systematic exploration and analysis of these issues.

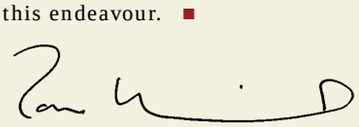
As an institution that is deeply inter-disciplinary in character, the Faculty has the capacity to examine the scope for laws and legal institutions from a broad and probing perspective. As the articles in this volume demonstrate, to understand the plight of the developing world, and hence to develop a realistic agenda for change, it is necessary to be able to invoke insights gleaned from economics, from political science, from philosophy and from sociology so that the problems confronted by these societies can be analyzed at their most fundamental level.

What is the relationship between democracy and economic growth? Are entrenched bills of rights fundamental to democracy? Do the institutions of democracy ensure liberal societies? What are the tradeoffs between wealth creation and distributive justice? What is the ideal institutional sequence for achieving the goals of freedom and growth? Does the standard prescription of democracy and markets have the inadvertent but inextricable effect of unleashing suppressed ethnic conflict in developing countries?

Another reason for the Faculty's commitment to the challenges of development reflects our pride as a great Canadian institution. Canada has long distinguished itself as a country that has maintained an engagement with the challenges of the developing world. It is a tradition, in fact, that has been enhanced by a number of leading Canadian statesmen, including, most recently, the leadership offered by several distinguished graduates of the Faculty, including Paul Martin, Bill Graham, and Bob Rae. This tradition, coupled with our ties to scholars and institutions in Commonwealth countries, offers another reason for our involvement in this area.

Over the last several years, it has become clear that the world's leading law schools are each, in their own way, aspiring to respond to the challenges posed by globalization. At least at the University of Toronto Faculty of Law, our response will be framed by the prospects for the developing world. And so, the Faculty will continue to offer courses like "Law and Development", "International Human Rights", "Globalization and Labour Rights" that address aspects of development. We will mount new workshops and symposia that systematically explore the development agenda. We will build our International Human Rights Program by supplementing the various placements we now offer with new opportunities for human rights advocacy in domestic and international fora. We will continue to invite scholars from the developing world to our Faculty to offer intensive courses to our students. And, finally, of course, we will work to attract the most promising students from the developing world to our Faculty for graduate studies.

As always, the support and involvement of our alumni will make an important contribution to our capacity to vindicate our goals in this area. I look forward to working with you in this endeavour. ■



Ronald J. Daniels '86

From the Editor

JANE KIDNER,
ASSISTANT DEAN,
EXTERNAL RELATIONS

With each edition of Nexus our goal is to provide you with a glimpse into the work of faculty, students and alumni as it pertains to important domestic and world issues. In the Fall 2002 edition we profiled the work of our health law and policy scholars and their analyses of Canada's struggling health care system, the complex issues underlying biomedical research, women's health issues and the criminalization of sex selection in Canada. In this edition we look beyond our borders to examine some of the most critical issues facing developing countries and those in transition today, and illuminate how we as law professors, students and lawyers are responding in an effort to make the world a better place in which to live.

Many developing countries face crises that threaten the very survival of their populations. In South Africa, for example, one in nine is currently living with HIV/AIDS – a staggering 4.7 million people. It is an epidemic of unprecedented proportions that is predicted to only become worse. In Sierra Leone, ordinary citizens are only now recovering from horrific human rights abuses suffered at the hands of government-sanctioned military and rebel troops in the 1990's. In many developing countries, women face the very real threat of maternal death as a result of inadequate health care, and in Kenya people are struggling with how to rebuild their judicial system after years of corruption and decline in public confidence. Around the world, citizens of developing countries are deprived of their rights and freedoms that we take for granted each day: clean water, universal education and health care, the right to vote, a judicial system free of corruption, and free speech to name a few.

On pages 10 to 19, four of our faculty offer insights into the evolving theories of law and development and illuminate some of the leading issues for the future. International visiting scholars from South Africa, China, Argentina, and the United States offer their perspectives on the key legal challenges facing developing countries today (pages 20 to 23). An interview with Justice Robert Sharpe on page 29 profiles the work he and others are doing to assist Kenya with judicial reform. On page 26 we report on the work that our faculty and students are doing to help redress some of the most extreme human rights abuses in Sierra Leone. And on page 28 we document the work of students and alumni who are devoting their time to help win the battle against HIV/AIDS in Africa.

I hope you enjoy reading this edition of Nexus. Please continue to write in with your comments and suggestions.

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A Burmese woman and children. Rich in natural resources, and endowed with extremely fertile soil and important offshore oil and gas deposits, Burma is home to nearly 50 million people of diverse cultural and ethnic backgrounds. Yet despite the country's abundance of natural wealth, most of the Burmese population live in extreme poverty with a life expectancy of about 55 years. The Burmese military government is reported to be one of the world's most repressive regimes and responsible for many human rights violations. As one of the world's poorest developing countries, Burma represents the global challenge we face. "Improving the life chances of the world's most desperately impoverished citizens in developing countries," says Prof. Michael Trebilcock (on page 16), "is the most urgent imperative of our times."

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Correction: In "Back to the Future" in the Fall/Winter 2002 issue of Nexus, a Canadian graduate law student's offer of admission at another law school was incorrectly described. The student, who turned down the offer in order to be able to attend the University of Toronto, Faculty of Law, would have taught one class while pursuing his doctoral studies. Nexus regrets the error.

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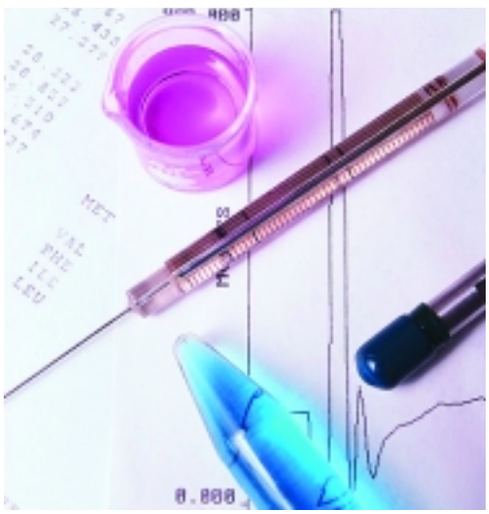

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Assisting developing countries in international trade and development

International trade is widely regarded as one of the main contributors to economic growth and development. As trade policy issues have grown in complexity and in their impact on a range of domestic policy issues, the link between trade and development has been given increased attention. Developing countries, particularly in Africa and the Caribbean, have had limited access to expert trade and development advice. A key challenge, therefore, has been to assist such countries in establishing and developing their own trade policy and the capacity to adequately represent their interests.

It is within the context of this on-going challenge that International Lawyers and Economists Against Poverty (ILEAP) was recently formed at the Faculty of Law. The brainchild of Professor Gerry Helleiner of the Munk Centre at the University of Toronto, ILEAP was formally launched in Nairobi in May 2002 following extensive consultations with trade and development experts and generous support and commitment from the Dean, Ron Daniels, and the Faculty of Law.

ILEAP aims to establish a non-governmental advisory service as well as training programs for lawyers and economists from the poorest and smallest developing countries to provide assistance with trade and trade-related issues. "Provided that we can find first-rate and highly motivated lawyers to work on behalf of the developing countries, this initiative can begin to restore some balance in the international trading system," says Professor Helleiner. ILEAP's long-term goal is to build the capacity of trade professionals in developing countries to a level that allows them to fully participate and to represent their interests in trade negotiations. "ILEAP is a great complement to the law school's institutional goals of internationalization and to Canada's commitment to world development," says Dean Daniels.

In October 2001, the International Development Research Centre awarded an initial grant to the Faculty of Law to explore the feasibility of launching this initiative. Over the past year and a half, ILEAP has undertaken a wide range of activities, mostly focused on building an international network of institutions and individuals that would form the support structure for the initiative, fundraising, and planning for its first projects. For additional information on ILEAP, please visit http://www.ileapinitiative.com or contact Ivana Kadic, Program Coordinator, at ivana.kadic@utoronto.ca.

U.S. National Security Strategy hotly debated

(L to R - against window): Profs. Emanuel Adler, Jutta Brunnée, Karen Knop, Ed Morgan, Janice Stein, and Clifford Orwin

On October 22, 2002, national and international scholars joined U of T Faculty of Law professors Ed Morgan and Jutta Brunnée, political science professors Emanuel Adler and Clifford Orwin, and Munk Centre for International Studies prof. Janice Stein to debate the broader social and political implications of the new U.S. National Security Strategy. Their theories and positions were published as editorials in the National Post the week of October 21st 2002. Professors Brunnée and Morgan offered contrasting views on the implications of the newly defined American role for international relations and the controversial inclusion of a "pre-emptive strike" approach to the National Security Strategy's military and strategic vision. Defending the United Nations as a valuable forum for intelligent criticism and debate, Brunnée argued that it ought not to be lost in the United States' design for greater unilateral decision and action. Challenging Brunnée's view, Morgan boldly claimed that international institutions demand no such objectivity or normative discourse, and concluded that multilateral action is no better and no worse than the "unilateral self-interested votes that put it in place." Prof. Janice Stein developed a new stream of debate, arguing that the definition of "imminent" in the US Strategy had been unwisely expanded to include past behaviour as a justification for pre-emptive action beyond the historically accepted notion of an unequivocal and pending threat. For the full story, visit the Faculty's web site at www.law.utoronto.ca.

Math and science don't mix with lawyers, according to Justice Ian Binnie

"The incomprehensible chasing the unteachable." Such is the way Supreme Court of Canada Justice and Class of 1965 alumnus, Ian Binnie, recently described the relationship between math and science and lawyers. His remark came in the midst of the Osler, Hoskin & Harcourt "Innovation and the Law" lecture, which he gave at the Faculty's Centre for Innovation Law and Policy in March. Binnie's lecture highlighted the ongoing problem, as he sees it, of lawyers finding themselves at a distinct disadvantage when arguing cases where science is central to the facts before the court. Why this problem should exist is unclear. Perhaps, it has been suggested, lawyers have an inherent aversion to math and science, although Peter Rosenthal, a longtime U of T math professor who is a member of the Class of 1990 and a prominent Toronto lawyer, would probably disagree. More likely, thinks Binnie, it is a structural problem in the legal system that needs to be addressed. "There ought to be a root-and-branch analysis of what it is about our trial structure that inhibits a full understanding of the underlying science." As a way forward, Binnie suggested that "it is important that the people whose commercial interests and liberty interests are at stake understand that the court understands what they see as the underlying scientific problems. We have to put our minds to making the court a more science-friendly place." For the full story, visit the Faculty's web site at www.law.utoronto.ca.

The Honourable Justice Ian Binnie '65, SCC

The Hon. R. Roy McMurtry, Chief Justice of Ontario, on "The Creation of the Charter of Rights: A Personal Memoir"

On March 13th, the Faculty of Law welcomed the Hon. Roy McMurtry, Chief Justice of Ontario, as the 2003 presenter of the Morris A. Gross Memorial Lecture, established in memory of the late Morris A. Gross (Class of '49) by the law firm Minden, Gross, Grafstein & Greenstein and by members of his family, friends and professional associates. McMurtry has long been at the centre of important constitutional events in Canada, including his famous participation in the negotiations and the Supreme Court reference case leading up to the patriation of the BNA Act and its proclamation as Canada's constitution in 1982. In his informative hour long lecture, McMurtry recalled the late 1970s and early 1980s - years when he was Ontario's attorney general - with an acute historical sense, and an insider's knowledge of detail. Though controversial at the time and since, McMurtry expressed "no regrets about decisions pertaining to the constitution and the charter of rights," although his "disappointment" remains over the fact of Quebec's opting out. McMurtry's lecture ended with a lively question and answer session during which he recounted how in politics things rarely turn out the way you might think beforehand. "Big Roy, keep your head up," is how Jean Chretien laughingly greeted McMurtry during a conference call shortly after the Mulroney Tories defeated the Liberals and swept to power in 1984. To those assembled for this year's Gross Lecture, Chief Justice McMurtry's presence was evidence that he had done so. For the full story, visit the Faculty's web site at www.law.utoronto.ca.

The Honourable R. Roy McMurtry, Chief Justice of Ontario

The Grafstein Annual Lecture in Communications: "Winners and Losers: The Internet Changes Everything or Nothing"

It's not the destination, but rather the journey that counts. Such is the chestnut that Michael Froomkin, a University of Miami School of Law professor, delivered on February 13 at the Grafstein Annual Lecture in Communications. Froomkin is a specialist in Internet law and has published widely in the areas of Internet governance, e-commerce, cryptography and piracy. In his lively lecture he explored the two major animating ideas behind Internet development - the first which he called the "Cyberpunk Dream," and the opposite which he called "Data's Empire." The first involves a world of freedom and access, where there is a necessary correlation between the Internet and democracy. In the second, governments exercise a growing hegemony over the Internet, tracking and monitoring users and centralizing control through service providers. What, then, asked Froomkin, will the future of the Internet look like? A bit like both of these worlds, he answered. And in this new world it's the voyage that matters most, not the destination. For a web broadcast of the lecture, visit the Faculty's web site at www.law.utoronto.ca.

The metaphysics of Indian treaties

Prof. John Borrows
University of Victoria, Faculty of Law

"Treaties are an integral part of our world's political landscape," says professor John Borrows, one of Canada's leading native legal scholars, a 2003 winner of the National Aboriginal Achievement Award, and a member of the Faculty of Law at the University of Victoria. Borrows is Anishinabe and grew up on the Chippewa Nawash reserve located near Georgian Bay, Ontario. He holds an LL.B. from U of T, graduating in the Class of 1991, as well as an L.L.M. and D. Jur. earned in 1994. On February 24 he gave this year's Public Lecture on Law and Diversity at Flavelle House. The topic? "Why Are We Here?: The Metaphysics of Indian Treaties."

Treaties of any sort can be a complicated business, perhaps especially so in the context of Canadian indigenous peoples and the Crown. But "they embody some of the highest aspirations for peace, friendship and respect," observed Borrows. These aspirations are what underlie the aboriginal conception of treaties, setting out "obligations to the Creator and others in a framework of reciprocity and mutual exchange." In this way, continued Borrows, "a view of treaties as both limiting and authorizing activity is an important perspective to remember when considering their implications for contemporary justice issues." Borrows insisted that the signing and implementation of treaties must be viewed as mutual, that is, both sides should benefit from their existence: "It allows Indigenous and non-Indigenous peoples to equally participate in the process of justice reform with the knowledge that neither should be subordinated or privileged in relation to this issue." Easier said than done, however, acknowledged Borrows, because the language of the original treaties was often arcane and of course always in English. The result was that the nuances of aboriginal intention were often lost in the hard type of the treaty parchment. To understand fully what was agreed upon "the oral traditions and perspectives of the Elders must be taken into account to determine the treaties' meanings." In his lecture Borrows was quick to point out that this perspective does not mean the treaties are therefore invalid, but rather that there is an inherent "mutuality upon which the treaty relationship is built." For the full story, visit the Faculty's web site at www.law.utoronto.ca.

The law school welcomes human rights activists from around the world

Ayesha Imam
Executive Director, BAOBAB

This past year, the law school's International Human Rights Program welcomed guest speakers from around the world to talk to students about issues that are having a significant impact on people living in developing countries. Jesus Tecu Osorio, a soft-spoken man who comes from a village called Rabinal in the Rio Negro region of Guatemala, and Ayesha Imam, founder and executive director of BAOBAB for Womens' Human Rights in Nigeria were just two of the many guests students had the opportunity to meet.

In 1982, Jesus witnessed the massacre of 177 men, women and children from his village, including his parents and all but one sibling. This was one of four state-sanctioned massacres by the Guatemalan Army and paramilitaries which displaced the local population to make way for the Chixoy Dam Hydro-Electric Project. Currently living with his wife and children not far from where the massacres took place, Jesus is now participating in a legal case of genocide in Guatemalan courts against the military generals and is working with Rights Action (and others) to seek redress from the World Bank and the Inter-American Development Bank, which provided financial support for the initiative.

Ayesha Imam, who was in Canada to receive the 2002 John Humphrey Freedom Award for her tenacious work as an advocate for womens' rights in Nigeria, spoke to students about the need for greater cooperation between international human rights advocates and local advocates. Other guest speakers for the year included Abdul Tejan-Cole of the Sierra Leone Special Court; Payam Akhavan, formerly of the International Criminal Tribunal for the Former Yugoslavia; Dr. Urs Cipolat of the University of California at Berkeley; Jonathan Freiman, a refugee law specialist; Remy Beauregard, a consultant to the Rwandan Constitutional Commission; Paul Copeland, a human rights activist on Burma; Cheryl Milne, Justice for Children and Youth; Kyo Maclear, author of *Beclouded Visions: Hiroshima-Nagasaki and the Art of Witness;* Zarizana Abdul Aziz, Salbiah Ahmad, and Honey Tam of the Women's Centre for Change in Penang, Malaysia; and Simon Archer and Grahame Russell of Rights Action. For more information about the International Human Rights Program visit the Faculty's web site at www.law.utoronto.ca.

Accountability the key to real change in Canada's health care system

Meaningful improvement to Canada's health care system will require more than just money spent on homecare and diagnostic technologies, according to U of T Faculty of Law professors Colleen Flood and Sujit Choudhry. "These initiatives might please the general public and remove some of the political heat for politicians, but they would also decrease the likelihood that the more important recommendations in the Romanow Report would ever be implemented," said Flood. "Real change to the management and delivery of health care in Canada will require the adoption of provisions that aim to hold those that run the health care system more accountable." Flood and Choudhry were part of a panel discussion hosted at the law school on December 10, 2002 following on the heels of the widely publicized release of the Romanow Report on the Future of Health Care in Canada. Also part of the panel discussion were U of T professor Carolyn Tuohy, Vice-President, Policy Development; Michael Decter, Chair of the National Board for the Canadian Institute for Health Information and former Deputy Minister of Health for the Ontario Government; and Hugh Segal, President of the Institute of Research for Public Policy. Agreeing with the general consensus, Segal said that the worst possible scenario would be a "cash for silence" deal where money is transferred to the provinces without the imposition of accountability mechanisms. "An infusion of untied and untargeted cash into the system just isn't enough." For the full story visit the Faculty's web site at www.law.utoronto.ca.

(L to R): Prof. Sujit Choudhry (podium), Prof. Carolyn Tuohy, Hugh Segal, Prof. Colleen Flood, and Michael Decter

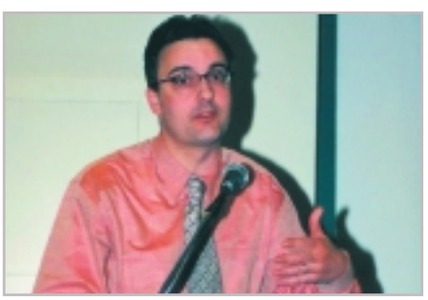
Are advancements in biomedical research putting human subjects at risk?

Biomedical research is controversial and becoming more so all the time, so said the presenters and participants at the Faculty of Law's 3rd annual Health Law Day held last November 22nd. Evidence of this state of affairs is not hard to find, something that was made clear in the poignant telling by Paul Gelsinger of the death of his chronically ill 18 year old son, Jesse, because of gene therapy research gone wrong. Jesse Gelsinger's death is the worst case result of what can happen when biomedical research is not adequately governed. And figuring out ways to prevent such a dire outcome from ever happening again is what occupied the over one hundred health law academics, practitioners, policy-makers, students, alumni and members of the public who spent an enlightening late-autumn day at the law school.

To meet the challenges of biomedical research a comprehensive governance system is required, said Professor Kathleen Glass of McGill University. Few would disagree, but achieving it will be difficult, in part because of the array of interests in this complex area. Not the least of these interests is commercial, which, in the view of some of the presenters - such as U of T law professor Trudo Lemmens - is potentially dangerous and needs to be tightly controlled. This view was certainly held by Paul Gelsinger who blamed the death of his son on the financial interests of the principal researchers in the case. The legal and ethical issues presented by the Gelsinger case and others are what lie behind the Canadian government's Bill C-13, the Assisted Human Reproduction Act. Once passed, it will put in place extensive regulations governing the ways and means of stem cell research, for example, which should address various scientific, legal and ethical questions. On the latter point, it was reported that Health Canada - under whose purview such regulations would come - has recently established a Research Ethics Board with U of T law professor Bernard Dickens as chair. The board's establishment may have come too late for the Gelsinger family, but hopefully not for others.

The Faculty's annual Health Law Day conference was organized by Professor Trudo Lemmens and Duff Waring, and sponsored by the Centre for Innovation Law and Policy, the Ontario Genomics Institute (Genome Canada) and the Stem Cell Genomics and Therapeutics Network. Speakers included Prof. Anna Mastroianni of the University of Washington School of Law; Prof. Kathleen Glass of McGill University; Dr David Naylor, Dean of Medicine at U of T; Prof. Sheldon Krimsky of Tufts University; Glenn Rivard of the federal Department of Justice; Prof. Angela Campbell of the University of Ottawa Faculty of Law; and internationally-renowned developmental biologist Dr. Janet Rossant. For the full story see the Faculty's web site at www.law.utoronto.ca.

Prof. Bernard Dickens



Prof. Trudo Lemmens

Legal aid clinic improves access to justice for Toronto's South Asian community

Raj Anand '78, Partner, WeirFoulds

Until recently, members of Toronto's low income South Asian community had few places to turn for affordable legal services. Despite other ethno-specific legal aid clinics funded by Legal Aid Ontario (LAO), like the Metro Toronto Chinese & Southeast Asian Legal Clinic, African Canadian Legal Clinic, and Centre for Spanish-Speaking Peoples, no such clinic existed to meet the needs of Toronto's growing population of South Asians. South Asians make up the second largest (24.7%) visible minority community in the GTA (Statistics Canada, 1996 Census data), and a staggering 38% of South Asians are low-income earners, with 30% below the low-income cut off. The recently established South Asian Legal Clinic of Ontario (SALCO) is making a noticeable difference in this regard. A not-for-profit organization that recently received the green light from LAO for one year of funding, SALCO began in 1999 and operates today with one staff lawyer. On October 28th, Faculty of Law professor Sujit Choudhry organized a symposium at the law school - "Access to Justice and the Need for Legal Aid Clinics: The South Asian Experience", featuring community leaders such as law graduate Raj Anand '78, former head of the Ontario Human Rights Commission and partner at WeirFoulds; Judith McCormack, Executive Director of Downtown Legal Services; and Kiron Datta, the force behind the establishment of SALCO. For the full story, visit the Faculty's web site at www.law.utoronto.ca.

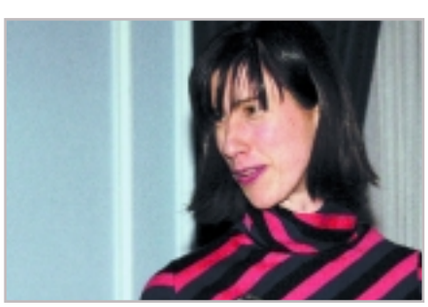
Race, policing and crime

David Mitchell
President, Association of Black Law Enforcers

Following a provocative series of articles published in the Toronto Star that investigated the Toronto Police Force's use of racial profiling in apprehending and prosecuting alleged offenders, the Faculty hosted a forum on October 30, 2002 to discuss and debate this controversial issue. Sponsored by the Black Law Students Association, the Students of Law for the Advancement of Minorities, and the Faculty's Special Committee on Diversity, the forum was chaired by Prof. Sujit Choudhry and included guest speakers Toronto Star journalist, Jim Rankin; staff lawyer at the African Canadian Legal Clinic, Marie Chen; President of the Association of Black Law Enforcers, David Mitchell; and Toronto lawyer, Julian Falconer. Topics covered included the data analysis methods employed by the Toronto Star investigative team, the response of police complaint services and human rights commissions, police practices and the impact on the community, and the use of consultation on the part of the Toronto Police Force. Closing out the day, Falconer noted that for a truly effective resolution to this issue, all parties should help to foster free and open debate of the issues. For the full story, visit the Faculty's web site at www.law.utoronto.ca.

Two new workshop series added to the Faculty

Prof. Kerry Rittich



Prof. Karen Knop

Designed to explore important and wide-ranging issues in international law, the newly established JD/MAIR Speaker Series (coordinated by Professor Karen Knop and part of the combined JD/Collaborative MA in International Relations) has had a diverse roster of speakers including Payam Akhavan, former legal adviser in the Office of the Prosecutor, International Criminal Tribunal of the Former Yugoslavia; Cecilia Medina of the University of Chile and a member of the UN Human Rights Committee; and Vaughan Black, professor of law at Dalhousie University and an expert in the field of private international law. If its first year of operation is any indication, the JD/MAIR Speaker Series is here to stay. As Professor Knop notes, "I hope it will be part of building a diverse community of people interested in international law."

Also new to the Faculty this year is the Diversity Workshop. Coordinated by Professor Kerry Rittich, the workshop is set up to examine such topics as Indigenous law and the Canadian Charter, international law, racial justice and colonial history, and the role of gender in nationalism. The intent is "to pluralize the range of approaches to legal analysis and to involve both faculty and students in interdisciplinary analyses of social justice," says Rittich. This year the focus was on aboriginal issues, and the first of six speakers in the series was U of T's Darlene Johnston who spoke on "Litigating Identity: The Challenge of Aboriginality." Other speakers in the series were James Anaya and Leslye Obiora of the University of Arizona, College of Law; Nira Yuval-Davis of the University of East London; and Sonia Alvarez of the University of California, Santa Cruz. Graduate students, faculty and JD students attended each of the six lectures, which bodes very well for the future of this workshop.

Governments and governance in cyberspace

This past January, students at the U of T Faculty of Law hosted the 4th annual Technology and Intellectual Property conference featuring panels on the intersection between the changing role of international law, government regulation, and independent governance agencies. Keynote speakers were Professor Neil Netanel of the University of Texas in Austin and Professor Monroe Price, Professor of Law at the Benjamin N. Cardozo School of Law and Director of the Howard M. Squadron Program in Law, Media, and Society. Both keynote addresses and all panel discussions are available for viewing at www.innovationlaw.org/tip/pages/internation.htm.

Prof. Monroe Price, Benjamin N. Cardozo School of Law

Borderless cyberlaws threaten Canadian interests

Prof. Michael Geist

The extraterritorial scope of recent attempts to impose regulatory controls and restrictions on various elements of cyberspace represents an important change in the direction of internet governance, according to University of Ottawa Professor Michael Geist. Geist, the host of www.lawbytes.com and a regular contributor to journals and newspapers on internet and e-commerce law, was a keynote speaker at two seminars hosted by the Centre for Innovation Law and Policy at the Faculty of Law on January 31st, 2003: "Cyberlaw 2.0" and "The World of Cybertaxes". Geist argued that Canada's national interests will suffer as long as the local laws of foreign jurisdictions are applied globally. "Canada is gradually losing its ability and power to pass legislation to protect its interests in cyberspace, because other nations, such as the United States, have taken the lead in developing cyberlaws," said Geist. During the early days of the Internet (a period which Geist refers to as "Cyberlaw 1.0"), it was assumed that the "information superhighway" was a borderless medium and that national governments and other legal institutions had no role to play. "The prevailing sentiment during the advent of the Internet was that governments should not regulate or govern the Internet, but should allow blossoming innovation technology businesses to determine and regulate the future and direction of the Internet," said Geist. The reality of internet technology and governance was reversed in the following period ("Cyberlaw 2.0"). "Today, judicial decisions and legislative rules now serve to establish jurisdictional fences for the Internet and e-commerce," noted Geist. "As the Internet environment is becoming more regulated or jurisdictional in nature, cyberlaws are becoming increasingly borderless." For the full story of the Cyberlaw 2.0 and Cybertaxation events, visit the Centre's website at http://www.innovationlaw.org.

2002-03 competitive moot standings

Student oralists in the Faculty's competitive mooting program had another strong showing this past academic year. Among this year's winners were members of the Jessup International Law Moot team, which took first place in the nationals, moving forward to the international finals in Washington, D.C. There they made it into the run-offs among the final 16 (out of 86 teams). Three of the Jessup oralists were in the top 100.

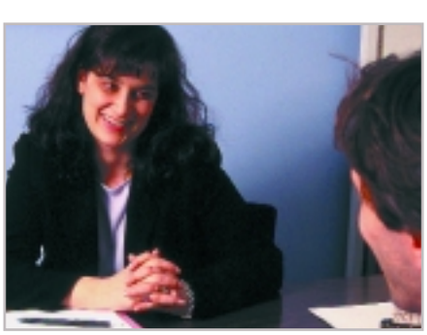
Our first-year contingent took first place in the annual Goodman & Carr cup, and the law school also took second place in both the Securities Moot and the Wilson Moot. Our Gale team was awarded a third place overall standing, beating out 13 other teams across Canada. In addition to these accomplishments, the school was host to this year's Niagara International Law Moot, which included 18 law schools across Canada and the United States, more than 80 student coaches and mooters, as well as 70 practitioners from the Toronto legal community. For the full story and a complete list of all competitors, please visit the Faculty's web site at www.law.utoronto.ca.

Keeping pace with the new economy – career services at the law school

Over the past six years, the Career Development Office (CDO) has become an important resource and service to alumni, offering individual appointments for "resume-refreshening," job search strategies, resources and information, and alumni networking assistance. The CDO sends updates and information to alumni seeking employment, and has a new web-based job bank which is easily accessible to alumni with the use of a password issued by the CDO.

The office is also initiating new programs targeted at graduates, and it expects to introduce career networking events for alumni this summer.

Another important change at the CDO is the addition of a Graduate Studies Career Services Advisor, Ivana Kadic, whose mandate is to provide career coaching, resource development and programming to the graduate students at the Faculty of Law. For more information on any of these services, visit the Faculty's web site at www.law.utoronto.ca.



Bonnie Goldberg, Assistant Dean, Career Services

Law and the Developing World

Can Law Alleviate Despair?

Four of the Faculty's development law scholars offer unique perspectives on the role of laws and legal institutions in the developing world.

Professor Brian Langille probes the controversial phenomenon of globalization and how it can be harnessed to overcome poverty and foster a more just world. In her article Development Old and New, Professor Kerry Rittich questions whether development reinvented around law and governance can better respond to the demands of growth, justice, and democracy. Internationally renowned economist and legal scholar, Professor Michael Trebilcock, outlines the aspects and limitations of many large-scale econometric studies undertaken in recent years on the determinants of development. And, Professor Kevin Davis asks: how can we identify the attributes of good legal institutions? – and offers alternative views to rule of law and corruption data.

Thinking about Globalization

Professor Brian A. Langille

We were a poor family who happened to own a lot of animals, though not the roof over their heads (or above ours, for that matter) … The life of a zoo, like the life of its inhabitants in the wild, is precarious. To prosper, a zoo needs parliamentary government, democratic elections, freedom of speech, freedom of the press, freedom of association, rule of law and everything else enshrined in India's constitution. Impossible to enjoy the animals otherwise. Long term, bad politics is bad for business.

Yann Martel, Life of Pi (2002)

PHOTOGRAPHY BY LIAM SHARP

I am a Canadian Labour Law Professor who has been drawn gradually into debates about globalization. It started with the debates about "trade and labour" in connection with the FTA in 1988 and the NAFTA in the early 1990s - (Remember the claims about "jobs, jobs, jobs" on the one hand and "the giant sucking sound" on the other?) Since those early days matters have only become more complex and the focus is now not only upon the direct impact of globalization upon jobs but has expanded to the indirect impact on domestic law, sovereignty, and the ability of any nation-state to articulate an independent policy on economic, fiscal, environmental and labour matters, among others.

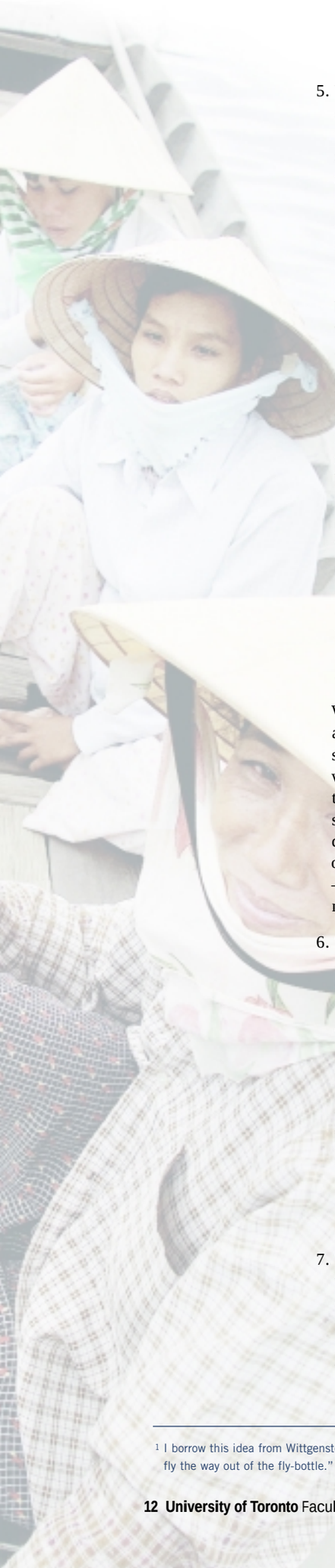
I am often asked what my approach is to these issues. If there is time to do so, I respond as follows:

1. Here are the most significant facts about our world. There are (roughly) 6 billion people living on our planet. Of these, 3 billion live on less than two dollars a day and 1.2 billion live in what the World Bank describes as "absolute poverty" of less than one dollar a day. This is our problem.

2. Here is the most important and controversial phenomenon of our time - globalization. By globalization we mean not simply trade liberalization but international economic integration in which barriers to the mobility of capital, goods, services, data, ideas (but not, nearly to the same extent, people) are lowered and, in conjunction with revolutions in communications and transportation technologies, enable the construction of networks of international investment, production, and consumption.

3. Here, then, is our most obvious challenge - how can the globalization and information revolution be channeled, harnessed, mobilized, called in aid of, and be put to work in overcoming our most significant problem? Or, more simply, how can globalization and the information revolution foster the development of a world which is more just?

4. But there is a barrier to answering this vital question. While clear thinking is required in order to answer our question our thinking here is, in fact, often muddled and confused. Our thinking frequently falls into an unfortunate but very common pattern or way of understanding our crucial question. This "received wisdom" or conventional way of thinking goes, roughly, as follows. Globalization is an external phenomenon bearing or putting pressure upon our societies - including our labour markets and our labour market policies and institutions. Many people believe that this pressure exerted by globalization is, to say the least, unwholesome. On this view globalization increases inequality (both globally and within states), causes local job losses, imposes a set of Western, or American, or European or "market" values, undermines local cultures and patterns of social behavior, is unfairly tilted towards the already rich and powerful, exacerbates the existing disadvantages of those already marginalized, erodes domestic sovereignty by subjecting local policies to undesirable competitive pressures which lead to suboptimal policy decisions because of international collective action problems, challenges the ability of individual states to raise the revenue (taxes) to fund social programs, and so on. In short, globalization means a world run by economists, trade theorists, the chief executive officers of transnational corporations, whose chief goal is to advance market values over social values. The opposing view is equally familiar. Globalization means increased trading opportunities bringing with it the mutual windfalls of the theory of comparative advantage, increased international investment - a most critical requirement in a world in which wealth is so unevenly distributed, a world in which transnational corporations can introduce technology and knowledge which enhance the lives of local citizens, create jobs and the tax base for improved educational, health, and social services, in which states will be subjected to good competitive pressure which will illuminate and help eliminate harmful corruption, inept administration, and poor policy choices. In short, globalization means more and better distributed world wealth.



5. While these scenarios are both familiar and very different they share a picture or vision of the relationship between globalization and individual societies. On this view globalization is an external force which bears upon individual societies and the causal arrow runs in one direction only. This is a shared view which unites the pro and anti globalization forces. They see globalization bearing upon societies but see different results flowing from the application of this force - one group sees bad results, the other sees good ones. This is a widely embraced framework of thought - even among those who have thought long and hard about these issues. It is sort of a glass bottle in which the debate has been placed. Without even seeing it the debate keeps bumping up - like a fly inside a bottle - against the limits imposed by the framework of thought in which the debate has been cast.[1] So, for example, the distinguished economist Dani Rodrik writes that the most daunting challenge posed by globalization is "ensuring that international economic integration does not lead to domestic social disintegration"[2], and the United Nations Millennium Declaration articulates its understanding of the problem as follows: "We believe that the central challenge we face today is to ensure that globalization becomes a positive force for all the world's Peoples."

   While Rodrik articulates the problem in terms of avoiding the "bad", and the Millennium Goals stake their claim in terms of securing the "good", what unifies is the shared framing of the issue – that our problem is that globalization is, to put it simply, the "central challenge" to, or promise for, depending on one's view, the people and societies of the world. Globalization drives human societies – and the potential is seen as either positive or negative, depending on your view.

6. This brace of familiar views - which still frames and organizes much of current thinking about globalization - has been researched, examined, tested, and argued about in forums ranging from obscure academic journals to the streets of Seattle, Genoa, Quebec City, and beyond. One of the most interesting outcomes of this study and debate has not been the resolution of our controversy. Rather, something more interesting has been going on. What we are witnessing is a gradual recognition that this received way of understanding the globalization debate is stale, unhelpful, inconsistent with our observed reality, and intellectually incoherent.

7. This is true for two reasons. First, this received wisdom is locked into a very familiar and inadequate understanding of the central dynamic of globalization. It is based upon an outdated paradigm. But it is a powerful paradigm. Second, the received wisdom has lost touch with Nietzsche's warning - it has lost sight of what our real goals are.

8. The old paradigm was a paradigm which underwrote much of modern labour law (in Canada, for example); international labour law (the ILO, for example), and development theory (the "Washington Consensus", for example) and on this paradigm there was a segregation (professional, conceptual, institutional) of the economic forces of globalization from "the social and political" realm. They were segregated, sequenced, and locked into a zero sum game. This old paradigm leads to a view, for example, of domestic labour law which sees its chief justification as the need to come to the rescue of workers thought of as people "in need of protection". And at the international level, it leads to a view of the ILO as protecting against real prisoners' dilemmas caused by states making rational choices to lower labour standards. On this view the economic (getting prices right) is prior to and separate from the social (including basic issues of democracy, sovereignty, human rights, equality concerns, etc.) which are conceived as a set of "luxury goods" which might be purchased with the fruits of economic progress generated elsewhere. All of this is reflected in an institutional division of labour, both domestically and internationally, between the financial institutions and ministries on the one hand (The Bretton Woods Institutions, Ministry of Finance), and the social ones (The ILO, Ministry of Labour) on the other.

   The crucial point is that the foundations upon which all this simple and shallow view rests are shifting. Recent factual findings and clearer normative thinking (especially that which focuses upon the need to think carefully about our true ends as opposed to our means, or instrumentalities, for achieving them) have led to a wide variety of claims about an emergent "integrated theory" of development, of the Human Development Index, of the World Bank's Comprehensive Development Framework, among other things. This involves a re-conceptualization of development theory (and of domestic labour law, and the ILO, as well). At its core is the idea that the formulation underlying the shallow view (globalization → society), needs to be supplemented by another formulation (society → globalization), and to see the two as linked in a (potentially, at least) virtuous circle of mutual reinforcement. To return to the words of Rodrik and the Millennium Goals, our real problem is **not simply** to ensure that "international economic integration does not lead to domestic social disintegration" **but also** that domestic social disintegration does not lead to international economic disintegration, and, more positively, that domestic social integration drives international economic integration.

9. The second reason that our old paradigm and structure of thought was inadequate is that it was not based upon, and in fact disconnected from, a

[1] I borrow this idea from Wittgenstein who famously said the aim of philosophy is "to shew the fly the way out of the fly-bottle." Wittgenstein, **Philosophical Investigations,** para. 309.

[2] Rodrik, D. **Has Globalization Gone Too Far?** (Institute International Economics, Washington D.C. 1997) p. 2.

PHOTOGRAPHY BY LIAM SHARP

real normative foundation which would generate not only the political support for, but the intellectual case for, globalization. This was because the old debate and old paradigm proceeded without any real clarification or identification of our true ends – what it is all about – as opposed to our mere means, modalities, instrumentalities, methods, for achieving those ends. To put it simply, the old paradigm had no account, other than self-serving technical ones, of what it was we were trying to do. As a result it fell prey to Nietzsche's observation that the most common form of stupidity is forgetting what it is we are trying to do.

In short, we need an account of why we are discouraged and disheartened by the fact that 3 billion live on less than two dollars a day and 1.2 billion live on less than one dollar a day. This will in turn explain to us our own understanding of what constitutes a just society and why we pursue that end. It will let us understand the link between just societies and globalization. This is a tall order. But it is one that has been filled by some much needed modern thinking, especially that of Amartya Sen.[3] Sen's core insights are as follows. First, our concern – our true goal - is not simply to raise GDP per capita. Raising GDP per capita is a means to our true goal which is to improve the real lives of real human beings – to make those lives longer, healthier, happier, more fulfilling - to let people be subjects of their lives rather than mere objects buffeted by forces over which they have no control. In short, our goal is to give people the "real capability to lead lives we have reason to value". This is what Sen calls human freedom. So, raising GDP per capita, the drafting of an international labour code, or the creation of a Free Trade Agreement of the Americas – all of these are not ends in themselves - but means to the end of real human freedom.

Successful globalization is driven by and can and should drive the creation of successful and just societies. The trick is to see this truth, and act upon it.

Human freedom can be blocked in a number of ways. As Sen writes:

> Sometimes the lack of substantive freedoms relates directly to economic poverty, which robs people of the freedom to satisfy hunger, or to achieve sufficient nutrition, or to obtain remedies for treatable illnesses, or the opportunity to be adequately clothed or, sheltered, or to enjoy clean water or sanitary facilities. In other cases, the unfreedom links closely to the lack of public facilities of social care, such as the absence of epidemiological programmes, or of organized arrangements for health care of educational facilities, or of effective institutions for the maintenance of local peace and order. In still other cases, the violation of freedom results directly from a denial of political and civil liberties by authoritarian regimes and from imposed restrictions on the freedom to participation in the social, political and economic life of the community.[4]

Development is the process of removing these obstacles to human freedom.

Human freedom is not only the goal – the destination – it is also the path. This is because different sorts of human freedoms – economic, political, and social – interact in complex ways. For example:

> Political freedoms (in the form of free speech and elections) help to promote economic security. Social opportunities (in the form of education and health facilities) facilitate economic participation. Economic facilities (in the form of opportunities for participation in trade and production) can help to generate personal abundance as well as public resources for social facilities. Freedoms of different kinds can strengthen one another.[5]

This is a view which takes market freedoms seriously - indeed sees them as an important aspect of human freedom in and of themselves and not just instrumentally justified. It also sees various sorts of human freedom as interconnected and mutually supported.

10. These insights are both profound, yet very obvious. These are the ideas animating the quest for a post-"Washington consensus" – a Comprehensive Development Framework – the Human Development Index – the Millennium Goals – and explain what our best research shows us. The fundamental failure of the old paradigm was the isolation of economic freedoms from social and political ones. This led to a belief that freedoms could be sequenced and segregated – a view of social and political freedoms as a set of "luxury goods" which could be purchased, after the event, and if so desired, with the fruits of prior economic progress generated by economic freedoms alone. This was the core idea of the old Washington consensus. The problem is, the world does not work that way. What we now see is that our empirical reality, and best theoretical reasoning, not to mention our most fundamental beliefs, lead to the demonstration of the shallowness of this view. We now know, for example, that respect for core labour rights attracts rather than repels investment, improves trade performance, rather than hinders it, promotes stability and growth, etc. Thus we need and have at hand a new view. At its core is the idea that human freedoms, including but not exclusively economic freedoms, are valuable in themselves but even more critically from a policy perspective, interact and are mutually supporting in complex ways. In short, development of just societies is a "package deal". Successful globalization is driven by and can and should drive the creation of successful and just societies. The trick is to see this truth, and act upon it. ■

3 Sen, Development As Freedom (1999)
4 Sen, Ibid., p. 4.
5 Sen, Development as Freedom, p. 11.

"Human freedom is not only the goal – the destination – it is also the path."

Professor Brian A. Langille

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Development Old and New

Professor Kerry Rittich

Development has been reconceived. After a period in which the pursuit of economic growth was the preeminent objective, now a host of other goals are articulated as integral to development. According to the international financial institutions, there are now two sides of the balance sheet: the conventional macroeconomic concerns remain as relevant as ever, but now they must be supplemented by greater attention to the "structural, social and human" dimensions of development.

Law and legal institutions have become central to the way in which these new development objectives are formulated. In the official story, lack of development can largely be attributed to the following internal difficulties and deficiencies: the absence of key institutions, corruption on the part of government officials, and lack of respect for the rule of law. But law is also part of the reconceptualization of development: freedom, democracy and the enhancement of human capabilities. Because law serves both dimensions of the development agenda, almost everyone places enhanced attention to the rule of law at the beginning of the list of reforms. Indeed, law is a defining feature of second generation development efforts, the 'post'-Washington consensus as it is sometimes called, the element that most clearly demarcates the current from the earlier moment.

"Whether development reinvented around law and governance can better respond, not only to the demands of growth but to the demands of justice and democracy, remains the central question."

The new focus on law in development, however, turns out not merely to concern cultivating a healthy respect for the rule of law; nor is it about the promotion of societies that are law-governed rather than arbitrarily ruled. Instead, law reform is part and parcel of a more comprehensive effort to institute good governance in developing countries. If the development consensus of the 1980s revolved around getting the state out of the market, then now that consensus has shifted in favour of defining the proper role of the state in the market. What has been described as a 'remarkable consensus' in the developed and industrialized worlds has emerged concerning the place of the state, the market, and private actors and 'civil society' groups in the global economy. The state should play an 'enabling role' in market transactions. Private/public partnerships should be sought wherever possible. Volunteer and civil society groups, NGOs, and perhaps even religious groups have an important role to play, whether as a means to democratize society, as conduits for transmitting popular desires to decision-makers, or as alternative providers of goods and services. Driving the new visibility and popularity of both the market and the 'third sector' is the view that a large role for the state is both economically unsustainable and normatively undesirable: the state cannot be trusted to perform many of its traditional economic and welfare functions, but even if it could, such a role is passe.

While this is the official story, it is worth reflecting on the other reason for the emergence of the new development agenda. Revamped development objectives centered around law, institutions and governance did not emerge simply out of a recognition that their importance had been earlier overlooked. Instead, the prevailing development paradigm was undermined by a series of crises. From East Asia to Sub-Saharan Africa and Central and Eastern Europe and the states of the former Soviet Union, key operating assumptions driving the management of financial crises, development policy and market reform seemed to be mistaken, with the result that growth was often undermined rather than furthered. Not only was the development agenda often failing on its own terms, by the late 1980s, the international financial institutions were bombarded with complaints from a widening range of sources concerning the social, political and distributional impact of their policies. In the eyes of their critics, development policies were frequently harmful to social development, undemocratically generated, and unequal in their impact upon different groups. The development institutions first resisted but ultimately absorbed at least some of these critiques. Their response was a new focus on social issues, a promise of greater grassroots participation in the formulation

PHOTOGRAPHY BY HENRY FEATHER

PROF. KERRY RITTICH

of development objectives, and greater attention to specific groups, such as women, who claimed to be disadvantaged under the conventional approach to economic development. These reforms, too, proceeded in the name of law. Human rights, the language that grassroots organizations, scholars and activists typically used to frame their criticisms of development policy, are now officially incorporated into the ends and means of development.

This transformation is important to the legal agenda. Once development itself has been reformulated - reflecting a larger, more varied set of objectives - then what law is for and what it does in development also takes on new significance. Although for a long time the international financial institutions put aside questions of equality and distribution while crafting development policies, equity and efficiency are - and are increasingly recognized as - not separate but deeply interconnected issues. Yet this remains a deeply contested issue. Whether development reinvented around law and governance can better respond, not only to the demands of growth but to the demands of justice and democracy, remains the central question.

Part of the answer will lie in how law is used. The introduction of the rule of law and human rights gives the reformed development agenda a newfound legitimacy. But it also gives us another means by which to evaluate development initiatives. Because specific laws provide both the material incentives and the normative structure in which different actors, public and private, are expected to perform, the prescriptions concerning the rules necessary to development give us priceless clues about the distinctive shape and character of the new development agenda. They reveal not simply its abstract hopes and commitments, but the manner in which, for better or worse, they are prioritized and the route by which they are to be realized.

What do the legal rules related to good governance look like? For now, law still stands mostly in the service of growth. Even in the newly "social" and participatory era, the legal dimension of development remains mainly focused on the ways in which legal rules can facilitate efficient transactions and generate the stability and predictability for investors that ostensibly promote growth. And for the most part, policy is still designed around the presumption that there is a tradeoff between equity and efficiency. The question, who benefits and who loses in the process, does not often form a decisive part of the law reform calculus. Human rights have been added to the development agenda, but how they fit into other reform proposals and priorities is in question. Can they be advanced to contest and perhaps alter the current social and economic goals of development? Do they reflect a willingness to recognize rights or entitlements entirely apart from their economic effects? Will human rights and other legal reforms be used, not only to promote efficiency, but to advance the distributive dimension of development that has so far been neglected? At this point, the answers remain uncertain.

Quite apart from the content of law, who controls the path and processes of development remains contentious. However well intentioned and conceived, the new development agenda does not stand on its own, nor is it even necessarily perceived as new. Those on the receiving end may experience current governance and law reform efforts as the latest in a line of encounters with powerful outsiders who often have objectives of their own. Whatever their promise, many developing countries have experienced disappointment with what multilateral institutions and greater participation in the global economic order have delivered so far. The new development agenda is even more pervasive in its reach than its predecessor; moreover, ideas about good governance, enlightened policy and good and bad legal reforms are powerful disciplinary and regulatory tools. Whatever the commitment to democracy, civil society, and greater grassroots participation in the latest phase of development, important parts of the reform agenda remain largely predetermined: they are not up for discussion. Thus, the new agenda has powerful internal tensions. However, those states and groups looking for something more and something different from the new development agenda can now be expected to ask, for what and for whom is law in development used? ■

Law and Development[1]

Professor Michael Trebilcock

Introduction

Of the world's almost 6 billion people, about 1.2 billion live on less that one dollar a day and 2.8 billion on less than two dollars a day. Infant mortality, life expectancy, morbidity, nutrition and literacy levels in developing countries are typically dramatically inferior to those of developed countries. Improving the life chances of the world's most desperately impoverished citizens in developing countries is the most urgent imperative of our times.

Through much of the 1980s and early 1990s academics and policy makers interested in development focused on policies that had little or nothing to do with the legal system. The overriding goals of development policy were macroeconomic stabilisation, privatisation and 'getting prices right'. Recently, however, the focus of attention has shifted to institutions, which Douglass North defines as 'the rules of the game of a society'. Those rules of the game include formal legal rules, and consequently the new reform agenda — so-called Second-Generation Reforms — is typically understood to include legal reforms.

To the extent that the new agenda includes legal reforms it is premised on the notion that legal institutions play an independent and significant role in development. Ironically, just over 25 years ago this notion was discredited and renounced by scholars who had once been its most ardent proponents. According to Trubek and Galanter in a famous article published in 1974, "Scholars in Self-Estrangement," the notion that American liberal legalism could be successfully transplanted to LDCs was completely misguided. This idea was deemed "ethnocentric and naïve," as the pre-conditions to the successful implementation of the liberal legal model contrasted sharply with reality in developing countries. As Trubek and Galanter stated:

> Empirically, the model assumes social and political pluralism, while in most of the Third World we find social stratification and class cleavage juxtaposed with authoritarian or totalitarian political systems. The model assumes that state institutions are the primary locus of social control, while in much of the Third World the grip of tribe, clan, and local community is far stronger than that of the nation-state. The model assumes that rules both reflect the interests of the vast majority of citizens and are normally internalized by them, while in many developing countries rules are imposed on the many by the few and are frequently honored more in the breach than in the observance. The model assumes that courts are central actors in social control, and that they are relatively autonomous from political, tribal, religious, or class interests. Yet in many nations courts are neither very independent nor very important.

In the light of this historical record it is essential to analyse critically the theoretical and empirical bases for current assertions that legal institutions play an important role in development.

This question – what role do legal institutions play in development? – is merely the first of three critical questions that ought to be explored by scholars interested in law and development. The second question is: to the extent that law does play a role in development, why is it that some countries have developed the types of legal institutions that are conducive to development while others have not? The third and final question is: what steps if any can be taken to encourage the emergence of the legal institutions that facilitate development in countries where those institutions have not evolved?

Suggestive Evidence

In recent years, a number of large-scale econometric studies have been undertaken to test various aspects of the claims by those who view law and legal institutions as important determinants of development. One group of studies tests the relationship between the quality of bureaucracy, the level of political corruption, likelihood of government repudiation of contracts, risk of government expropriation, and overall maintenance of the rule of law, and growth rates, finding that improvements in these measures have significant impacts on growth rates. Other studies test the relationship between indices measuring respectively government effectiveness, rule of law, graft, and growth. The government effectiveness index combines survey results on perceptions of the quality of public service provision, the quality of bureaucracy, the competence of civil servants, the independence of the civil service from political pressures, and the credibility of the government's commitment to policies. The rule of law index reflects survey results on perceptions of the incidence of violent and non-violent crimes, the effectiveness and predictability of the judiciary, and the enforceability of contracts. The graft index reflects survey results on perceptions of corruption. Again, improvements in these indices result in substantial increases in per capita GDP. Moreover, improvements in the government effectiveness index have significant positive impacts on infant mortality and literacy rates. Other studies examine the relationship between corruption and investment and growth rates, and typically find that high levels of corruption have negative impacts on the latter.

1 These comments are derived from past and current research by myself and my colleague, Kevin Davis

PHOTOGRAPHY BY LIAM SHARP

Other studies have examined the relationship between growth and investment on the one hand, and indices of government credibility on the other. Responses to survey questions have been used to produce indices of government predictability in rule-making, subjective perceptions of political instability, security of persons and property, predictability of judicial enforcement, and corruption. One such study found significant a positive correlation between the aggregate credibility index and both growth and investment, suggesting that 71% of cross-country variation in investment rates are explained by variations in credibility. Another recent study compares the growth and performance of common law and civil law countries and finds that the growth rate in per capita GDP was about 1% higher in common law countries than it was in civil law countries.

Another group of studies examines the relationship between the nature of political regimes and development, and in particular whether democracy is more conducive to development than other political regimes, such as an autocracy. These studies yield a very mixed result. Some find that democracy has an insignificant effect on growth. Others find evidence of a positive correlation between growth and various indices of political and economic freedoms. One survey of these studies reports that eight studies found democracies more conducive to growth, eight found authoritarian regimes to be more conducive to growth, five found no significant difference. If development is defined in broader terms than economic growth, some studies find that more extensive civil liberties and political rights have a significant positive impact on infant mortality and adult literacy, and democracy is more conducive than authoritarian regimes to the promotion of economic growth in ethnically fractionalized societies.

A major limitation of all of these studies is that they do not allow us to differentiate the effects of different types of legal institutions on economic development. The variables that these studies use to represent the characteristics of legal institutions do not shed much light on which types of legal institutions play the most important roles in development, whether measured in terms of economic growth or some other dimension of development. They also do not shed any light on which, if any, substantive bodies of law are more important than others in promoting various conceptions of development.

Conclusions

The utility of many legal reforms can be challenged on empirical grounds. In recent years a number of scholars and commentators have vigorously advocated reforms to property rights, contract law, and political and civil rights. Interestingly enough though, there is little conclusive evidence that reforms in these areas have been effective in furthering development, however conceived. Further empirical research on these topics is clearly warranted. In the meantime however, a tentative conclusion is that, as far as legal reforms are concerned, developing countries should not focus exclusively on enacting or adopting appropriate substantive bodies of law or regulation designed to vindicate the particular conception of development that motivates them. Rather, the empirical evidence suggests that it is appropriate to emphasise reforms that enhance the quality of institutions charged with the responsibility for enacting laws and regulations, and institutions charged with the subsequent administration and/or enforcement of those laws or regulations.

The evidence suggests that effective access to the courts for individuals and groups of citizens, and the integrity, competence and independence of the formal criminal and civil courts systems, as well as adequate staffing and resourcing of them, is a major problem for many developing countries. However, an exclusive or predominant preoccupation with the court system inappropriately discounts the important role played by government departments and agencies, the police and specialised administrative or regulatory bodies in the administration and enforcement of laws. In fact, the challenge facing many developing countries in upgrading the quality of their legal systems is far more daunting than simply reforming their civil and criminal court systems, and is likely to reach deep into the domain of government or public administration more generally. ■

How Important is the Legal System?[1]

Professor Kevin E. Davis

Law and development is definitely in vogue. Although their ranks still tend to be dominated by economists, mainstream development scholars and practitioners now typically regard institutional reforms in general and legal reforms in particular as central components of an effective development strategy. In other words, one of the most dominant theoretical frameworks in contemporary development studies is the institutional one and more often than not the institutions at the centre of attention are legal institutions. Developing countries that were once directed to focus upon 'getting the prices right' are now being told to concentrate on 'getting the institutions right'.

But what do the right legal institutions look like? Which aspects of legal institutions matter? Generally speaking, scholars have adopted one of two approaches to answering these questions. The first approach focuses upon substantive law and attempts to identify the types of legal rules that are more or less conducive to development. This approach has been especially popular amongst financial economists. Perhaps most notably, in a widely cited series of papers La Porta, Lopez-de-Silanes, Shleifer and Vishny, have argued that legal rules offering relatively large degrees of protection for creditors and minority shareholders are important determinants of companies' access to capital and so are indirectly important determinants of economic development. Many legal scholars, however, have great difficulty with the idea that there is a uniquely optimal set of legal rules and point to evidence that efforts to transplant legal rules from one jurisdiction to another have met with limited success. These and other concerns have led most scholars interested in the project of identifying the attributes of good law to adopt a second approach, one that focuses less upon substantive legal rules and more upon the manner in which they are enforced.

This second line of research on law and development is inspired and guided by a number of cross-country studies showing that measures of judicial efficiency, respect for the rule of law, and corruption are all correlated with economic development. The standard interpretation of these studies appears to be that whether or not the substance of legal rules matters, the quality of law enforcement is an important determinant of development. The obvious policy implication is that developing countries can improve their economic prospects by investing in improving the efficiency and integrity of institutions charged with administering the law, i.e. courts, administrative agencies and police forces. Many development agencies have taken this wisdom to heart and committed extensive funds to projects aimed at judicial reform and the elimination of corruption.

It almost goes without saying that efficiency and integrity are desirable features of legal institutions. The question I wish to pose here, however, is whether the well-documented correlations between respect for the rule of law and corruption on the one hand and economic development on the other hand tell us anything more than that efficiency and integrity are inherently good things.

In order to assess the significance of the empirical studies on the relationships between the rule of law, corruption and development, it is important to understand the nature of the data upon which they rely. The principal source of rule of law data is a private publication known as the International Country Risk Guide (ICRG), which provides quantitative assessments by unidentified experts of the strength of the law and order tradition in various countries. The law part of the equation is a measure of the strength and impartiality of the legal system while the order part refers to the extent of popular observance of the law. In other words, the ICRG's law and order index reflects assessments of both the quality of legal institutions and the extent of compliance with the laws that they enforce.

Data on corruption are usually generated in much the same way as the ICRG's rule of law data. They are typically produced by private organizations and represent the results of surveys of experts who are asked to assess either the frequency of various types of improper transactions or the extent to which the presence of such transactions poses a threat to foreign investment

1 This essay is adapted from a longer paper with the working title "What Does the Rule of Law Variable Measure?" and is part of ongoing research being conducted jointly with Professor Michael Trebilcock.

PHOTOGRAPHY BY HENRY FEATHER

PROF. KEVIN DAVIS

or an obstacle to doing business. The focus of these surveys is clearly upon bribery of public officials by private parties. Ultimately therefore, like the rule of law data, the corruption data represent assessments of the qualities of both public institutions and the private individuals with whom they interact.

The dangers inherent in relying upon subjective assessments of behaviour that purport to reduce the behaviour of a large population of actors to a single dimension should be obvious to all concerned. Reliance upon this kind of data is particularly troubling where there is a strong probability that some of the assessments are prepared by foreigners and represent efforts to measure the incidence of behaviour that is illicit and so unlikely to be publicized. On a more positive note however, users of this data often point out that notwithstanding its potential deficiencies the data has passed a market test: businesses routinely pay large sums of money for data of this sort, suggesting that it is of at least some validity.

Even if we assume, however, that this data is reasonably reliable there remains the question of what to do with it. The dominant interpretations seem to presume that poor rule of law and corruption scores tell us that a society either has bad substantive laws (for example sentences that are too lenient) or weak law enforcement (for example under-resourced, inefficient and easily corrupted judges and police officers). It seems to me, though, that these interpretations overlook the possibility that a society's performance on the rule of law and corruption indices tell us as much about the members of a society as they do about the content of its laws or the efficiency and integrity of its law enforcement institutions.

Developing countries that were once directed to focus upon 'getting the prices right' are now being told to concentrate on 'getting the institutions right'.

The reason for this is simple: as we have seen, both these sets of data measure, at least in part, the extent of compliance with laws. Regardless of the pretensions of lawyers and law enforcement officials, compliance with the law is almost certainly a function of both legal variables and a number of factors that have little to do with the quality of the legal system. For example, low crime rates in a given society might reflect the existence of a harsh criminal code or a large or dedicated police force. Those rates might, however, also reflect the fact that members of the local population are unusually willing to report crimes, appear as witnesses in legal proceedings and shun offenders, or that they have particularly deep ethical commitments to law abiding behaviour. Similarly, low rates of corruption might reflect the presence of severe penalties for bribery or efficient and incorruptible law enforcement agencies. But they may also reflect the fact that the members of the society in question, or at least the potential bribe-payers among them, find the idea of paying a bribe morally offensive.

More generally, prevailing ethical norms and the extent of law-abidingness are likely to depend upon an array of factors such as the strength of families and other informal social networks, the extent of poverty and economic inequality, and the degree to which state officials are perceived as exercising legitimate rather than illegitimate authority. Legal rules and the manner in which they are enforced may influence some or all of these features of a society, but any causal relationships are likely to be subtle, indirect, and context-specific. Theoretically speaking, it is even possible that strengthening laws or improving law enforcement will undermine the ability of moral values and family structures to serve as alternative methods of inducing compliance with the law.

The inherent complexity of the role of law in society suggests that the task of 'getting the institutions right' from a developmental perspective will be significantly more challenging than it might first appear. There is a distinct possibility that for the next little while further academic research in this area will confuse as much as it enlightens. However, given the magnitude of the potential benefits to be achieved, the challenge of identifying the attributes of good legal institutions seems like one well worth taking on. Thus in my view, the study of law and development ought to remain in vogue for some time to come. ■

Four International Legal Scholars Answer the Question:

What is the greatest legal challenge facing developing countries today?

Each year the intellectual atmosphere of the Faculty is enriched by international scholars who offer unique perspectives on a diversity of legal and social policy issues. We asked four of these international scholars who have spent time with us in the past, or who will join us in the future, to offer their personal insights into the question "What is the greatest legal challenge facing developing countries today?"

Professor Carlos Correa of the University of Buenos Aires joined the Faculty as a Visiting Professor for the 2003 spring semester to teach International Trade Law. A few years ago, Justice Albert Sachs took a leave from the Constitutional Court of South Africa to join us as a distinguished visitor and teach a two-week intensive course on Justice and Truth in South Africa. And in January 2004 the Faculty will welcome Professor Yash Ghai of the University of Hong Kong and Professor James Anaya, a frequent visitor to the school from the University of Arizona, to teach two-week intensive courses as part of our Distinguished Visitors Program.

Professor Carlos M. Correa

Director, Center for Interdisciplinary Studies on Industrial Property Law and Economics, University of Buenos Aires

Rule Making in International Law

Trade has become an increasingly important factor for economic development. Regulations on trade have expanded in the last twenty years, notably as a result of the GATT Uruguay Round. Though originally conceived to regulate measures at the national borders (e.g. tariffs), international trade law today reaches a growing number of "beyond the border" policies and covers not only trade in goods, but also trade in services, the global protection of intellectual property rights and – if current negotiations succeed – certain aspects of competition, investment and labour policies.

The deepening and broadening of trade disciplines raise important questions about the degree to which national governments retain sufficient flexibility to domestically address public interests, such as in the case of the protection of the environment and public health. The Doha Declaration on the TRIPS Agreement and Public Health (WTO Ministerial Conference, Doha, November 14, 2001) for instance, reaffirmed the States' right to determine when a health emergency exists, but measures that governments can adopt are subject anyway to an analysis of consistency with the provisions of said Agreement. The expansion of trade rules also raises significant questions with regard to the ability of poorer countries to apply development policies, which in many cases (like performance requirements on foreign investment) were largely utilized by developed countries in the recent past.

All these issues create, by themselves, important challenges to developing countries. But they point to a more general problem. While legally empowered by the right to vote (one country, one vote), the reality is far from this abstract equalitarianism. Such countries can rarely make their genuine interest prevail in WTO matters, as proven by the persistence of core protectionist policies in the areas where developing countries are more competitive. Similarly, developing countries can exercise (and they growingly do) the right to challenge WTO inconsistent rules applied in other Members, including major trade partners. The problem, however, is that developing countries' retaliatory power is often minimal, as epitomized by Ecuador's dilemma when implementing its right to "sanction" the European Community for proven illegal restrictions relating to banano trade.

In brief, addressing the problems of poverty and global inequality through trade disciplines requires much more than preaching (but not necessarily practising) free trade and the rhetorical use of "development" as the alleged objective of the Millennium Round negotiations. Genuine understanding of the problems faced by developing countries and changes in the decision-making process of international trade law are called for. ■

PHOTOGRAPHY BY LIAM SHARP

Justice Albert Sachs

Constitutional Court of South Africa

The Court's Role in Protecting Social and Economic Rights

What we in the developing world desperately need is bread [resources, information, skills, technology, and the physical wherewithal to survive, flourish and enjoy all our rights]. Yet what we in the developing world also desperately need is freedom [the right to speak our minds, to be free from oppression and to determine our destinities, to feel that we can make meaningful choices about the society we live in and about who we want to be]. So we want bread, and we want freedom, and each in full and realisable measure; not just a ration of bread and a ration of freedom.

The key task facing us, then, is how to ensure that we get bread and we get freedom in full complement. In this respect a broadly conceived constitutional democracy has a crucial role to play. As Amartya Sen has pointed out, the more open the society and the stronger its democratic institutions, the less chance is there of a despotic elite hoarding scarce resources for itself and leaving the majority to face famine. Yet the converse also holds: the institutions of freedom flourish in a society where the welfare of all is regarded as a matter of public concern and responsibility.

We on the Constitutional Court of South Africa have recently been confronted by two cases which vividly brought out the connections between the right to bread and the right to freedom. Both dealt with the manner in which a court in an open and democratic society could be called upon to intervene to require government to help realise constitutionally protected social and economic rights. In both cases the Constitution required the government to take reasonable measures progressively to realise such rights within its available resources.

In the first, the Grootboom case, the Court said it was not reasonable to have a massive house-building programme for the poor if it did not make appropriate plans to give shelter to those in circumstances so desperate as to plunge them below the levels of minimum dignity. In the second, the Treatment Action Campaign case, it decided that it was unreasonable for the Ministry of Health to restrict the supply of the drug nevirapine to eighteen selected public facilities for a lengthy trial period, when its provision more generally, at little cost, and without serious safety concerns, could save large numbers of babies from being born with the HIV virus.

Without the institutions of freedom, including the Constitutional Court, and without respect for the rule of law both by the claimants and by the government, the cases could not have been brought. And without an appropriately conceived notion of everyone having a substantive right of access to basic resources – in our case a concept grounded in hard constitutional text, in other countries one derivable from international instruments and soft law commitments – the linking up of freedom and bread through the notion of human dignity could not have been accomplished. ■

PROF. YASH GHAI

Professor Yash Ghai

Sir YK Pao Professor of Public Law, University of Hong Kong

Overcoming Poverty: Reflections on Redesigning the State

The Draft Constitution of Kenya prepared by a constitutional commission which I chaired has a provision found in no other charter of rights. It acknowledges everyone's right to a reasonable standard of sanitation, including the ability to dispose of the bodies of the dead with decency. The genesis of this provision is an account a resident of a large Nairobi slum gave me of a father's efforts to bury his son. The cost of burial in public cemeteries was well beyond his means; his attempts to bury his child secretly in the neighbourhood under the cloak of darkness were thwarted by passers-by. So he placed the dead body in a sack which he slung over his shoulder and boarded a bus to a distant place to dispose of the body. Numerous families are too poor to claim relatives from mortuaries where bodies collect and rot. My visits to the slum showed that dignity in life was even more difficult than dignity in death.

Previously I could not imagine the circumstances of those who struggle amidst the squalor and insecurity of poverty to overcome the daily humiliations that constitute their existence. In crowded slums where home is a dilapidated shed, offering no protection against the elements, where families and sometimes strangers herd, there is no privacy, no time for reflection on the mysteries or meaning of life, no opportunity for self-discovery. Denied clean, or indeed any, water, living alongside open sewers, unable to send their children to schools because a 'donor' country has insisted that fees be introduced for that most basic of rights, education, deprived of access to medical facilities because that did not meet the priorities of well heeled politicians, having to do frequently without food of any kind at all for two or more days, harassed by rapacious landlords and money lenders, subject to extortion by the police, totally without political influence other than the opportunity to sell their vote every five years for the lowly price of a dollar, they were caught in a trap without escape. 60% of Kenyans live like this, a travesty of the right to life in dignity.

If poverty denies rights, corruption has become the greatest cause of poverty. Poverty is not the natural state of humankind, not even in the underdeveloped South. It is a product of human enterprise.

What was a commission, more familiar with the sacredness of sovereignty, the defence of the nation, the grandeur of high office, the right of property, the separation of powers, the mysteries of due process, but also the trappings of power, to make of this? Yet it was clear that unless we grappled with this reality, we would grievously fail in our mandate. A constitution in these times could scarcely disregard poverty, for poverty denies fundamental constitutional values of dignity, representation and participation, accountability, equality, individual autonomy, and a cohesive political and moral community.

Constitutions have seldom designed a state for the eradication of poverty and the promotion of social justice. But now when the ideology of globalization, dominated by the concerns of the rich, determines constitutions and laws, that task faces additional difficulties. Kenya was once a prosperous place, able to feed and educate its citizens, provide them with physical and emotional security, export food to its neighbours, build and maintain infrastructure of roads and communications. The decline in living standards followed the dismantling of institutions for fair representation, the emasculation of democracy, the concentration of power at the centre, and in one pair of hands, the subversion of the judiciary, the politics of patronage, all of which facilitated the plunder of the state. In little time Kenya achieved international renown as one of the world's most corrupt regimes. If poverty denies rights, corruption has become the greatest cause of poverty. Poverty is not the natural state of humankind, not even in the underdeveloped South. It is a product of human enterprise.

The challenge to us, as I saw it, was to frustrate that enterprise. This requires a fundamental restructuring of the state and its values. The overwhelming necessity is empowering the people. We tried to use the process of constitution-making to give people a sense of their own worth and importance by their extensive participation. Our proposals see democracy as springing from the village and going upwards, instead of arising from and being stifled at the capital. The government must be transparent and accountable. For this we have proposed the strengthening of Parliament, the independence and competence of the judiciary, many independent commissions and mechanisms of supervision and investigation, a code of conduct designed to prevent conflict of private interests and public duties, and the participation of civil society in public affairs. I believe that only a thorough-going democratization will create the right environment for probity and the management of national resources. I also believe strongly that a strong regime of human rights, in which economic, social and cultural rights are fully incorporated, acting as the framework for state and corporate policies, is necessary to direct the orientation and energies of the state. We have given much consideration to the ways of implementing and sustaining the new constitution so that it will turn from utopia to reality. Perhaps all this is the hopelessly optimistic dream of a passionate constitution maker-for the tide of time runs against such dangerous ideas of democracy and social justice, and laws and constitutions more than ever before serve the rich and powerful. ■

Professor James Anaya

Samuel M. Fegtly Professor of Law, University of Arizona

The Challenge of Recognizing and Remedying the Legacies of Colonialism

PROF. JAMES ANAYA

Colonialism, an asymmetric and disparaging way of political ordering that international law once protected, is essentially a defining characteristic of developing countries. On the basis of a now widely proclaimed ethos of self-determination, international law and institutions now stand in opposition to the classical institutions of colonial rule and have worked to see their demise. In virtually all cases the formal bonds of colonial rule have vanished, aided by tectonic shifts in the theory and workings of international law. But the disparities of power and wealth engendered by colonialism in past centuries have left ongoing conditions that threaten the stability and welfare of most of the world's population, the developing world. A still remaining challenge is for international law to be torn further from its historical complicity with colonialism and to be harnessed to remedy the still persistent legacies of the colonial past.

Colonialism lies at the very root of underdevelopment in almost all cases. The exploitative relationships erected and maintained historically by the colonial masters disrupted, and sometimes displaced, native subsistence and trade patterns. The rupturing of native economies was accompanied by the taking of lands or other natural resources, through enterprises that placed native people in servile positions, all for the ultimate benefit of the colonizer. Attitudes of cultural and religious superiority on the part of colonizing agents justified and helped shape the colonial patterns, deepening the injury to the cultural and social fabrics of native populations that accompanied economic exploitation. The crippling of native societies and economies was not much remedied just by removing the formal cloak of colonialism. And in many cases, exploitative economic relationships that favor outside interests, advantaged by the lingering or worsening local ills, have survived or resurfaced robust in the aftermath of the end of colonial rule.

Some developing countries, such as those of Latin America, shed the cloak of formal colonialism long ago, before the 20th Century, and their populations represent a mixture of immigrant and indigenous roots. But for these, as well as for the more recently decolonized countries, the history of colonialism is a starting point for explaining the origins of underdevelopment, especially for the population sectors that retain a continuity of culture and identity with precolonial indigenous societies and for whom the woes of underdevelopment are invariably felt hardest. Today we refer to people as indigenous to identify the descendents of groups who were at the receiving end of colonial patterns, and of course there are indigenous peoples living in many of the world's richest countries and not just those countries regarded as developing. The surviving indigenous peoples living in rich countries such as Canada and the United States represent, more frequently than not, pockets of underdevelopment, thus serving as stark reminders of the continuing effects of the colonialism's devastations.

The political and territorial configurations resulting from colonial histories contribute to the problems of underdevelopment. The end of formal colonialism has typically meant the conversion of previously colonized territories into independent states, with the colonizer's geographical boundaries intact. Within the typical decolonization model, which was deployed throughout all of Africa and elsewhere, the political institutions of newly independent states are built more from the colonial bureaucracy than from precolonial indigenous patterns of authority, and the territorial boundaries of the state have little to do with cultural patterns and ethnic identities stemming from precolonial times. These factors have too often made for states with frail institutions that are susceptible to corruption, with concentrations of power along ethnic lines, or with forces that in the name of nation-building suppress ethnic or cultural diversity. These destabilizing conditions, which in many cases are accompanied by widespread violence and human suffering, are obvious barriers to development.

The United Nations Charter and various UN resolutions call upon the international community to promote development, and with specific reference to countries emerging from colonial rule, and it is clear that a strong policy in favor of development is operative in numerous spheres of international cooperation. It is possible to affirm that, along with this policy, international law now embraces a right to development, at least in the sense of a right of peoples to develop in all spheres of life without hindrance or interference from outsiders and to seek development assistance. Further, international law increasingly upholds indigenous and minority group rights, within the model of a multicultural state. But international law must do more. I share the controversial view that a right to development must be accompanied in international law by an affirmative obligation upon rich countries to take steps to remedy, through the transfer of resources and other measures, the underdevelopment that is the legacy of colonialism. This obligation would apply with particularity to rich countries in terms somehow commensurate with the extent to which they have benefited from colonialism and with the harm they have inflicted, either directly or indirectly, and it preferably would be realized through channels of multilateral cooperation. To ask that the international community embrace such a course as a matter of legal imperative, and not just vague policy, is perhaps much too much to ask. But, with a huge gap between the world's rich and poor sadly persisting, this should be asked. That is the challenge. ■

After Iraq: Reality Check on International Law

Prof. Jutta Brunnée

Against the backdrop of two world wars, one of the overriding objectives in the creation of the United Nations in 1945 was to "save succeeding generations from the scourge of war" (*UN Charter,* Preamble). The *Charter* promotes this goal through a two-pronged approach. First, the unilateral use of force by individual states is strictly limited to instances of self-defense. Under Article 51, states may use force to respond to an "armed attack." Arguably, in limited circumstances involving imminent threats, the right to self-defense also encompasses anticipatory action. Second, the *Charter* envisages that, in all other cases involving threats to international peace and security, resort to force must be collective. Thus, outside the ambit of individual states' rights to self-defense, the use of force must be authorized by the UN Security Council.

Since "9/11," and especially in light of recent events surrounding military action in Iraq, many have doubted this framework. Some commentators call for radical overhaul of the rules on the use of force, pointing to new threats from global terrorism, rogue states and weapons of mass destruction. Elsewhere, it is fashionable to dismiss international law as the playground of naïve legalists and 'latte liberals,' or to depict the UN as risking to "fade into history as an ineffective, irrelevant debating society" (President Bush, March 13, 2003). Yet others seem resigned to the demise of multilateralism and international law in the face of an increasingly unilateralist 'single super power.' What to make of these assessments?

It is odd indeed to find international law dismissed as irrelevant when we have just seen governments, parliamentarians, pundits and the proverbial people on the street discussing the doctrine of preemptive strike, debating the material breach of UN Security Council resolutions, or opining on the need for additional resolutions to authorize force against Iraq. Consciously or unconsciously, rarely have more people used the language of international law. It is difficult to think of a better way to illustrate one of the most important roles of international law: it frames debates and demands justifications. Even in matters as central to national interest as the use of force against other states, international law imposes normative constraints against which states must - and do - justify their actions. Indeed, this has been true even in the case of the most recent military actions by the 'most powerful country in the world.'

What is perhaps most remarkable about the US effort to legally justify its campaign in Iraq is the path *not* chosen. In its much-quoted 2002 *National Security Strategy,* the US government promotes the adaptation of the rules on the use of force to permit preemptive strikes against "emerging threats" posed by "rogue states" with weapons of mass destruction. This approach has rightly raised concerns; it would leave virtually no standard capable of providing normative guidance or constraining unilateral assessments. In the 1962 Cuban Missile crisis, the United States refrained from invoking preemptive self-defense for this very reason. In 2003, one might have expected the Bush administration to make Iraq the test case for the preemptive strike doctrine. It did not. Add to this the fact that the State Department's Legal Adviser actually took pains to bring preemption within the confines of the "traditional framework," stressing that "a preemptive use of proportional force is justified only out of necessity" (William Taft, November 18, 2002). He added that "necessity includes both a credible, imminent threat and the exhaustion of peaceful remedies." Indeed, "[w]hile the definition of imminence must recognize the threat posed by weapons of mass destruction and the intentions of those who possess them, the decision to undertake any action must meet the test of necessity… in the face of overwhelming evidence of an imminent threat, a nation may take preemptive action to defend its nationals from unimaginable harm." Three observations can be made. First, it appears that, far from considering the rules on the use of force to be irrelevant, the administration acknowledges existing limitations on unilateral

PROF. JUTTA BRUNNÉE

action. Second, in proposing criteria to reign in the overbroad concept of emerging threat contained in the *National Security Strategy,* the United States appears to acknowledge the need for standards of review. Third, political rhetoric notwithstanding, the US government did not seem to consider these standards met in the case of Iraq. Instead, in its March 20, 2003, letter to the Security Council, the United States claimed that its military measures were authorized under a series of Council resolutions, empowering individual states to respond to Iraq's repeated "material breaches" of these resolutions. Governments, and the wider international law community, should seize the resulting opportunity to engage with the US on whether, and to what extent, the legal parameters for self-defense require adjustment, including through the concept of "imminent threat."

The fact that the United States subjected itself to the UN process rather than assert a right to unilateral preemption points to other opportunities for renewed engagement. It suggests that, again, we must carefully separate bluster from fact. The American government and various commentators have claimed that the Security Council has rendered itself irrelevant by refusing to support a war against Iraq. Pointing to behind the scenes 'horse-trading,' other commentators deny that the Security Council can ever lend legitimacy to the use of force. Both assertions miss the mark. The Security Council has functioned. The majority of its members were unconvinced of the existence of a threat to peace and security sufficient to justify large scale use of force. And, remarkably, many small countries with much at stake resisted both US siren calls and pressure. Recent events in the Security Council illustrate that raw power may be able to coerce (sometimes), but as Kofi Annan recently observed: "[The peoples of the world] have made it clear that in confronting uncertainty and danger they want to see power harnessed to legitimacy." In short: the Security Council continues to play a vital role for all involved, perhaps most of all for the United States. Security Council involvement can help ground US exercise of power in the legitimacy that it will need to last the distance. With five major powers as permanent, veto-bearing members and ten other states on rotating memberships, the Council was specifically configured to operate at the interface of political realities and legal imperatives. While the configuration may need adjustments, the Council is likely more relevant than ever as a forum in which the US can engage other states in matters of international security, and can be engaged by them. Such engagement must confront difficult issues, including the US (and UK) arguments regarding Council authorization of the Iraq war. Most international lawyers deem the arguments seriously flawed. Indeed, a senior legal adviser to the British foreign secretary resigned over the issue. The claim that individual council members can decide to enforce Council resolutions also leads to a dangerously slippery slope. It makes mockery of the very idea of collective security and thus, if left unchecked, undermines any hopes of genuine engagement in the Council.

> Consciously or unconsciously, rarely have more people used the language of international law. It is difficult to think of a better way to illustrate one of the most important roles of international law: it frames debates and demands justifications.

No doubt, these are momentous times. We must all engage with the implications of recent developments for the international order. But when the dust settles in the Iraqi desert, what is needed is sober reflection, not shrill rhetoric. ■

Redressing Human Rights Violations in Sierra Leone

Noah Novogrodsky

This past February 2003, Noah Novogrodsky (Director of the International Human Rights Program and adjunct faculty member) travelled to Sierra Leone in West Africa along with second year student Mora Johnson as delegates of the Sierra Leone Working Group at the Faculty of Law. Their mission – to provide legal assistance to the Special Court for Sierra Leone (pictured above) established in 2002 to try those responsible for crimes against humanity and gross human rights violations committed over the past decade.

Sierra Leone is a tiny country in West Africa. As a former British colony, the capital - Freetown - features streets named after the same mid-level English officials whose names are central to Toronto - Dundas, Bathurst and Sackville among them.

There the similarities end. Between 1991 and 2001, the people of Sierra Leone endured a civil war fueled by diamond mining revenues and marked by grotesque human rights abuses. Both the rebels - led by the notorious Foday Sankoh - and the army of Sierra Leone, massacred civilian populations, enslaving whole villages, conscripting child combatants and committing widespread rape and sexual abuse. In the late 1990s, the armies of Sierra Leone gained notoriety by amputating the limbs of victims, first as a warning and punishment used to discourage potential voters from casting ballots and later as an instrument of terror. By 2002, Sierra Leone ranked last on the UNDP's index of living standards.

The United Nations and British Special Forces intervened to stop the worst human rights abuses in Sierra Leone; the UN has since created the largest peacekeeping force in the world there. In 2002, Sierra Leone held democratic elections. That same year, the United Nations and the Government of Sierra Leone began construction of the Special Court for Sierra Leone, a hybrid tribunal staffed by a mixture of foreign and Sierra Leonean lawyers and judges and designed to try those who "bear the greatest responsibility" for human rights violations committed during the conflict. The Special Court, which issued its first indictments in March 2003, will try those responsible for crimes against humanity, war crimes and grave violations of Sierra Leonean law. Located in Sierra Leone, the Special Court will attempt to provide justice to the thousands of victims. Just as importantly, the Court will be seen to provide justice. In a country that has known virtually no rule of law for a decade, the Court aims to leave the legacy of a world-class courthouse, a cadre of trained Sierra Leonean lawyers and the precedent of the Court's jurisprudence. Sierra Leone has also convened a Truth and Reconciliation Commission (TRC) that will record a history of the conflict. Both the Special Court and the TRC have a distinctly Canadian flavour: Canadian law professor William Schabas serves on the TRC while Canadians serve in several critical positions at the Court. Valerie Oosterveld, former Director of the International Human Rights Program and now a lawyer at the Department of Foreign Affairs and Foreign Trade worked tirelessly at the UN to establish the Special Court and now sits on the UN Management Committee that funds the Court.

In February, I traveled to Freetown with Mora Johnson (II), head of the Sierra Leone Working Group (SLWG). Since November 2002, the SLWG has been providing legal research for the Special Court's Office of the Prosecutor. The SLWG, like the Rwanda Working Group before it, is an initiative that allows students the opportunity to organize members of the law school community to advocate on specific international human rights issues. Working groups are also a vehicle for NGOs,

Mohammed Suma of the Special Court's Prosecutor's Office conducts outreach and popular education about the Court at a community centre in Freetown, Sierra Leone.

"the people of Sierra Leone endured a civil war fueled by diamond mining revenues and marked by grotesque human rights abuses."

DFAIT and intergovernmental organizations to request and receive research, advocacy and/or education from interested students. Mora and I went to Sierra Leone as part of the Special Court's Prosecutor's Office Academic Consortium and to consider if and how we might share relevant experiences of the Rwanda Working Group, who have spent years advocating for the development of a responsive sex crimes jurisprudence at the International Criminal Tribunal for Rwanda.

What we found was simultaneously disturbing and inspiring. At the Aberdeen camp for amputees in Freetown, men, boys and women whose limbs were amputated during the conflict wait for medical procedures and resettlement. A single Canadian doctor provides medical services for hundreds of families in the camp. Edward Soriba recounted for us how he left his family during the January 6, 1999, invasion of Freetown. Captured by an army faction, his left arm was amputated on the orders of an officer who remains stationed in Freetown. Rather than seek revenge, however, Edward is hopeful that the persons responsible for his amputation will be prosecuted by the Special Court and asked that the international community not forget the suffering of Sierra Leone.

Prosecution, according to Mohammed Suma and Tom Perriello of the Office of the Prosecutor's Outreach Program, will happen only if the perpetrators qualify as kakatua, the local word for those who bear the greatest responsibility. But unlike many transitional societies, most of the Sierra Leonean kakatua are in prison, including Foday Sankoh. This fact gives the Special Court an opportunity to prosecute and not merely indict human rights abusers.

In the process, the Special Court will be the first international criminal institution to address seriously the crimes of recruiting child combatants and engaging in sexual slavery. The Special Court will also seek to preserve the fragile peace in Sierra Leone by removing from society those who would resume the war and commit fresh human rights abuses. All told, the Special Court aims to complete its work within three years and to play a positive role in the reconstruction of Sierra Leone.

To do so, the Court will have to improve on the mistakes of the ad hoc international criminal tribunals for the former Yugoslavia and Rwanda. Those institutions are frequently criticized for failing to promote justice at the site of the offenses, for providing inadequate protection for witnesses and for revictimizing those witnesses who do testify.

The Sierra Leone Working Group is working with the Special Court to apply the lessons of existing international tribunals and to conduct legal research for the Office of the Prosecutor. During the summer of 2003, at least two University of Toronto law students will travel to Sierra Leone to intern with the Special Court and the TRC. Although the problems Sierra Leoneans face are enormous, the Sierra Leone Working Group is pleased to participate in the Academic Consortium, to contribute to the development of international human rights law and to promote the justice that Soriba seeks. ■

HIV/AIDS in Africa – Battling the Barriers to Treatment

Over the last ten years no health issue has had a bigger impact worldwide than HIV/AIDS. Recently, some former and current law students have taken an active role in the fight against this relentless epidemic in Africa, the hardest hit region in the world. The latest statistics show that of the 42 million people around the world who are HIV positive, 29 million of them live in Africa. In 2001, the latest year for which full statistics are available, 2.2 million African men, women and children died from AIDS. In January, and responding to considerable international pressure to make a dramatic and far-reaching move against HIV/AIDS, U.S. President George W. Bush, in the State of the Union Address, pledged $15-billion (U.S.) to fight the epidemic over the next five years. Bush's substantial pledge is a welcome infusion of cash to many, including Stephen Lewis, the Canadian U.N. special envoy for HIV/AIDS in Africa. Meanwhile, however, the deaths continue, as do the many hardships associated with living with AIDS, which have both a personal and a social impact.

Africa is a long way from Canada, but that distance has been shrunk during the last year by a couple of initiatives sponsored by two law school alumni and a current student. Jonathan Berger completed an LL.M. in 2001 on the impact of international trade law on access to treatment for HIV/AIDS. His thesis looked at the relationship between the World Trade Organization Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS) and South Africa's Constitution, focusing on the manner in and the extent to which TRIPS permits a country like South Africa to take steps towards safeguarding the health of its people.

Afterwards, Berger interned in Rio de Janeiro, Brazil with Gruppo Pela Vidda, an AIDS-service and advocacy group before returning to South Africa to take up a position with the AIDS Law Project (ALP), which is based at the Centre for Applied Legal Studies at the University of Witwatersrand. South Africa, like many countries in Africa, daily faces an AIDS crisis. Almost five million - or one-in-nine - people in South Africa are living with HIV/AIDS. In 2001, over 200,000 South Africans died of AIDS, and all the signs point to a steady increase in these grim numbers.

But a strong belief that the epidemic can be turned around motivates Berger in his work, which consists mainly of trying to achieve better and broader access to HIV/AIDS medicines for those needing treatment. The ALP, through its Law & Treatment Access Unit (LTAU), seeks to use the law as a tool in attempting to remove barriers to treatment access. The cost of antiretroviral medicines (used to treat HIV-infection and thereby prevent the onset of opportunistic infections associated with HIV/AIDS) is extremely high. For many Africans, whose income is meagre by western standards, the cost of seeking proper treatment is prohibitive. To that end, LTAU advocates for a fairer price regime and has launched a lawsuit against the pricing practices of GlaxoSmithKline and Boehringer Ingelheim, two major multinational drug firms operating in South Africa. In addition, the LTAU is advocating for a review of the Patents Act insofar as essential medicines are concerned, calling for the South African government to pass amendments that would take full advantage of recent international trade law developments that have the potential to increase access to medicines.

For Berger, the work is hard - both emotionally and otherwise - but rewarding. As he describes it: "I feel both privileged and honoured to be able to use my skills in a way which contributes towards the broader public interest as well as my own intellectual and professional growth. Despite the enormity of the challenge facing us, I believe that the struggle for access to treatment will be won."

"Despite the enormity of the challenge facing us, I believe that the struggle for access to treatment will be won."

Closer to home, J.D. student Max Morgan, and former LL.M. student, Kibrom Isaac Teklehaimanot, coordinated a group of students in March of this year to help in the fight against HIV/AIDS in Africa. The main goal of the new working group, says Morgan, is "to amend the *Canada Patent Act* to allow for the production and export of generic pharmaceuticals to developing countries." As well, the group - which is part of the law school's International Human Rights Program - is assisting the Canadian HIV/AIDS Legal Network in producing a resource guide for development officers, which will emphasize a rights-based approach to fighting HIV/AIDS. This approach is important to both Morgan and Teklehaimanot, both because of their own research interests and because of the way in which their legal studies can be made directly applicable to an extremely serious international issue. This latter fact was highlighted through the working group's screening at their inaugural meeting in March of "Race Against Time," an award-winning documentary on AIDS in Africa attended by both the filmmaker, Judy Jackson, and Anne Bains, special assistant to Stephen Lewis.

Morgan's interest in HIV/AIDS advocacy came in part from working for an AIDS research organization in Johannesburg, South Africa in 2002. And this summer, he will gain even more experience by taking up an internship with the International Council of Service Organizations, an internship facilitated by the International Human Rights Program. Teklehaimanot, an Eritrean, completed his LL.M. in Human Rights and Reproductive Health law in 2001. His aspirations include continuing to use his education and experience to help the working group fight AIDS in Africa through the vehicle of human rights advocacy. ■

– Brad Faught

Probing the Kenyan Judicial System

Former Dean of the Law School, Justice Robert Sharpe of the Court of Appeal for Ontario, travels to Kenya to assist in a formal review of Kenya's judicial system.

JUSTICE ROBERT J. SHARPE (RIGHT) WITH JUSTICE GEORGE KANYEIHAMBA, SUPREME COURT OF UGANDA, MEMBERS OF THE TEAM OF COMMONWEALTH JUDGES, NAIROBI, KENYA, MAY 2002

2002 was a watershed year in Kenya. The era of President Daniel Arap Moi - in power since 1978 - came to an end with his retirement and a subsequent hotly contested election. In the run up to the election, various reform-minded Kenyan lawyers, activists and officials pressed for a constitutional review. Charges of corruption at almost every level of the law have long been rife in Kenya, leading to what some describe as a deplorable breakdown in confidence in the Kenyan judiciary.

In light of this situation, Mr. Justice Robert J. Sharpe of the Court of Appeal for Ontario was invited along with four other co-advisors - including fellow Canadian, Professor Ed Ratushny of the University of Ottawa, Faculty of Law - to travel to Kenya in May 2002 to serve as part of the Advisory Panel of Eminent Commonwealth Judicial Experts reviewing Kenya's judicial system. For many who visit Kenya, the experience is one of going on a safari, or heading to the beaches of coastal Mombasa or the nearby exotic island of Lamu. Not so, for Justice Sharpe. His Kenyan experience was all about work, but no less enjoyable because of it, he says.

"Very rewarding and very moving," is how Justice Sharpe, former professor and dean of the Faculty of Law, describes his two week stay in Kenya, where he and his co-panelists probed the Kenyan judicial system. Within their detailed, 90 page report, they made eleven specific recommendations for improvement ranging from the process for judicial appointment to the structure of the courts system.

NAIROBI, KENYA

Surprisingly, the government decided to allow the judicial review to proceed. The leading figure in pressing for it was Professor Yash Pal Ghai, chair of the Constitution of Kenya Review Commission. Ghai is an international constitutional expert who, among other appointments, has been a visitor to U of T's law school. In getting the review off the ground he approached Justice Sharpe about serving on the advisory panel. Sharpe said yes, and early in May of last year, he flew off to Nairobi.

Sharpe and his fellow advisors met daily with a wide range of lawyers, judges, officials, and activists in an attempt to understand both Kenya's embattled judiciary, and to assist in the process of improving it. While not in a position to investigate individual cases, the advisory panel did dig into the reasons for the breakdown in public confidence in the country's court system and what measures might be enacted in order to improve it. In the panel's endeavours much cooperation was received from a lot of "courageous and impressive young lawyers and activists," says Justice Sharpe. Conversely, stiff resistance was encountered from many senior jurists. In one meeting, says Sharpe, "the room exploded and the judges walked out" when faced with a litany of alleged abuses and corruption laid out for them by the panel.

Still, the process endured leading to a report that has been well-received by reform-minded Kenyans. And that includes a lot of Kenyans outside of the educated or professional classes. The prospect of constitutional and judicial reform is a truly popular issue in Kenya. Sharpe relates that while driving one day with Yash Ghai they stopped at a dhuka - a small, side of the road, shop - to buy the daily newspapers. The fact that they bought all of the dailies was highly gratifying to the subsistence proprietor, but even more so was the fact that partway through the transaction he recognized that the buyer was Ghai. "Yash Pal Ghai!" he cried out, in approbation, which was evidence to Sharpe that so-called ordinary Kenyans want a government and a judicial system that is free of corruption and that works.

Since the report came down on May 17, 2002 two senior judges – including Chief Justice Bernard Chunga – have resigned. There has been some recovery in public confidence and a desire by most Kenyans to continue down the road of renewing their judiciary. In this process, Justice Sharpe was glad to have played a small part. "The political will for change does exist. And we nudged it along," he says humbly. As the report itself put it, "We are convinced that the Kenyan people aspire to and deserve a just society governed by the rule of law." Thanks to Justice Sharpe and his co-panelists, that aspiration has come a little closer to reality. ■

– Brad Faught

Departments: People

University of Toronto law professor named Fulbright New Century Scholar

PROF. PATRICK MACKLEM

The law school's Prof. Patrick Macklem has been named Fulbright New Century Scholar. The only Canadian chosen to participate in this prestigious international research program, Macklem will visit numerous offices of the United Nations, as well as the Organization for Security and Cooperation in Europe, culminating in a three month residency at the European Law Research Center at Harvard University. While at Harvard, he will examine how international human rights law addresses ethnic and cultural conflict. In recent years, Macklem's scholarly work on indigenous rights and international human rights has attracted widespread acclaim. In 2001 his book *Indigenous Difference and the Constitution of Canada* was awarded both the Canadian Political Science Association Donald Smiley Award for best book on Canadian government and policy, and the Canadian Federation for the Humanities and Social Sciences 2002 Harold Innis Prize for the best English-language book in the social sciences. "Professor Macklem's success in this worldwide competition is a testament to his expertise in a field of critical importance to Canada and the international community," said Dr. Michael K. Hawes, Executive Director of The Canada-U.S. Fulbright Program. "Of the more than seventy countries invited to nominate candidates, Canada can take pride in being one of the twenty countries to have had a candidate chosen." Now in its second year, the Fulbright New Century Scholars Program brings together leading scholars and professionals from around the world to explore a specific research theme of global significance, and is administered jointly by The Canada-U.S. Fulbright Program in Ottawa and the Council for International Exchange of Scholars in Washington, D.C. It is supported by the Department of Foreign Affairs and International Trade Canada and the United States Department of State. For the full story, visit the Faculty's web site at www.law.utoronto.ca.

Environmental law specialist returns to the law school

PROF. ANDREW GREEN

We are delighted to welcome back Andrew Green, who graduated from the Faculty's LL.B. program in 1992. In Andrew, the Faculty is gaining a specialist in environmental law. His expertise in this field is wide-ranging, drawing on an interdisciplinary academic background and several years of environmental law practice. In addition to his LL.B., Andrew's academic record includes a B.A. in Philosophy from Queen's University (1987), an M.A. in Economics from the University of Toronto (1988), and both an LL.M. and J.S.D. from the University of Chicago (1994 & 1997). Andrew's environmental law practice spanned corporate, litigation and regulatory matters. The breadth of Andrew's background and experience is reflected in his scholarly work. His doctorate focused on environmental law and policy and compared the U.S. and Canadian domestic regimes. His publications speak to many of the central issues in Canadian environmental law, ranging from directors' liability, to public participation, to environmental impact assessment. Andrew is also participating in the big 'law and economics' debates on environmental law. In some of his current writing, he is examining the extent to which incentive-based approaches can protect public interests. In addition, Andrew is tackling one of the 'hottest' of the environmental issues facing Canada: climate change. Through the lens of federalism, one of his ongoing projects focuses on the implementation of the Kyoto Protocol.

Andrew is currently completing a term as Senior Research Fellow with the Ontario Government's Panel on the Role of Government. He will join the Faculty as Assistant Professor in January 2004, and will be teaching in the areas of environmental law and international trade law.

– Prof. Jutta Brunnée

Law school gains a new voice in moral philosophy and legal theory

PROF. SOPHIA REIBETANZ

Sophia Reibetanz, who was both an undergraduate in Philosophy at U of T as well as a student in the Faculty of Law, is returning to the University of Toronto as assistant professor with a joint appointment in the Faculty of Law and the Department of Philosophy. While a law student, Sophia distinguished herself not only academically but also as a leader in organizing reading groups, editing the Law Review, mooting, and participating in the Rwanda Working Group. Between her two stints at the University of Toronto, Sophia did graduate work in moral and political philosophy at Oxford, where she received a B. Phil., and at Harvard where she was awarded her doctorate. Since her graduation from the Faculty of Law, she has been clerking for Chief Justice McLachlin at the Supreme Court of Canada. She is also an Associate of the Oxford Centre for Ethics and Philosophy of Law. Sophia brings to the Faculty a set of varied but interconnected scholarly interests. Her current research in moral philosophy focuses on problems of responsibility for action and belief, and her current projects in law focus on aspects of tort theory and on the application of philosophical conceptions of equality to the Charter and to anti-discrimination law in the private sector. Through her studies, her publications and her papers, Sophia has already been recognized by leading scholars in Canada, the United States and England as a powerful new voice in moral philosophy and legal theory. She exemplifies the Faculty's commitment to interdisciplinary legal scholarship by being the third member of the Faculty who presently holds a joint appointment with the Department of Philosophy. The Faculty of Law at the University of Toronto is already well-known as one of the pre-eminent centres for scholarship in legal theory. By strengthening an already very strong group, Sophia's arrival helps ensure that pre-eminence will continue well into the future.

– Prof. Ernest Weinrib

Lee a stellar new addition to the Faculty

PROF. IAN LEE

Ian Lee has a solid pedigree at the University of Toronto, having finished a B. Comm. in 1991 at Trinity College focusing on economics and finance. In addition to winning the prize for the highest third year average at Trinity, Ian earned no fewer than *eight* scholarships and *four* other awards in economics, commerce, and finance. Entering the Faculty of Law in 1991 with a three-year scholarship from Borden & Elliot, Ian graduated in 1994, having garnered second place standing in his third year, the James B. Milner bronze medal, and five other prizes. He did this while he was the Associate Editor of the Faculty of Law Review and a member of the first place team at the Laskin Moot. Ian's career since graduation is equally impressive. Ian clerked for two years, first for the Hon. Justice Mark MacGuigan in 1995-96, and then for the Hon. Justice Claire L'Heureux-Dubé 1996-97. After a year as a legal researcher for the Privy Council Office in 1997-98, Ian did a tour of duty at Sullivan and Cromwell in New York and Paris, acting as a corporate and securities lawyer (with a focus on mergers and acquisitions and corporate finance) in 1998-2000 and 2001-2003. In 1998 Ian picked up an LL.M. at Harvard (researching state liability for breaches of EC law), working at the same time as a teaching fellow in the Department of Government. Ian's catholic interests include corporate law, constitutional law, and European Union law. These bald facts convey some, but not the full measure of Ian's potential as an academic Master of the Universe. In addition to a publication in the Canadian Bar Review, Ian has already placed an article on insider trading in the Columbia Business Review. He is a stellar addition to the faculty and only time stands between Ian and his academic black belt. A hearty welcome, Ian!

– Prof. Jeff MacIntosh

U of T's Clinic Director honoured by the Law Society

Judith McCormack, Executive Director of the Faculty of Law's flagship clinic, Downtown Legal Services (DLS), was one of this year's recipients of the Law Society of Upper Canada's Law Society Medal. It is the Society's top honour, and one that is bestowed "for outstanding service within the profession whether in a particular area of practice, the academic sphere, or in some other professional capacity where the service demonstrates the highest ideals of the legal profession."

Such a description nicely suits McCormack, head of DLS since 2001. Her broad-based experience gained in private practice and with the Ontario Labour Relations Board before coming to DLS has meant that she speaks widely and publishes regularly in her areas of expertise: administrative law, labour law and alternative dispute resolution. She also writes short fiction. Described by Nino Ricci as a "joy to read," her work has been widely acclaimed. Her latest collection of short stories, The Rule of Last Clear Chance (The Porcupine's Quill), was launched on May 1st.

"I'm quite honoured and surprised," says McCormack about the award. "It's especially wonderful because it reflects a continuing appreciation for public interest law on the part of the Law Society." In applauding McCormack's achievement Dean Ron Daniels said that "in the short time that Judith has been heading the Clinic, she has amply demonstrated the characteristics and qualities that make her an ideal recipient of this honour."

JUDITH McCORMACK

U of T law grads top list of Canada's best general counsel

What does it take to be one of Canada's top 25 general counsel? According to the Lexpert/National Post feature that ran in the newspaper on April 30th, it takes three things: outstanding legal/business judgement skills; participation as a lead player in major corporate transactions; and general participation as an important member of the corporate team. On this scale two of the best general counsel in the country this year are U of T law graduates: Deborah A. Alexander and Albrecht W.A. Bellstedt. Alexander, executive vice-president and general counsel for the Bank of Nova Scotia, graduated with the Class of '75. Bellstedt, executive vice-president law & general counsel for TransCanada Pipelines Ltd., graduated with the Class of '72. Both of them credit the education they got at U of T for much of their success. "The standard of teaching and the standard of the students were extremely high," says Alexander. Likewise, Bellstedt praises the law school for giving him a "great grounding in corporate and securities law."

DEBORAH A. ALEXANDER '75

ALBRECHT W.A. BELLSTEDT '72

In Memoriam

This past year, the untimely deaths of two young law graduates, Eric Yolles and Gina Caldarelli, were met with sadness and a deep sense of loss by the law school community.

ERIC YOLLES '92

Eric Yolles, a 1992 graduate, died of brain cancer at age 37 on February 14, 2003. Following law school, Eric briefly practised corporate and securities law at Torys before seeking new challenges in management consulting with the prestigious Boston Consulting Group. Eric was blessed with rare insight and could always be counted on to provide an objective, thoughtful perspective. He had an extraordinarily uncluttered mind and a love of logic that served him well in all that he undertook, but particularly during his brief career as a lawyer where his performance was exemplary. Eric's incisiveness, sensitivity and acerbic sense of humour illuminated the lives of all who knew him.

GINA CALDARELLI '97

Gina Caldarelli, of the Class of 1997, passed away at the age of 30 on January 20, 2003. A fun-loving and spirited student, Gina had countless friends and was well known for her casual cheerfulness and warm disposition. While she wasn't studying, she was running pubs for the Student's Law Society, arguing cases for clients at Advocates for Injured Workers, performing for Law Follies, mooting, or just making fellow students and friends laugh. Following graduation, Gina worked at Osler, Hoskin and Harcourt, where her empathy for clients and ability to analyze complex legal issues served her well. A prize in Gina's memory has been established by friends and family.

Law Students Have Diverse Political Visions for Canada

If given the opportunity to be Canada's prime minister, would your political vision include tax relief for Canada's wealthiest citizens, or more social welfare initiatives supported by increased taxes? It depends on whether you ask fourth year JD/MBA student, Richard Meloff, or second year law student Robin Rix.

Both are past winners of the prestigious Magna International Ltd. national essay competition. The contest - which comes with a $20,000 cash prize, and a year-long internship at the auto-parts giant valued at $50,000 – asks, "If you were the Prime Minister of Canada, what political vision would you offer to improve our living standards and ensure a secure and prosperous global economy?"

Meloff, who won the competition in 2000 with a libertarian platform, and Rix who won in 2002 with a more interventionist agenda, were chosen from among thousands of contestants who held vastly diverse political views on everything from health care and taxation to government leadership and civic participation. Meloff's essay, The 21st century belongs to Canada (full version at www.law.utoronto.ca) set out a ministerial agenda that would end what he calls a punitive personal and corporate tax regime, create a private alternative to health care, and reform our electoral system. To help steer the country to greener pastures, Meloff wrote relief was needed across-the-board, but especially for Canada's entrepreneurs. "The problem with overtaxing corporations and small businesses" Meloff says, "is that these companies simply decide to leave Canada, taking with them their expertise, determination and job-creation potential. As well, potential entrepreneurs are deterred from even starting an enterprise, and this results in fewer emploment opportunities".

At the opposite end of the spectrum, Rix, who has a B.A. in history and English, and a master's degree in European Politics, advocated in his essay An Ounce of Prevention: Long-term Policies for Canada (full version at www.law.utoronto.ca) for an increase in funds for illness prevention, a liberalization of trade, and an infusion of money into capital projects. Like Meloff, Rix proposed tax reform. However, unlike Meloff he did not support a reduction in the overall taxation level. "While some Canadians are dissatisfied that they pay, on average, more taxes than their American counterparts, there may be compelling reasons to support this discrepancy," Rix wrote. "Taxes allow governments to raise revenues for projects, such as health care and education, which would not otherwise be funded on account of difficulties associated with collective action. Taxes also redistribute wealth, from the more fortunate to the less fortunate, such as people who are unable to work or to find work. Generally, most Canadians, including myself, believe that a higher taxation level is preferable to the alternatives of reduced social spending or deficits."

The two essayists were also on opposite ends of the political spectrum on the issue of health care. Meloff advocated a privatized, competitive health care system based on the notion of Medical Savings Accounts (MSAs), which "could buy the neediest into a free-market system rather than buying 30 million Canadians into a universal system." Rix's prime ministerial vision included universal funding available for the prevention of illnesses, so that less funding will be required for treatment in the future. "While it's true that MSA's may provide some short-term savings by providing a disincentive to people unnecessarily seeing their physicians, at the same time a lot of people will end up foregoing checkups and accessing diagnostic services," Rix noted in an interview with Nexus. "And the treatment for what they've missed will cost the system a lot more money in the future than it will save in the present."

ROBIN RIX

RICHARD MELOFF

Faculty Notes

Jutta Brunnée

Jutta Brunnée's research and writing continues to focus on international law and international environmental law. She published "COPing with Consent: Lawmaking under Multilateral Environmental Agreements," (2002) 15 *Leiden Journal of International Law* 1-52, and "The Changing Nile Basin Regime: Does Law Matter?" (2002) 43/1 *Harvard International Law Journal* 105-159 [with S.J. Toope]. With volume 11 of the *Yearbook of International Environmental Law* (2001), she completed her term as Editor-in-Chief of this Oxford University Press publication. She is now working on another major editorial venture, the *Handbook of International Environmental Law,* which will appear in Oxford University Press' flagship Handbook series. Under the auspices of a SSHRC Standard Research, she continues to work with Professor S. J. Toope on issues at the intersections of international law and international relations theory. The theme of the three-year grant, awarded in 2002, is "Interactional International Law: Shaping International Society."

Jutta Brunnée has also been active as a speaker in academic conferences and judicial education events. She presented: "Reconciling Trade Law and International Environmental Law in the Free Trade Area of the Americas," to the Conference on "Greening the FTAA: Towards the Protection of Ecological Integrity in our Hemisphere," at McGill University (March 2003); "Promoting Compliance with Multilateral Environmental Agreements: The Kyoto Protocol Compliance Regime in Context," to the International Conference on "Common But Differentiated Responsibilities in the Protection of the Global Climate," Kagawa University, Japan (December 2002); and "The Stockholm Declaration and the Structure and Processes of International Law," to the Conference on the "Stockholm Declaration and the Law of the Marine Environment," Stockholm (May 2002). Professor Brunnée delivered seminars on the domestic application of international law to judicial education sessions for the Ontario Court of Appeal, the Federal Court of Canada, and the B.C. Supreme Court and Court of Appeal (with S.J. Toope), and a presentation on "Promoting Compliance with Multilateral Environmental Agreements," to the Canadian Bar Association 3rd Annual International Law Conference, Ottawa (May 2002).

Bruce Chapman

Over the past year Professor Chapman has continued with his research into theories of rational decision-making for which he was awarded a SSHRC grant in 2000. In March 2002 he presented his paper *"Rational Choice and Categorical Reason"* at a Symposium on "Preferences and Rational Choice: New Perspectives and Legal Implications" at the University of Pennsylvania Law School. The paper will appear in *151 University of Pennsylvania Law Review* (2003). In April 2002 he presented his paper *"Rational Aggregation"* at the Annual Meeting of the European Public Choice Society, Belgirate (Lago Maggiore), Italy. This paper has now been published in *1 Politics, Philosophy, and Economics* (2002). He also presented his comment *"The Preliminary Reference Procedure and Sophisticated Choice"* on a paper "National Courts and the European Court of Justice: A Public Choice Analysis of the Preliminary Reference Procedure" by George Tridimas at the Belgirate meeting. In December 2002, he presented his paper *"Rational Commitment and Legal Reason"* at the University of Frankfurt. This paper will be published in a book edited by Gunther Teubner and Oren Perez called *Paradoxes and Self-Reference in the Law* (Hart 2003). He also published his paper *"Aggregating Reasons"* in *3 Revista Argentina de Teoria Juridica* (July 2002).

In addition to this research on rationality, Professor Chapman also worked on his paper *"Economic Analysis of Law and the Value of Efficiency",* which is forthcoming in Aristides N. Hatzis ed. *Economic Analysis of Law: A European Perspective* (Elgar 2003), published his paper *"Responsibility and Fault as Legal Concepts" 12 King's College Law Journal* (2001), and was invited to discuss the work of the philosopher Robert Nozick at a seminar near Bozeman, Montana in May, 2002.

Sujit Choudhry

Teaching

Professor Choudhry taught a new first year elective, "Transnational Legal Problems", as well as two seminars, "Conflicts of Interest in Medicine" and "Concepts in Constitutionalism".

Academic Honours

Prof. Choudhry was appointed a Senior Fellow at Massey College.

Publications

Over the last year, Prof. Choudhry published articles in the *Journal of Political Philosophy,* the *Annals of Internal Medicine,* the *University of Toronto Law Journal,* and *Constitutional Forum.* In addition, he had articles accepted to the *International Journal of Constitutional Law,* the *Journal of Medical Ethics,* the *Osgoode Hall Law Journal,* the *McGill Law Journal,* and *Constitutional Forum.*

Public Policy Activities

Prof. Choudhry served as a consultant to the Romanow Commission, and prepared a discussion paper on the modernization of the *Canada Health Act* that served as the basis for many of the Commission's recommendations. In March 2003, he traveled to Sri Lanka as part of a team of constitutional experts assisting in the negotiations currently underway. As well, he was appointed Chair of the Advisory Board of the South Asian Legal Clinic of Ontario.

Presentations

Prof. Choudhry presented papers at the National Policy Research Conference in Ottawa, an Association of Canadian Studies conference on the Charlottetown Accord in Montreal, New York University, the University of Alberta, the University of Cape Town, and Witswatersrand University (South Africa).

Rebecca Cook

Rebecca Cook co-directs the Programme on Reproductive and Sexual Health Law with Professor Dickens, which sponsored four masters and one doctoral student who graduated last year. She continues to collaborate with the University of the Philippines, which published the following, resulting from teaching there during a recent sabbatical: *Proceedings of the Short Course on Reproductive Health, Rights, Ethics and Law for Health Professionals,* Manila: University of the Philippines, 2002, 87pp; and *Proceedings of the Short Course on Reproductive Health, Rights, Ethics and Law for Law Professionals,* Manila: University of the Philippines 2002, 163pp. Among 17 publications during 2002, her work with the Danish Centre for Human Rights resulted in the publication of: a review of the norms on reproductive and sexual rights, including case law, that have emerged in the European system, which she compiled with Julie Stanchieri, (00), Isfahan Merali (96), Dina Bogecho (01); a paper from a conference organized by the Danish Centre on discrimination: "Compliance with Reproductive Rights," in *Discrimination and Toleration: New Perspectives,* Kirsten Hastrup and George Ulrich (eds.), The Hague: Kluwer Law International, 2002, 229-256.

As the ethical and legal co-editor of the International Journal of Gynecology and Obstetrics, she authored (with Professor Dickens) 4 articles, including one with Dr. Mahmoud Fathalla, Assiut University, Egypt, "Female Genital Cutting (Mutilation/ Circumcision): Ethical and Legal Dimensions," *International Journal of Gynecology and Obstetrics* 79: 281-87 (2002). She presented her most recent findings from research on "Human Rights Dimensions of Access to Health Services" at the World Association for Medical Law Congress, Maastricht, Netherlands, in August, 2002. She presented research on "Duties to Adopt Temporary Special Measures under the Convention on the Elimination of All Forms of Discrimination against Women" at a Seminar of the UN Committee on the Elimination of Discrimination against Women, organized by Maastricht University, the Netherlands, in October, 2002. Professor Cook was recently appointed to the Board of Directors of Rights and Democracy, Montreal.

Brenda Cossman

In the Fall of 2002 Brenda was a visiting professor at Harvard Law School. Over the past year she also wrote a number of books and articles including: Privatization, Law and the Challenge of Feminism, ed, with Judy Fudge (Toronto: University of Toronto Press, 2002); "Disciplining the Unruly: Sexual Outlaws, Little Sisters and the Legacy of Butler" University of British Columbia Law Review (2002);"Lesbians, Gay Men and the Charter of Rights and Freedoms" (2002) 40 Osgoode Hall Law Journal; and "Sexing Citizenship, Privatizing Sex" (2002) 6 Citizenship Studies 365. Adding to an already busy schedule, Brenda also presented at the following conferences and symposia: "Family Feuds: Neo-Liberal and Neo-Conservative Visions of the Reprivatisation Project" Faculty Seminar Series, Harvard Law School, November 2002; "Sexing Citizenship, Privatizing Sex" Subversive Legacies Conference, Texas Law School, November 2002; "Mapping Sexuality and Equality: What Do We Want From Feminist Legal Theory Today?" with Janet Halley, Harvard Law School, November 2002; "Untying the Knot: Should the State remain Wedded to Marriage?" with Bruce Ryder, Joint Annual Meetings of the American Association of Law and Society and the Canadian Association of Law and Society, Vancouver, June 2002; and "Secularism and the Protection of Religious Minorities in India", Symposium Addressing the Legal Rights of Minority Communities" New York University Law School, April 2002.

Bernard Dickens

Bernard Dickens has completed a busy year of research, publication and international travel for conference presentations and consultation, including separate visits to Cairo in May 2002 and February 2003, and to Trinidad (April 2002), the Netherlands (August 2002), England (October 2002), Colombia (February 2003) and England (March 2003) in addition to monthly attendance in Ottawa as chairman of Health Canada's Research Ethics Board.

His seventeen publications appearing since March 2002 include: (with Professor Rebecca Cook) "The Injustice of Unsafe Motherhood" 2 *Developing World Bioethics* (2002) pp. 64-81; "Can Sex Selection Be Ethically Tolerated?" [Editorial] 28 *Journal of Medical Ethics* (2002) pp. 335-6; "Codes of Conduct and Ethical Guidelines" in Health Theme in *Encyclopedia of Life Support Systems* (EOLSS), Oxford ,UK: Eolss Publishers, 2002 [http://www.eolss.net]; "Ethical Issues Arising From the Use of Assisted Reproductive Technologies" in *Current Practices and Controversies in Assisted Reproduction,* E. Vayena, P.J. Rowe, P.D. Griffin, eds., Geneva: World Health Organization, 2002; pp. 333-348. Online at http://www.who.int/reproductive-health/infertility/report_content.htm
(with Professor Rebecca Cook and Dr. Mahmoud Fathalla), "Female Genital Cutting (Mutilation/ Circumcision): Ethical and Legal Dimensions," 79: *International Journal of Gynecology and Obstetrics* (2002), pp. 281-87; "Genetics and Artificial Procreation in Canada," In *Biomedicine, The Family and Human Rights.* M-T. Meulders-Klein, R. Deech, and P. Vlaardingerbroek (eds.), The Hague: Kluwer Law International, 2002, pp. 87-105; (with Professor Rebecca Cook) "Human Rights Dynamics of Abortion Law Reform," *Human Rights Quarterly* 25 (2003) pp. 1-59; and (with Professor Rebecca Cook) "Patient Care and the Health-Impaired Practitioner," 78: *International Journal of Gynecology and Obstetrics* (2002), 171-177. A publication highlight has been completion of a three-year project on the book, co-authored with Professor Rebecca Cook and Dr. Mahmoud Fathalla of Assiut University, Egypt, entitled *Reproductive Health and Human Rights: Integrating Medicine, Ethics and Law* (Oxford: Clarendon Press, Oxford University), a 560-page text due to be published in late March or April 2003.

Abraham Drassinower

Publications

"A Rights-Based View of the Idea/Expression Dichotomy in Copyright Law," (January 2003) *Canadian Journal of Law and Jurisprudence* 3-21; *Freud's Theory of Culture: Eros, Loss, and Politics* (Lanham, Maryland: Rowman & Littlefield, 2003); "Labour and Intersubjectivity: Notes on the Natural Law of Copyright," *Legal Scholarship Network* (online), *Stanford/Yale Junior Faculty Forum* special issue; "The Doctrine of Political Purposes in the Law of Charities: A Conceptual Analysis," in B. Chapman, J. Phillips and D. Stevens, eds., *Between State and Market: Essays on Charities Law and Policy in Canada.* (Montreal: McGill-Queen's, 2001); "Unrequested Benefits in the Law of Unjust Enrichment" (1998) 48 *University of Toronto Law Journal* 459-488.

Presentations

"A Rights-Based View of the Originality Requirement in Copyright Law," presented at Center de recherche en droit public, Faculté de droit, Université de Montréal; "Patents, Property, and Ethics: A Comment," presented at "Patenting Higher Life Forms: Reactions to the Harvard Mouse Decision," Harvard Mouse Symposium held at the University of Toronto Faculty of Law and organized by the Centre for Innovation Law and Policy and the Canadian Business Law Journal; "Recent Developments in Canadian Copyright Law," presented at "The Public Voice in Internet Policy Making," Electronic Privacy Information Centre (EPIC) Conference, Washington, D.C; "Labour and Intersubjectivity: Notes on the Natural Law of Copyright," presented at Stanford/Yale Junior Faculty Forum, Stanford University School of Law; "Focusing on the Future," presented at "IP/Copyright Colloquium: The Next Decade," Office for Partnerships for Advanced Skills (OPAS) Conference, Glendon Campus, York University.

David Duff

Professor Duff completed his textbook/casebook, *Canadian Income Tax Law,* which was launched at Bar Italia December 3, 2002. He also completed a major research project for the Department of Justice on the effect of a bijural legal system on the interpretation and amendment of the federal Income Tax Act, to be published in a forthcoming issue of the Canadian Tax Journal as *"The Federal Income Tax Act and Private Law in Canada: Complementarity, Dissociation, and Canadian Bijuralism"*. Professor Duff also competed the following papers and comments: "Tax Treatment of Charitable Contributions in Canada: Theory, Practice, and Reform"; "Recognizing or Disregarding Close Personal Relationships Among Adults? The Report of the Law Commission of Canada and the Federal Income Tax Act" (2002), 50 *Canadian Tax Journal* 1021-30; "Special Federal Tax Assistance for Charitable Donations of Publicly Traded Securities: A Tax Expenditure Analysis" to be published in the Canadian Tax Journal; and "Judicial Application of the General Anti-Avoidance Rule in Canada: *OSFC Holdings v. The Queen*", to be published in the *Bulletin for International Fiscal Documentation.*

Professor Duff served as co-editor of the "Current Tax Reading" section of the Canadian Tax Journal, and lectured on "Tax Issues Affecting Partnerships" at the Canadian Bar Association's Tax Law for Lawyers Conference in Niagara-on-the-Lake in May 2002, and at a Canadian Bar Association Continuing Legal Education seminar in November 2002. He is currently writing a paper on "Tax Policy and Global Warming" to be delivered at the Fourth Global Environmental Tax Conference in Sydney, Australia in June 2003, and a paper on "Benefit Taxes in Theory and Practice" for the Panel on the Role of Government.

Anthony J. Duggan

Appointment

Associate Dean, Faculty of Law, University of Toronto from 1 July 2002

Publications

Commercial and Consumer Sales Transactions: Cases, Text and Materials (with Jacob S. Ziegel) (4th edition Emond Montgomery Publications, Toronto 2002); *Secured Transactions in Personal Property and Suretyships: Cases, Text and Materials* (with Jacob S. Ziegel and Ronald C.C. Cuming) (4th edition, Emond Montgomery Publications, Toronto, 2003); "Unconscientious Dealing, Misrepresentation" and "Undue Influence" in Patrick Parkinson (ed.), *The Principles of Equity* (2nd edition, Lawbook Company Sydney Australia, 2003), pp 127, 167 and 393; "Patent Security Interests: Costs and benefits of Alternative Registration Regimes" (2002) 37 *Canadian Business Law Journal* 165.

Conference papers

Commercial Law and the Limits of the Black Letter Approach, Seminar on Commercial Law, London School of Economics, November 2002.

Government submissions

Submission on Bill 180 to the Ontario Legislative Assembly and to the Committee on Finance and Economic Affairs (with Jacob S. Ziegel, Vaughan E. Black and Thomas G.W. Telfer) (December, 2002).

David Dyzenhaus

Publications

"Transitional Justice", International Journal of Constitutional Law; "Judicial Independence, Transitional Justice and the Rule of Law", Otago Law Review; "Formalism's Hollow Victory", New Zealand Law Review

Other Activities

Law Foundation Lecture, University of Auckland, "With the benefit of hindsight: law, judges and justice in the South African transition"; "Formalism's Hollow Victory", Faculty Workshop at Faculty of Law, University of Auckland, and Faculty of Law, University of Otago; "Humpty Dumpty Rules or the Rule of Law", keynote address, Australian Society for Legal Philosophy, Australian National University; "The Genealogy of Legal Positivism", Conference at Queen's University to mark the retirement of Alistair MacLeod; "The Dilemma of Legality and the Moral Limits of Law", Law and Society Workshop, Amherst College; Organised international conference on administrative law, "The Authority of Reasons", held at the Law Faculty in January; Associate Dean (Graduate Studies) since July.

Colleen Flood

As well as teaching several courses, organizing the first year Bridge Week on the Human Genome Project, developing the health law and policy group and seminar series, and supervising graduate work, Colleen made a number of presentations at meetings and symposia over the past year, including the following: "Private Financing? Private Delivery? Two Tier Healthcare?", National Healthcare Leadership Conference, Halifax, May 2002; "Prescriptions from Downunder: Can Canada Import Australia's Pharmaceutical Benefit Scheme?," Institute for Research in Public Policy, "National Aspects of Pharmacare", September 2002, Toronto; "Strengthening the Foundations: Securing the Modernity of the Canada Health Act" Alberta Health Law Institute, 25th Anniversary Conference, September 2002; "Lessons from Australia's National Pharmacare Plan", the Patent Medicines Review Board Meeting, Ottawa, October 2002; "Directions for Change", the Invitational Workshop on a National Health Council, March 2003; and "Who Decides What Is In and Out of Medicare"? Dalhousie Faculty of Law, April 2003.

Colleen was also invited to provide expertise for a variety of commissions and governments on health care reform including the Senate Committee and the Romanow Committee. She also provided input to the CBC for the duration of the build-up and release of the Romanow report; Rogers TV public access channel on "The State of Health Care"; and various television and radio interviews with the CBC to discuss the Romanow recommendations including the National. Colleen has also published two books: International Health Care Reform: A Legal, Economic and Political Analysis, (Routledge: London, 2000) which is being rereleased in paperback this year; and Canadian Health Law and Policy (2nd edition, Butterworths, 2002) (co-edited with Jocelyn Downie & T. Caulfield); as well as many chapers in books, articles, and conference papers. For full details please refer to the Faculty's web site at www.law.utoronto.ca.

John Hagan

Professor Hagan is presently on leave as the John D. MacArthur Visiting Professor of Sociology and Law at Northwestern University and Research Fellow at the American Bar Foundation. Last year he was a Visiting Scholar at the Russell Sage Foundation. He is the Editor of the Annual Review of Sociology, the Criminology Editor of the Journal of Criminal Law and Criminology, and a member of The National Academy of Sciences Panel on School Violence. Professor Hagan's principal research and teaching interests encompass Law and Society and Criminology. His most recent book is *Justice in the Balkans: Prosecuting War Crimes in The Hague Tribunal* (University of Chicago Press, forthcoming, fall, 2003). The book examines how leadership figures at The Hague Tribunal's Office of the Prosecutor have transformed an international social movement for human rights in the Balkans into a path-breaking legal institution and helped to establish a new transnational legal field. The book provides an in-depth analysis of the investigation and prosecution teams at the ICTY and demonstrates that successful leadership can be understood as a collective creation of shared social purpose. Hagan's other recent book is *Northern Passage: American Vietnam War Resisters in Canada* (Harvard University Press, 2001).

Doug Harris

Upon joining the Faculty in July 2002, Doug Harris became the Director of the Capital Markets Institute (CMI), a joint initiative of the Faculty of Law and the Rotman School of Management that undertakes and sponsors policy research and analysis to develop a comprehensive capital markets strategy for Canada. In October, the CMI released a major paper on securities regulatory structure that was written by Doug and edited by James Baillie, Counsel at Torys LLP and a member of the CMI's Advisory Board. The release of the paper coincided with the announcement by the federal government that Harold MacKay had been appointed special representative to the Minister of Finance to recommend a process for reforming Canada's securities regulatory system. Doug and other CMI personnel met with Mr. MacKay on the day the paper was released, and an excerpt from the paper was included in Mr. MacKay's final report. The paper attracted significant media attention for the CMI and the Faculty, including appearances by Doug on ROBTv in October 2002 and in January 2003.

Doug presented a paper on the subject of securities regulation and the internal common market for capital at the Faculty's 32nd Annual Workshop on Commercial and Consumer Law in October, and a version of that paper will be published this year in the Canadian Business Law Journal.

In February 2003, Doug presented his paper "The TSX Technology Company Listing Standards as a Response to the 'Hot Issue' Market of 1995-2000" at the *Law and Economics Workshop at the Faculty.*

Edward Iacobucci

Publications

"Privatization and Accountability" (2003) 116 Harvard Law Review 1422 (Co-author: Michael Trebilcock); "Tying as Quality Control: A Legal and Economic Analysis", forthcoming, Journal of Legal Studies, 2003; "National Treatment and Extraterritoriality: Defining the Domains of Trade and Antitrust Policy", forthcoming, American Enterprise Institute, 2003; *The Law and Economics of Canadian Competition Policy* (University of Toronto Press, 2002) (Co-authors: Michael Trebilcock, Ralph Winter and Paul Collins).

Other Activities

Professor Iacobucci was a John M. Olin Fellow at Columbia University Law School from January to April, 2002 and was a Visiting Professor at University of Chicago Law School from January to June, 2003. In the past year, he made presentations at the Canadian Law and Economics Association's Annual Meeting, Columbia University, the University of Michigan, the University of Virginia, the University of Chicago, Northwestern University and at the American Law and Economics Association's Annual Meeting at Harvard University.

Brian Langille

Profeesor Langille presented a paper "What is the ILO, and Why?" at the Michigan Law School in March 2002; chaired an author meets critics panel at the Law and Society meetings in Vancouver (with Steve Winter and his book A Clearing in The Forest); also presented at the same meetings a brief paper "What Questions the ILO's World Commission on the Social Dimension on Globalization Should Be Asking Itself". In connection with this very question he organized in Toronto a meeting in May for the heads of the research secretariat of the Commission, presented one paper ("Regulatory Frameworks in the Global Economy - An Overview of Issues") and attended two meetings of the Commission's "knowledge networks" in Geneva in November 2002 and February 2003, and wrote a paper on a possible framework for the Commission entitled "The Grammar of Globalization" (December 2002). In September 2002 he traveled to Stockholm for the meeting of the executive of the International Society for Labour Law and Social Security of which he is a member. Professor Langille also organized a panel of international experts on International Labour Obligations in Toronto for the Department of Foreign Affairs and International Trade in March 2002 and also wrote a report for that Department entitled THE COHERENCE AGENDA: A POSITIVE APPROACH TO INTERNATIONAL LABOUR OBLIGATIONS (April 2002). For Human Resources Development Canada he presented a paper entitled " Formal and Informal Labour Markets -Do North and South America Have Anything to Say to each Other?" to the meeting of the Labour Ministers of the Americas in Montreal in October 2002. In February he delivered to that department a study entitled CREATING COMPETITIVE SOCIETIES AND ECONOMIES- CORE LABOUR RIGHTS, THE FTAA, AND DEVELOPMENT. He presented this study to the meeting of the Labour Ministers of the Americas Meeting in Montevideo Uruquay in March 2003, and also presented a paper "Foreign Direct Investment and Labour Rights"

at the Columbia Law School in the same month. He was also invited to contribute to and published a short piece "Down and Out in Doha - and Geneva?" in (2002) 2 Global Social Policy. He also continued his work as the Canadian Editor of the International Labour Law Reports published by Kluwer International and as a member of the editorial committee for the next edition of LABOUR LAW: CASES AND MATERIALS. He was also invited to join and is a member of an SSHRC funded major collaborative research initiative on "Rethinking Institutions for Work and Employment in the Global Era" based at the University of Montreal. He also continued to serve on the Governing Council of the University of Toronto as well as on its Business Board and its Executive Committee. On July 1, 2002 he ended his term as Associate Dean, Graduate Studies (and returned to the trenches.)

Trudo Lemmens

Throughout the year, Professor Lemmens has continued his work on the regulation of human subjects' research and on the legal and ethical dimensions of new biotechnology. Several publications have appeared or are forthcoming in the *Journal of Law, Medicine & Ethics,* the *American Journal of Bioethics* and the *Encyclopedia of the Human Genome;* or are published as chapters, including: "Research Involving Humans" (with K.C. Glass in *Health Law in Canada,* 2nd ed., J. Downie, T. Caulfield & C. Flood, eds., Toronto: Butterworths, 2002 pp. 459-500); and "Culturally-Sensitive Compensation in Clinical Research." (with R. Nwabueze, in International Research Ethics, Bethesda: NIH, forthcoming). As co-chair of the Legal and Ethical Subcommittee of the Ontario Provincial Advisory Committee on New Predictive Genetic Information, Professor Lemmens drafted, with Mireille Lacroix and others, a report entitled *Legal and Ethical Challenges of New Predictive Genetic Testing.*

He was invited by various universities, the Ontario Health Bar Association, the National Judicial Institute, Health Canada and the U.S. National Institutes of Health to present his work in Toronto, Ottawa, Montreal, Edmonton, Bethesda, Minneapolis, and Neuchâtel (Switzerland). His community service included chairing a committee that evaluated the adherence of various institutional policies to the Tri-Council Policy Statement and serving as a member of the National Research Ethics Committee of the Canadian HIV/AIDS Trials Network.

In the fall, Trudo Lemmens successfully defended his doctoral dissertation (D.C.L.) entitled *Genetic Information and Insurance: A Contextual Analysis of Legal and Regulatory Means of Promoting Just Distributions.* More recently, with Dr. Duff Waring, he received a *Legal Dimensions Initiative Award* from the Law Commission of Canada to write a paper on the role of law in the evaluation of research risks. And in 2003, Professor Lemmens was invited to become a member of the Institute for Advanced Studies in Princeton and to spend the academic year 2003/4 in the Institute.

Jeff MacIntosh

Professor MacIntosh concluded his term as Director of the Capital Markets Institute before going on sabbatical for the 2002-2003 academic year. In the past year, Professor MacIntosh published a textbook on securities regulation (with Chris Nicholls of Dalhousie Law School; this is part of the "Essentials

of Canadian Law" series published by Irwin Law). He also published three chapters (all dealing with venture capital) in books produced by the Oxford Press, New York University, and Elsevier Press. In addition, he published an article in the International Review of Law and Economics on the reasons why Canadian firms sometimes choose to reincorporate from one jurisdiction to another. This paper (co-written by Doug Cumming of the University of Alberta) also conducts an event study which finds that reincorporations are generally associated with material increases in share price. Another paper on venture capital (with Douglas Cumming) was accepted for publication by the University of Toronto Law Journal and is currently in press. Professor MacIntosh also co-authored (with Douglas Cumming) three new papers, one of which extends the empirical evidence relating to reincorporation decisions, and two of which deal with Labour Sponsored Venture Capital Corporations ("LSVCCs"). One of these papers examines the governance structure of LSVCCs, and produces evidence that the profitability of LSVCC funds has been extremely poor compared to other funds and relevant market indices. The other produces empirical evidence that shows that, contrary to legislative intention, LSVCCs have not expanded the aggregate pool of venture capital in Canada. Professor MacIntosh also produced revised materials for both "Securities Regulation" and "Small Firm Financing". Professor MacIntosh was the first Ronald G. Smith lecturer on business law at the Dalhousie Law School of Dalhousie University, in March of 2003. His lecture examined the governance structure and performance of Labour Sponsored Venture Capital Corporations.

Audrey Macklin

Publications

"Deconstructing Engagement: Corporate Self-Regulation in Conflict Zones" (co-author). Report funded by Social Sciences Humanities Research Council and Law Commission of Canada, January 2003; "Dancing Across Borders: Exotic Dancers, Trafficking and Immigration Policy, (2003) 37(1) International Migration Review (forthcoming); "Our Sisters from Stable Countries: War, Globalization and Accountability, Social Politics (forthcoming); "Mr. Suresh and the Evil Twin", (2002) 20(4) Refuge 15-22; "Public Entrance, Private Member: Privatisation, Immigration Law and Women", in J. Fudge and B. Cossman, eds., Privatisation, Feminism and Law (Toronto: U of T Press, 2002).

Other Activities

Canada-US Memorandum of Agreement", Recent Developments in Refugee Law, Metropolis National Conference, Edmonton, 23 March 2003; "Law and the Encultured Subject", Ethnic and Pluralism Studies Speaker Series, 17 January 2003 "The

Governance Gap: Human Rights Obligations of Transnational Corporations Operating in Conflict Zones", SSHRC/Law Commission of Canada Roundtable, 19 October 2002; "Rights, Risk and Refugees", Policy Research Initiative Annual Conference, Ottawa, 24-25 October 2002; "Are There Migration Solutions to the Problem of Terrorism?", Metropolis International Conference, Oslo Norway, 09-13 September 2002; Mission to Israel and Occupied Territories (focus on women), sponsored by International Centre for Human Rights and Democratic Development, 06-13 August 2002; "Impermanent Residence", L'Avenir du droit de l'immigration au Quebec et au Canada, AQAADI , 7 June 2002; "Female Genital Mutilation and Canadian law", Sudanese Women's Association of Niagara", June 2002, January, March 2003; "Language Acquisition Policies for Newcomers: Canada and Austria Compared", Canadian Studies Conference, Innsbruck Austria, 02-05 May 2002; "This Law is My Law: The Criminalization of FGM in Canada", Female Circumcision: Multicultural Perspectives, Bellagio, Italy (Rockefeller Foundation) 29 April-2 May 2002; "Immigration and Security in the Immigration and Refugee Protection Act" Federal Court of Canada, National Judicial Institute, Ottawa, 10 May 2002.

Jennifer Nedelsky

In October, 2002, Profesor Nedelsky attended a conference in Moscow on Social and Economic Rights. Most of the participants were judges from the constitutional courts of the countries of the former Soviet Union, as well as Hungary, Poland and the Czech Republic. Prof. Nedelsky delivered a paper entitled "The Challenges of Social and Economic Rights: Equality at every Level." The participants were particularly interested in the feminist component of the paper that argued that social and economic rights must not be overlaid on an existing structure of provision of care that is itself unjust. This happened to be the week of the hostage taking by the Chechens so it was an interesting and disturbing time for Prof. Nedelsky to be there. It was also her first trip to her father's homeland.

Jim Phillips

I spent the first half of 2002 on sabbatical, completing a book with my wife, Rosemary Gartner, Director of the U of T Centre of Criminology. Entitled Murdering Holiness: Religion, Gender and the Law in the Pacific Northwest, it will be published by UBC Press and the U of Washington Press this summer. We also have two "spin-off" articles from the project soon appearing, and gave lectures from it at the Universities of Victoria and Ottawa. This academic year I'm back teaching first-year property and nearly 100 students in my Trusts course. I have also been active in efforts to prevent law school tuition rising and thereby to maintain accessibility.

Jonathan Putnam

Consistent with his chair at the Centre for Innovation Law and Policy (CILP), Professor Putnam's research interests remained focused on the law and economics of intellectual property. He completed an edited book,"Innovation and Intellectual Property in the Knowledge-Based Economy" (forthcoming in 2003), based on papers given at a CILP-sponsored conference. He also completed an extended chapter on copyright, "The Economics of Digital Copyright in the Knowledge-Based Economy," and presented an extension of this research as "The Politics of Price Discrimination" in the Law and Economics seminar at the Faculty.

With financial assistance from the CILP, Prof. Putnam developed a new course, "The Regulation of High-Technology Industries," which complements his regular teaching assignments in Property and Intellectual Property. Prof. Putnam also guest-lectured at the Rotman School of Management, Osgoode Hall Law School and at conferences sponsored by York University's Shulich School of Business and Yeshiva University's Cardozo Law School. Prof. Putnam also delivered the annual Cardozo-University of Toronto Lecture in Intellectual Property, on "Waging Peace: The Settlement of Generic Pharmaceutical Patent Litigation."

In policy-related work, Prof. Putnam testified at the U.S. Federal Trade Commission-Department of Justice joint hearings on intellectual property and antitrust, on the regulation of patent pools. While serving on the board of the University of Toronto's Innovations Foundation, Prof. Putnam also authored a study of U of T's technology transfer success compared to other Canadian research universities, "An Empirical Analysis of the University of Toronto Technology Transfer Office in the North American Context.". Prof. Putnam also testified on behalf of the Canadian software company Zi Corporation, and on behalf of the startup media firm Children's Radio Network, in intellectual property-related litigation.

Denise Réaume

Professor Réaume was fortunate to have the opportunity, during the fall of 2002, to teach Negligence Law in the Akitsiraq Programme operated by the University of Victoria in Iqaluit, Nunavut. She spent a fascinating three months in Iqaluit, working with the amazing students in the programme and learning about the unique ways in which tort law can play a role in the development of Nunavut. During her time there she also gave a presentation to the local bar association on the challenges facing Nunavut in revising its official languages legislation.

Currently, Professor Réaume is visiting at the College of Law at the University of Saskatchewan as the Law Foundation Chair, where she delivered the Law Foundation Lecture on "Discrimination and Dignity". She also enjoyed spending a week at the University of Victoria as the Lansdowne visitor in February of 2003, participating in classes, giving a public lecture, and a faculty seminar. Recent publications include "Of Pigeon Holes and Principles: A Reconsideration of Discrimination Law", in the Osgoode Hall Law Journal, "Indignities: Making a Place for Human Dignity in Modern Legal Thought" in the Queen's Law Journal, "*Beaulac* and the Demise of the Political Compromise Doctrine: Have Official Language Use Rights Been Revived?", appearing in the McGill Law Journal, and "Family Matters: Mothers as Secondary Defendants in Child Abuse Actions", written with Shauna Van Praagh and appearing in a recent special issue of the Supreme Court Law Review honouring the contributions of Justice Allen Linden.

Kent Roach

Kent was a visiting professorial fellow in September, 2002 at the National University Singapore where he gave lectures on comparative anti-terrorism law and wrongful convictions. In May and September, 2002 he gave three talks in Jakarta, Indonesia to a working group drafting an anti-terrorism law. He gave the McGill Law Journal Lecture for 2002 which has been published as "Did September 11 Really Change Everything: Preserving Canadian Values in the Face of Terrorism" (2002) 47 McGill L.J. 893-947. He also gave talks on September 11 and Bill C-36 to the Ontario Superior Court, The Federal Court, the G6 billion alternative to the G8 meeting, the Centre for Innovation's Privacy and Security conference, and the Canadian consulate in New York City and at Green College. Kent was an instructor at the first Canadian judicial education seminar on preventing wrongful convictions and acted as counsel in the Federal Court of Appeal in *Chippewas of the Nawash v. Canada*. He spoke in Ottawa and Vancouver at a number of conferences on the Charter's 20th anniversary and about his book *The Supreme Court on Trial* (Toronto: Irwin Law, 2001) which was short-listed in 2002 for the Donner Prize for best public policy book. He also published (with R.J.Sharpe and K.E. Swinton) *The Canadian Charter of Rights and Freedoms* 2nd ed (Toronto: Irwin Law, 2002); (with A.von Hirsch, A. Bottoms, J.Roberts and M.Schiff) *Restorative Justice and Criminal Justice* (Oxford: Hart Publishing, 2002) (348pp); "Canada's New Anti-terrorism Legislation" [2002] Singapore J of Legal Studies 122-148;" American Constitutional Law Theory for Canadians (and the rest of the world)" (2002) 52 UTLJ 503; "Remedial Consensus and Challenge: General Declarations and Delayed Declarations of Invalidity" 35 UBCL.Rev. 211-269 and (with Sujit Choudhry) "Racial and Ethnic Profiling: Statutory Discretion, Democratic Accountability and Constitutional Remedies" (2003) 41 Osgoode Hall L.J., in addition to editorials and book reviews in the Criminal Law Quarterly.

Ayelet Shachar

Awards and Appointments

Best First Book Award, American Political Science Association, Foundation of Political Theory Section, August 2002; *Emile Noël Senior Fellow*, New York University School of Law, January-June 2003; *Distinguished Visiting Scholar*, Program in Law and Public Affairs, Princeton University, January-June 2003

Publications

"Children of a Lesser State: Sustaining Global Inequality through Citizenship Laws," in *NOMOS: Child, Family, and the State,* Iris Marion Young and Stephen Macedo eds., (New York: NYU Press, 2003); "The Thin Line between Imposition and Consent: A Critique of Birthright Membership Entitlements and their Implications," in *Breaking the Cycles of Hatred: Memory, Law and Repair,* Martha Minow and Nancy L. Rosenblum eds., (Princeton: Princeton University Press, 2002); "The Right of Return," in *Global Migration in the 20th Century: An Encyclopedia* (Oxford: ABC-CLIO, forthcoming).

Invited Lectures and Conferences

"Multicultural Citizenship", Inaugural Lecture, *in the Shared Citizenship - Theory and Practice in Canada* Public Lecture Series, Munk Centre for International Studies, U of T; "Citizenship and Demos," Public lecture delivered at The *Jean Monnet Seminar - International Law and Democracy,* New York University School of Law; "Multicultural Jurisdictions: Cultural Differences and Women's Rights" Inaugural Lecture in the R. F. Harney Lecture Series in Ethnic, Immigration, and Pluralism Studies, U of T; "The Thin Line between Imposition and Consent: Women's Rights and Group Accommodation" *American Political Science Association Meeting,* Boston, MA; "Joint-Governance Regimes in Action" Keynote Lecture, *Ethno-Religious Identities and Political Philosophy Conference* University of Amsterdam, Netherlands; *Author-Meets-Readers Roundtable devoted to Professor Shachar's award-winning book, Multicultural Jurisdictions: Cultural Differences and Women's Rights* (Cambridge University Press, 2001), Joint Canadian and American Law & Society Association Meeting, Vancouver, British Columbia; "Conflicting Narratives: The Future of the Canada-US Border" *Revisiting Canada's Immigration Policy Post-September 11 Conference,* Institute for Research on Public Policy (IRPP), Toronto.

David Schneiderman

Publications this past year included "The Old and New Constitutionalism" in J. Brodie and L. Trimble, eds., *Re-Inventing Canada: Politics for the 21st Century* (Toronto: Pearson Education Canada, 2003) and "The Difficulties of Local Citizenship in an Era of Economic Globalization" in M. Hanen, A. Barber, and D. Cassels, eds., *Community Values in an Age of Globalization* (Alberta: The Sheldon M. Chumir Foundation, 2002). The paper entitled "Global Governance and the New Constitutionalism" was prepared for the volume *Global Governance in the Twenty-First Century: Dynamics and Contexts of Change* (forthcoming from Palgrave) edited by J.N. Clarke and G. Edwards. The paper entitled "Taking Investments Too Far: Expropriations in the Semi-Periphery" was prepared for the volume *Governance On the Edge: Semi-Peripheral States and the Challenge of Globalization* (forthcoming from Zed Books) edited by M. Griffin-Cohen and S. Clarkson and was presented at the Law and Society Association 2002 Joint Meetings, Vancouver, B.C. The paper "Exchanging Constitutions: Constitutional Bricolage in Canada" appeared in Osgoode Hall Law Journal and was presented at the Law and Society meetings in Vancouver and at Canadian Association of Law Teachers Meeting, Toronto, Ontario.

Other talks this past year included "The Vriend Case" to the Media/Supreme Court Round Table, Ottawa, Canada; "Associational Politics and Charter Rights" to the Pluralism, Religion and Public Policy Conference, McGill University, Montreal, Quebec; "Terrorism and the Risk Society" to the National Policy Research Conference - Future Trends: Risk, Ottawa; and "Constitutional Culture and NAFTA" to the conference on North America at Twenty Years at Universidad de Las Americas-Puebla. Also, it was a real delight to spend three weeks in January and February 2003 at the Akitsiraq Law School in Iqaluit, Nunavut teaching an intensive course on the Charter of Rights and Freedoms.

Lorne Sossin

Publications

Public Law (Toronto: Carswell, 2002) (with Michael Bryant, MPP); "Discretion Unbound: Reconciling the *Charter* and Soft Law" (2003) 45 Canadian Public Administration (forthcoming);"The Rule of Policy: Baker and the Impact of Judicial Review on Administrative Discretion" in D. Dyzenhaus et al (eds.), *The Unity of Public Law* (London: Hart, forthcoming); "The 'supremacy of God', Human Dignity and the Charter of Rights and Freedoms" (2003) 52 University of New Brunswick Law Journal (forthcoming); "Public Fiduciary Obligations, Political Trusts and the Evolving Duty of Reasonableness in Administrative Law" (2003) 66 Saskatchewan Law Review (forthcoming); Hard Choices and Soft Law: Ethical Codes, Policy Guidelines and the Role of the Courts in Regulating Government (2003) 40 Alberta Law Review (co-authored with Charles Smith) (forthcoming); "Developments in Administrative Law: the 2001-2002 Term" (2003) 18 Supreme Court Law Review (2nd) 41-74; "The Rule of Law and the Justiciability of Prerogative Powers: A Comment on *Black v. Chrétien*" (2002) 47 McGill L.J. 435-56; "An Intimate Approach to Fairness, Impartiality and Reasonableness in Administrative Law (2002) 28 Queen's L.J. 809-58; "Does Canada Need a Political Questions Doctrine? (2002) 16 Supreme Court Law Review (2nd) 343-72 (with Geoffrey Cowper, Q.C.); and "Crown Fiduciary Obligations, the *Canadian Bill of Rights* and the Implications of *Authorson v. Canada* for Administrative Law" (2002) 6 Regulatory Boards and Administrative Law Litigation 298-305

Presentations

New Developments in Judicial Review, 2001-2002, Paper presented at a special meeting of the Administrative Law Section, Ontario Bar Association, January 21, 2003; *The Rule of Policy: Baker and the Impact of Judicial Review on Administrative Discretion* Paper presented at the Authority of Reasons Conference, University of Toronto, January 3-5, 2003; *The Politics of Soft Law: How Judicial Review Influences Bureaucratic Decision-Making in Canada* Paper presented to an International Workshop on the "Impact of Judicial Review", University of Tilburg, Faculty of Law, November 7-8, 2002, Tilburg, Netherlands; *The Intersection of the Charter and Administrative Law: Tribunal Jurisdiction to Hear Charter Challenges* Paper presented to OBA Charter Conference: Law and Practice 2002, Toronto, October 10, 2002; *Grounds for Review, Bars to Review: The Latest Word,* Paper presented to Advanced Administrative Law Conference, Canadian Institute, Toronto, October 8, 2002.

Michael Trebilcock

Over the past several months, *The Law and Economics of Canadian Competition Policy,* was published by the University of Toronto Press (co-authored by Michael Trebilcock, Ralph Winter, Edward Iacobucci, and Paul Collins). Other papers published include "International Trade and Labour Standards," "Designing Competition Law Institutions," (with Edward Iacobucci), and "Privatization and Accountability" (with Edward Iacobucci). Presentations have been made at Georgetown Law School ("Trade and Labour Standards"), Louisiana State University Law School ("Bijuralism"), McGill Law School ("Instrument Choice"), and Harvard Law School ("Privatization").

Catherine Valcke

In July 2002, Catherine was a Reporter for Canada (Common Law Section) to the XVIth Congress of the International Academy of Comparative Law, University of Queensland, Brisbane, Australia. She has published *Teaching of Comparative Law and Comparative Law Teaching in Canadian Schools of Common Law"*, G. Moens, ed., teaching Comparative Law and Comparative Law Teaching (Bruylant, Brussels, 2003); *Le contrat en tant qu'instrument de justice privée: possibilités et limites* in N. Kasirer and P. Noreau, eds., Sources et instruments de justice en droit privé, (Thémis, 2002); and *L'enseignement du droit comparé à l'ère de la mondialisation–es yeux plus grands que la panse?* in Y. Gendreau, ed., Droit et Société (Thémis, 2003). Catherine is currently on sabbatical, working on a theory of comparative law.

Stephen Waddams

Stephen Waddams has published a fourth edition of *Products Liability* (Carswell), the annual update to *The Law of Damages* (Canada Law Book), and a note on "Good Faith and Wrongful Dismissal" in the *Canadian Business Law Journal.* He has just completed his tenure of a Killam Research Fellowship and a Social Sciences and Humanities Research Council grant, and his book-length study arising from these, *Dimensions of Private Law: Categories and Concepts in Anglo-American Legal Reasoning,* now at the proof stage, will be published by Cambridge University Press this summer. He has been a visiting lecturer at Manchester University (England) and has presented papers at a law and history conference at University College, London, and at a conference on unjust enrichment at the University of Western Ontario.

Ernest Weinrib

Professor Ernest Weinrib spent a part of the summer of 2002 as Visiting Professor at the University of Tel Aviv, where he taught an intensive course on "The Theory of Private Law." While in Israel, he gave lectures and seminars at various Israeli law schools. He also participated in an international conference on "Comparative Remedies for Breach of Contract" at the Faculty of Law, University of Tel Aviv, giving a paper entitled "Non-Compensatory Contract Damages and Corrective Justice." In the winter he gave a paper on "Incontrovertible Benefits in Jewish Law" at an international conference on "Understanding Unjust Enrichment" at Faculty of Law, University of Western Ontario.

Professor Weinrib was the editor of *Tort Law* (2nd series), a collection of essays on the theory of tort law for The International Library of Essays in Law and Legal Theory, published by Ashgate. His article "Corrective Justice in a Nutshell" appeared in volume 22 of the University of Toronto Law Journal (2002).

During the year he was also invited to contribute to symposium issues published by leading journals in the United States. His article "Deterrence and Corrective Justice was published in volume 50 of the University of California at Los Angeles Law Review (2002) in an issue in memory of the great American torts scholar Gary Schwartz. His article "Punishment and Disgorgement as Contract Remedies appeared in volume 78 of the Chicago-Kent Law Review (2002) as part of a symposium on "Punishment and Disgorgement in Private Law." He also contributed an article entitled "Poverty and Property in Kant's System of Rights" to volume 78 of the Notre Dame Law Review (2003) for a symposium issue in honour of the pre-eminent theorist of criminal law, George P. Fletcher.

Lorraine E. Weinrib

Conferences & Presentations

April 2002 - Feb 2003: Osgoode Hall Law School Conference, The Charter at Twenty, "The Charter's Promise of Equal Citizenship: The Community and the Individual Under the Charter"; Association of Canadian Studies Conference, *Twenty Years Under the Charter / Les vingt ans de la Chart,* "The Canadian Charter's Transformative Aspirations"; University of Tel Aviv, Faculty of Law, Intensive Course: "The Postwar Constitutional State"; The Supreme Court of Israel: "Canada's *Charter* as a Model for Israeli Constitutional Development"; The National Labour Court of Israel: "State and Religion under Canada's *Charter*"; University of Haifa, Faculty of Law, "Constitutional Values and Institutional Roles under Canada's Charter"; Halbert Centre for Canadian Studies, 9th Biennial Jerusalem Conference in Canadian Studies, Jerusalem, Israel, "Canada's Charter and Israel's Basic Laws: A New Model of Rights-protection?"; Ontario Bar Association, Charter at 20 Conference, "Canada's *Charter*: Comparative Influences, International Stature"; University of Manitoba, Law Faculty, "Perspectives on Equality Rights under the *Charter.*"; Manitoba Law Society, 2002 Isaac Pitblato Lectures: The Charter: Twenty Years and Beyond, *"The First 20 Years: Assessing the Impact & Anticipating the Future"* and "Charter Challenges: Practical Issues"; University of Michigan Law School, Ann Arbor, "Judging Judicial Review: *Marbury* in the Modern Era", Presentation: "The Modern Practice of Liberal Democracy: Themes and Variations on *Marbury v. Madison"*; University of Toronto, Conference (Munk Centre and Faculty of Law): Antisemitism: The Politicization of Prejudice in the Contemporary World, "Racial Hatred and the Practice of Postwar Liberal Democracy".

Publications

"Taking Rights Frankly", (2001) 15 Italian Canadian 24-29; Special Issue in Honour of Mr. Justice Frank Iacobucci; "Canada's Charter: Comparative Influences, International Stature" in Debra M. McAllister & Adam M. Dodek, eds., *The Charter at Twenty, Law and Practice* 2002 (Toronto: OBA, 2002) 491; "Constitutional Conceptions, Constitutional Comparativism" in V. Jackson and M. Tushnet eds., *Defining the Field of Comparative Constitutional Law,* (Westport CT, Praeger Publishers: 2002); "Canada's Charter: Comparative Influences, International Stature" in Debra M. McAllister & Adam M. Dodek, eds., *The Charter at Twenty, Law and Practice* 2002 (Toronto: OBA, 2002) 491.

HONOURABLE BILL GRAHAM '64

LAST WORD

On January 13th, the law school welcomed back the Honourable Bill Graham, Minister of Foreign Affairs, to give this year's annual Goodman Lecture. Bill Graham is no stranger to the law school, graduating in the Class of '64 and later returning to the law school to teach international law from 1981 to 1995. In recognition of his service to the legal community and to Canada, the Hon. William C. Graham Chair in International Law and Development has been established at the Faculty. What follows is a condensed version of his speech to students, faculty and staff at the January 13 lecture. To view a webcast of the lecture visit the Faculty web site at www.law.utoronto.ca and click on Special Lectures.

In recent years, astonishing developments have taken place in our international legal architecture, developments that are having an enormous impact both on the conduct of affairs between countries and on our domestic legal and political systems here in Canada. These changes have enormous implications for lawyers, both internationally and domestically.

In no area is the post-World War II reality of global interdependence more evident than in the astonishing growth of norms that regulate international trade and investment. But it is also evident in issues affecting the environment, health, organized crime, and indeed, practically any other subject that, until recently, was considered the exclusive domain of domestic politics.

This intense interdependence has created a new political reality requiring a new approach by politicians and lawyers to recognize that solutions to many domestic political problems can only be crafted by first recognizing the constraints that global or regional forces impose on us, and then by seeking solutions through international as well as domestic mechanisms.

In the midst of this challenge our country is well-situated to offer leadership. In my professional work and travel, I am constantly reminded of Canada's potential for contributing distinctively to the development of legal structures beyond our borders. Last May, for example, I was in Israel and had the privilege of spending a few hours with Chief Justice Barak. On his desk the Chief Justice had reports of Supreme Court of Canada decisions relating to the Charter, and these decisions, he told me, inform much of Israel's jurisprudence and, indeed, of other common law countries as diverse as India and South Africa.

As Canadian lawyers, you may have the opportunity to participate in the evolution of international legal systems, whether by working on issues related to the ever-increasing range of international economic and political institutions; by contributing to the development of legal structures in other countries; or by working within Canada on the assimilation of international legal norms to our own common law, civil law and constitutional affairs. I urge you to consider the opportunities you have to contribute to a better world as an international lawyer. As global interdependence grows, Canada needs its best minds to tackle the challenges of integrating our legal systems with evolving international norms and institutions. I also believe that the world needs the expertise that Canadian lawyers can bring to the tasks of devising new economic agreements, new political and judicial institutions, new human rights protocols, and new national constitutions and rules of good governance. And I believe that Canada's role in fashioning the International Criminal Court, for example, made a significant contribution to filling in one of the important gaps in the international legal system.

You are all familiar with the features distinguishing international law from domestic law: the absence of a universally accepted legislator together with problems associated with interpretation, application and enforcement. The flip side of these features is the extraordinary potential of international law to transform the sphere of human relations it deals with, by changing the terrain of international power politics dominated by superpower interests into a rules-based system that adjudicates the interests of all on a fair and principled basis.

In performing my role, I have been greatly influenced by the values and discipline acquired in this place, whether as a student, or later as a faculty member.

This is the reason why the legal work that goes into the construction and functioning of international institutions is, in my view, such a challenging and worthwhile field. I hope that you agree with me in this, and that you will carry on the fine work that Canadian lawyers have contributed to the creation of a better world for all of us through building on those Canadian values that I talked of earlier and that I believe inform the scholarly work that Professors Knop, Trebilcock, Cook, Morgan and others at this school (not to mention others throughout the country) are doing today.

If I may be permitted to end on a personal note, I would like to say what an enormous privilege it is to be our country's foreign affairs minister and what a terrible sense of responsibility one feels, particularly in times such as this, in bringing the voice of our country into the councils of the world. I do believe, however, that, in performing my role, I have been greatly influenced by the values and discipline acquired in this place, whether as a student, or later as a faculty member. I hope that you will be able to say the same thing when, in the future, you come to reflect on the direction that your legal career will have taken you. ■

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