UNIVERSITY OF TORONTO FACULTY OF LAW

nexus

SPRING/SUMMER 2005

THE EVOLUTION OF Law and Philosophy AT U OF T LAW SCHOOL

Style in Home

ALUMNI RE-INVENT THE HOME DECOR MARKET

PLUS

CLASS NOTES

NEW PUBLICATIONS

CAMPAIGN UPDATE

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– Prof. Arthur Ripstein

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"A philosopher is a person who is puzzled by things that other people find obvious."
– Prof. Arthur Ripstein

"Explaining love in terms of extrinsic ends is necessarily a mistake, because love does not shine in our lives with the borrowed light of an extrinsic end. Love is its own end. In this respect (and only this respect), private law is just like love."
– Prof. Ernie Weinrib

"Legal theory focuses on obligations one may be coerced to fulfill and asks what justifies forcing free beings to respect these obligations."
– Prof. Alan Brudner

"One method often employed in philosophy is to take an idea and try to break it down into its different conceptual parts, with the aim of then examining which of these conceptual parts is logically related to which others."
– Prof. Sophia Reibetanz Moreau

CAE GOLD AWARD WINNER • CCAE'S PRIX D'EXCELLENCE • 6157

(L-R): Professors Bruce Chapman, Ernest J. Weinrib, Mayo Moran, David Dyzenhaus, Sophia Reibetanz Moreau, Jenny Nedelsky (sitting), Peter Benson, Alan Brudner, Catherine Valcke, Arthur Ripstein, Denise Réaume, Abraham Drassinower (sitting), Lisa Austin and Hamish Stewart

UPCOMING FACULTY BOOKS

WATCH FOR THESE FACULTY BOOKS IN 2005

The Frontiers of Fairness: How Canadians Decide What is In and Out of Medicare

Professor Colleen Flood

This volume gathers presentations from the January 2004 National Health Law Conference, organized by the Faculty of Law and members of the "Defining the Medicare Basket Project." Led by Professor Flood, the project is a three-year multi-disciplinary research effort that is examining the ways in which allocation and access decisions are made in the Canadian health care system.

Global Anti-Terrorism Law and Policy

Professor Kent Roach

An expert in anti-terrorism policy and security issues, Prof. Roach edited this volume with Victor V. Ramraj and Michael Hor of the National University of Singapore. The book focuses on the growing field of comparative and international studies of anti-Terrorism law and policy. A unique feature of the collection is the chapters that focus on a particular country or region, and overarching thematic chapters that compare specific aspects of anti-terrorism law and policy.

Intellectual Property Rights and Innovation in the Knowledge-Based Economy

Professor Jonathan Putnam

This volume pulls together papers from Canadian and international authors who analyzed Canada's transformation from a resource-based economy to a knowledge-based one. The papers were presented at a conference co-sponsored by Industry Canada and the Centre for Innovation Law and Policy at the University of Toronto in 2001.

WHAT EVER HAPPENED TO. . .

Have you lost track of a classmate?

Have you lost touch with a law school classmate and wonder what she or he has been up to? If so, drop us a line with the name of a friend you would like to reconnect with and we will endeavour to find him or her. Nexus recently caught up with alumni **David Adam** '68, and **Michael Joseph St. Berna Sylvester** '63.

Read their profiles on page 5-6

class notes

Tell us about yourself.

Alumni share their personal stories, successes, set-backs and memories of the law school. These conversations reflect a true community of peers. Here is a snapshot of what you will find on pages 55 – 63.

Do you know these faces?

nexus

Nexus is published by the Faculty of Law, University of Toronto, for alumni, faculty, students, staff and friends of the law school.

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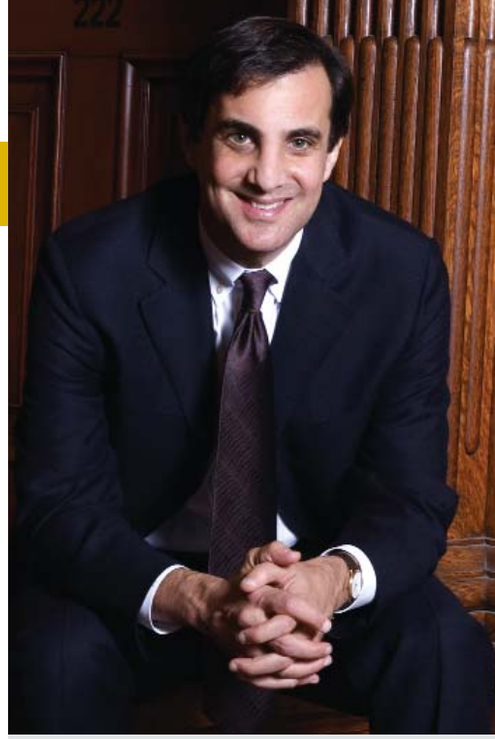
MESSAGE FROM THE DEAN



For the last several decades, the Faculty's teaching and research program, has been shaped, informed, and strengthened by its ties to the rest of the University. As my colleague, Ernie Weinrib, once observed: if Caesar Wright was responsible for bringing the Law School to the University of Toronto, it was Dean and University Professor Emeritus, Marty Friedland, who made the Faculty "of" the University of Toronto. Marty was firm in his determination to harness the full range of strengths and perspectives of the University in the service of understanding law and legal institutions in their broadest frame. This vision of the modern Law Faculty has been embraced and strengthened by virtually every one of Marty's decanal successors – Frank Iacobucci, Rob Prichard and Bob Sharpe. Today, as measured by the range of collaborative teaching, research and workshop and conference activity that we sponsor, the Faculty stands as one of the most interdisciplinary law schools in the world.

Surely, as is powerfully demonstrated by the articles contained in this issue of *Nexus,* one of the most important sites of the Faculty's inter-disciplinary activity is in the field of law and philosophy.

For several decades, under the quiet but firm leadership and inspiration of Ernie Weinrib, the Faculty has assembled a group of simply outstanding experts in law and philosophy. The fourteen quite extraordinary men and women who comprise this group have had a profound and enduring effect on contemporary debates in legal scholarship throughout the world. This is manifested in the many seminal books and articles written by our colleagues that have been published by the world's leading university presses and law journals. It is also reflected in the many distinguished lectures that our colleagues are invited to give throughout the world – one of the latest being David Dyzenhaus' magisterial delivery of the Smuts Memorial Lectures at the University of Cambridge. Not surprisingly, as a result of these activities, one can hear reference now and again to the "Toronto School of Law and Philosophy".

While mention of a Toronto School might imply a monolithic approach to law and philosophy, what is so striking about this group of scholars is its rich intellectual pluralism. Although colleagues committed to this perspective share the same deep convictions regarding the scope for a principled and coherent understanding of law, they agree on little else. They disagree on whether public or private law should be the primary focus of scholarly inquiry. They disagree on whether law is a branch of moral philosophy or separate and apart from it. And they disagree on how conflicts among competing principles of law can be reconciled with one another. In short, there is a lot of debate within this group as to what law is or ought to be.

Nevertheless, for those of us (like myself) who are not schooled in this perspective, and who, in fact, retain an unabashedly instrumental or utilitarian conception of the law, the disagreements among this group are less important than what unites them and strengthens us: a firm and unwavering commitment to rigorous intellectual inquiry and to the belief that there are coherent and justifiable underlying principles that do or should animate law's domain. We are so much better as an intellectual community for having this group of scholars and colleagues among us.

Now, as you probably know, this is the last issue of *Nexus* for which I will have the privilege of writing a Dean's message. Over the decades, there have been many wonderful advances at the Faculty and one of the significant challenges is how we can best share our activities and achievements with you, our graduates and friends. In 1982, then Dean Frank Iacobucci established the *Nexus* as one important way of supporting our then fledgling communications efforts. And in this, he was aided and abetted by Ann Wilson, graduate of the Class of 1975, who served as the first editor.

From the first edition of *Nexus* (an eight page black and white newsletter), the magazine has evolved into its current and very impressive incarnation. This is in no small measure due to the unstinting and uncompromising efforts of another graduate of the Faculty, Jane Kidner, Class of 1992, and our Assistant Dean for External Relations. This past term, Jane's efforts in strengthening the *Nexus* were formally recognized by the Canadian Council for the Advancement of Education, which awarded *Nexus* the Gold Medal Prix D'Excellence Award for best magazine. This is a singular honour.

To Jane, we give our heartfelt thanks and appreciation for all that she does for the Faculty, but, in particular, for transforming *Nexus* into the magnificent and very readable magazine of record of life in our beloved Faculty. ■

Ronald J. Daniels '86
Dean

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UP FRONT

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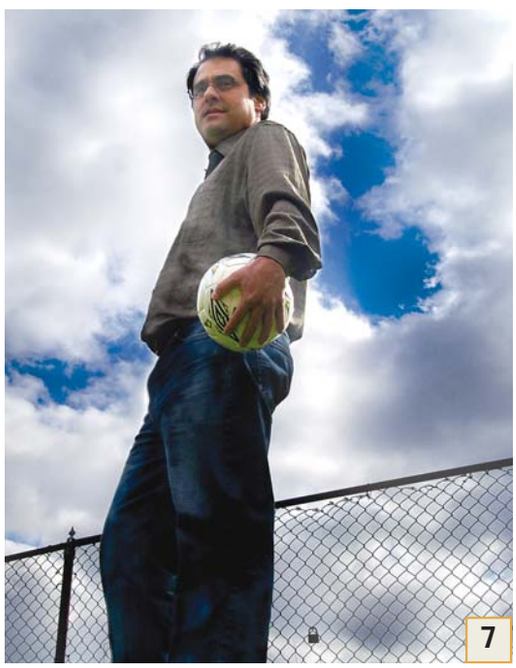
ON THE COVER

As historian Brad Faught so aptly puts it on page 17, the Law and Philosophy Group at U of T Law School embodies "one of the most important cadres of legal philosophers in North America." Recognized internationally as a pre-eminent intellectual community of legal theory scholars, they are responsible for a multitude of regular workshops, seminars, discussion groups, and seminal books and articles. The cover photo, taken by Toronto-based photographer Henry Feather, captures the entire group of all fourteen men and women in this special fold-out – a record for the most people ever featured on the cover!



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FROM THE editor

How, why, and what we think about philosophical questions of morality, ethics, and justice has occupied, in some cases, a lifetime of deep thought, questioning, and introspection for the Faculty's core group of law and philosophy scholars. As Dean Ron Daniels knew, it was time to let our alumni and others know about the seminal work of these world-renowned thinkers. Their feature articles found on pages 17 to 42 encompass a wide range of substantive legal, social and political issues (as well as some more abstract ones) and lay the foundation for thought-provoking discussion and debate. We hope you will find fascinating reading in the ideas about moral blameworthiness and how private law, according to eminent scholar, Ernie Weinrib, is just like love.

As well as being a magazine about faculty scholarship, *Nexus* is also about alumni. This issue kicks off with a new section we have called *"Whatever Happened To…?"* featuring two graduates we went to great lengths to track down. In one case it took nearly two dozen phone calls to the West Indies to locate Michael Sylvester, class of 1963 – but it was well worth the effort. We discovered some fascinating tales of travel, political exploits, and intrigue – and a warm welcome from Michael who was happy to reconnect with the law school and who invites classmates to contact him directly (page 5). This issue also contains our second annual *"Class Notes"* (pages 55 to 63) filled with reports from across Canada, and as far away as Australia, the Netherlands, and France.

Continuing our tradition of featuring interesting alumni in diverse and non-traditional careers, we profile two law grads who have a passion for bringing beauty into the lives of ordinary people. Each has found a special niche in the home décor market. How many of us can say that we have been asked to appear on the Oprah Winfrey Show? Read about Julia West '76 on page 46 in *"Furniture that Earns its Keep."* And how about a product so unique that it has no comparable competitor anywhere in the world? Read about the innovative technology of Mitch Wine '82 on page 48 in *"Bringing Innovation to Art."*

Finally, a note about our Dean, Ron Daniels. Sadly, this will be the last issue of *Nexus* with a message from Ron. At the end of June he leaves the University of Toronto, Faculty of Law for the University of Philadelphia, where he will assume the position of Provost. It has been my great pleasure and honour to work with Ron for the past seven years. He is a true visionary, a strong and fearless leader and most of all a very decent and kind humanitarian. I have watched as he has taken on challenge after challenge and created something great where nothing existed before. Ron has made the law school a much better place to study and learn the law. We thank him for his vision, passion, creativity, energy (sometimes a little too much energy!) and his determination to make us excellent. We wish him well on his new adventure in Philadelphia – and will enjoy watching the new and great things that will no doubt transpire there. I also very much look forward to working with our new Acting Dean, Brian Langille, who has a long history of solid leadership and a passionate commitment to the law school. ■

Happy reading – and happy summer!

Jane Kidner

Jane Kidner '92
j.kidner@utoronto.ca
Editor-In-Chief

LETTERS TO THE editor

WE WANT TO HEAR FROM YOU. PLEASE SEND YOUR COMMENTS TO j.kidner@utoronto.ca.

FROM: Master Carol Albert

President, Masters Association of Ontario, Superior Court of Justice

I write to you as President of the Masters Association of Ontario. The members of the Association are Masters (including Case Management Masters) appointed to the Superior Court of Justice by the provincial Attorney General. A number of provinces in Canada appoint Masters to their superior courts. The Ontario Masters exercise judicial functions that would otherwise be carried out by federally appointed judges.

We were surprised and disappointed that your Fall/Winter 2004 edition of *Nexus* at page 19 failed to include Masters in the summary of alumni holding judicial appointments across Canada. Alumni include Masters Ross Linton, David Sandler, Tom Hawkins, H. Michael Kelly, and Linda Abrams.

I or one of my colleagues would welcome the opportunity to speak with you about the judicial role Masters play in the Ontario court system.

From the Editor: We apologize for the oversight in failing to include Masters in our list of alumni who hold judicial appointments across Canada and would like to thank Master Carol Albert for bringing the error to our attention.

FROM: Eric Koch '43

I was most interested in your article about Ivy Maynier and Peter Fuld. I am sure I am not the only person who remembers them with affection and admiration. But I may well be the only ex-Frankfurter and Torontonian whose family knew the Fulds before Hitler. Peter and I were both interned in England in 1940 and were contemporaries at U of T law. Many thanks for including this article.

FROM: Neil Seeman '95

There is a disquieting uniformity in the Faculty's attitude toward critics of activism – specifically, an unwillingness to engage the critics' arguments in a scholarly manner. Brenda Cossman, for example, raises the 'hypocrisy' of Stephen Harper's legal challenge to the Elections Act, when he was president of the National Citizen's Coalition, contrasting this with the Conservative party's long-standing criticism of judicial activism in other contexts. She writes: "Judicial activism, it seems, is okay, as long as it is consistent with their underlying policy agenda."

However, Mr. Harper's challenge to the Act (I was one of the NCC's legal counsel at the time) was rooted in the idea that Parliament had trampled unconstitutionally on the codified Charter right of freedom of expression. To begin, a meaningful analysis of activism must distinguish between activism that extends the purchase of the state over private activity and activism that constrains state control over private activity.

I would urge a more nuanced consideration of these issues. This might invite an empirical analysis of the ratio of state-expanding claims heard by the Supreme Court to the state-limiting claims seldom considered by the court.

I encourage the Law School to offer a greater voice to critics of Charter orthodoxy. Only by embracing a diversity of intellectual opinion can the Faculty count among the world's greatest law schools.

From Our Archives

75 YEARS AGO
In 1930

The Great Depression was in its second year, and the planet Pluto was discovered by C.W. Tombaugh. Henry Luce began *Fortune Magazine,* which is still being published today. At the University of Toronto, the first Jewish professor, Jacob Finkelman was hired as a lecturer at the "School of Law." Prof. Finkelman introduced several new courses in Industrial and Administrative Law, Labour Law and Real Property.

50 YEARS AGO
In 1955

Sir Winston Churchill resigned his post as Prime Minister of Great Britain, and Albert Einstein died. Martin Luther King, Jr. helped mobilize the black boycott of the Montgomery Alabama bus system after Rosa Parks, a black woman, refused to give up her seat on the bus to a white man. Back at the law school, the Faculty won the trophy for "best float" in the annual Homecoming Parade. Meanwhile, Martin Friedland was entering his first year of law school. Friedland would go on to many great achievements, including serving as the Faculty's Dean from 1972 to 1979.

25 YEARS AGO
In 1980

Nearly 100 million North American TV viewers wondered "Who Shot J.R.?". Ronald Reagan was elected President of the U.S. and Pierre Trudeau was Prime Minister of Canada. John Lennon was shot and killed outside of his apartment in New York. At the U of T Law School, the Hon. Katherine Swinton and Mary Eberts were the Faculty's only female professors. Sixteen years earlier, Diana Priestly became the first female faculty member in 1964, and Hilda McKinley became the Faculty's second in 1970.

WHAT EVER HAPPENED TO . . .

BY KATHLEEN O'BRIEN

MICHAEL JOSEPH
ST. BERNA SYLVESTER '63

Michael Sylvester's life since graduation sounds like a Hollywood action film filled with politics, courtroom drama, revolution and death threats.

A 1963 law alumnus, Michael was born in Grenada, a small Caribbean island situated between the Caribbean Sea and Atlantic Ocean north of Trinidad and Tobago. After graduation and articling, Michael worked with the Attorney General's office and the Industrial Development Bank of Ontario. Returning to Grenada, he established a law practice and got involved in politics. Michael contested a seat for the Grenadian United Labour Party under the leadership of the late Sir Eric Gairy, but lost it in the democratic elections of 1967. For the next three years, he served as Assistant Deputy Attorney General, and then went back into private practice.

In 1973, Michael presented evidence of egregious human rights breaches to a Commission of Inquiry (the Duffus Commission), which was looking into the operation of justice and human rights abuses in Grenada. Upon its conclusion, the commissioners invited Michael to head the Faculty of Law at the University of the West Indies at Mona, Jamaica. Michael also worked at the Cave Hill campus in Barbados, where as Chairman of the Law Library Committee, he helped build its "scant" library into the foremost law library in the English-speaking Caribbean.

Six years later, in 1979, there was a coup in Grenada led by Cuban Communists and Michael's political leanings would be tested. For the next four years, Michael went on the lam, fighting for his life – *"Wanted Dead or Alive"* posters appeared around Grenada calling for his death. "I was lucky to escape with my life. The Good Lord was not ready for me yet," he says. During this time, Michael sought refuge in the United States where he worked as a Professor of Law at Pace University in New York, and organized a group, which he named the Grenada Movement for Freedom and Democracy (GMFD). Through intensive lobbying efforts in the U.S., GMFD was successful in bringing the issue of communism in Grenada to the Reagan Administration. As a result of ideological and other fundamental differences among the Communists in Grenada, this regime finally fell apart. The Reagan Administration militarily intervened in Grenada to prevent civil war and restore the country to democracy.

Michael often imagines what Dean Cecil Wright would have said in these situations. "I can hear his booming voice, 'Get to it Sylvester, get to it!'" Besides Wright, his favourite professors were Albert Abel and Bora Laskin.

In 1992, Michael left Grenada and moved to the Republic of Trinidad and Tobago, where he married Juliet Otten Sylvester. They have two children, in addition to his children from previous relationships, Michael, Valerie, Peter, Lisa, and Sharon. He now practices in Grenada's capital city of Saint George's as a barrister and solicitor in his own private firm. While he has many underprivileged clients, he is also proud to act as counsel for Dr. Keith Mitchell, the Prime Minister of Grenada.

For the next four years, Michael went on the lam, fighting for his life – *"Wanted Dead or Alive"* posters appeared around Grenada calling for his death.

Just last September, Michael says one of the most frightening experiences of his life happened when Hurricane Ivan and several tornadoes devastated 90 per cent of the island: "I expected the house to fall down at any minute." Seven months later, it is still difficult to reach him, as much of the country's landlines have not yet been restored.

Michael wants his 1963 classmates to know that since law school, he hasn't changed much. He is still 6'4", weighs 175 lbs, and has added only two inches to his 32" waist. He looks back fondly on his years at U of T having benefited "from the finest legal education anyone can have in their life." He invites classmates to get in touch with him at jmotten@hotmail.com.

DID YOU KNOW?

45 St. George Street

Baldwin House – 33 St. George Street

U of T's Faculty of Law has had at least six different homes since it was first established in 1887, beginning at King's College on Front Street. By the early 1920s, law was a sub-discipline within the Department of Political Economy, where law classes were taught in various locations on the St. George Campus. In the early 1940s, law became a sub-department within the Faculty of Arts and Science. In 1949, the modern law school moved into 45 St. George Street, an old three-storey brick mansion. Growing enrolment meant another move in 1952 to Baldwin House at 33 St. George Street (now Cumberland House near the corner of St. George and College Streets), a light colored three-storey brick mansion with a grand entranceway and deck, complete with pillars. In 1956, the law school moved yet again, this time to Glendon Hall, the current site of York University's bilingual campus (Glendon College) on Bayview Avenue. In 1961, the Faculty moved to Flavelle House, its present home on the St. George campus. Built almost 60 years prior, Flavelle House is named after Sir Joseph Flavelle, a meat packing magnate and baron. The law faculty expanded eleven years later into an adjacent brick house named Falconer Hall, formerly a private home for millionaire and philanthropist, Edward Rogers Wood. ■

DAVID ADAM '68

Most of his classmates haven't heard from 1968 alumnus David Adam for nearly four decades.

After graduating from law school, David decided to forego articling, and instead jumped on a plane for Ottawa to write the Foreign Service exams. Since then, he has spent the last 37 years living in the United States, India, Chile, Mexico, Ecuador, and Panama, working for Foreign Affairs Canada. "It's a pleasure to represent Canada overseas as it has no historical baggage to explain or apologize for," he says. Between postings, David goes back to Ottawa for more training.

David always intended to work in law. But after graduation, he felt the need to travel overseas, learn new languages and experience other cultures. He was willing to take his first few assignments "anywhere in the world."

Currently David is the Canadian Ambassador to the Republic of Panama, where he acts as the first line of intelligence when the Canadian government needs information or context on national matters. He works directly with Panama officials on trade, business, and economic issues, handling many interesting assignments. Career highlights include having worked on the Kyoto Agreement, Summit of the Americas, and the European Convention on Human Rights. From 1990 to 1994, David served as Deputy Ambassador to the Canadian Embassy in Mexico, where he helped negotiate the Free Trade Agreement between Canada, the US and Mexico. A year later, he got his first Ambassador post when he opened the Canadian Embassy in Ecuador. In 2000, he traveled as Ambassador with the 2008 Toronto Olympic Bid Committee.

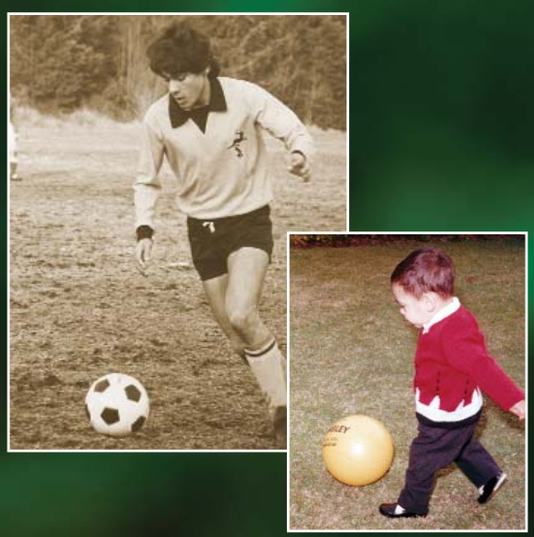
David stays in touch with a few classmates, and still thinks about many others. In June, David's posting in Panama will end. He will retire to Ottawa with his wife, Tatiana Jilkina, a cardio-vascular surgeon, and 18-year-old son, Alexander, who is finishing high school. For anyone who wants to get in touch with David, email him at david.adam@international.gc.ca. He looks forward to hearing from you!

After graduation, he felt the need to travel overseas, learn new languages and experience other cultures. He was willing to take his first few assignments "anywhere in the world."

UNITED STATES
INDIA
CHILE
MEXICO
ECUADOR
PANAMA

Top of his Game

Professor Abraham Drassinower



BY KATHLEEN O'BRIEN

His good looks and melodic South American accent conjure up images of Antonio Banderas. His soccer moves, David Beckham. Perhaps not the typical description of a law professor – but then again, Abraham Drassinower is anything but typical.

Abraham was born in Lima, Peru, a country known for its love of soccer. "In Peru, you don't play soccer, you are born into it," he says. Early on, Abraham showed tremendous athletic ability to play the game. Indeed, he even considered playing soccer professionally. But at the young age of 13 he was sent to Canada to an all boys' private boarding school outside Victoria, B.C., leaving behind his parents and three younger siblings. After a party he still remembers fondly, nearly 50 relatives and friends boarded a rented bus to wish him farewell at the airport. It was a difficult adjustment at first, says Abraham, but he stayed in touch with his family by writing letters every day.

As the new kid, with little English, Abraham made a determined effort to be on top both academically and in sports. By graduation, he was captain of the soccer team, won the highest academic awards, and gave the closing day address as "Head of School." His 1979 high school yearbook describes "Abie" as a star student, "cocky in attitude and witty in substance from the start."

But his academic calling would have to wait. In his first year at Stanford University where he played Varsity Soccer, Abraham decided to explore Europe. He dropped out at age 17 and became a frequent fixture at parks and cafés, writing "Bohemian" poetry and working as an editorial writer. He soon found himself interested in learning more about the great philosophers, Immanuel Kant and Friedrich Nietzsche. So Abraham returned to Canada, where he obtained his B.A., M.A., and Ph.D at the University of Toronto. There, he held a Postdoctoral Fellowship in the Department of Political Science, then lectured on political philosophy at U of T and York University. In 1998, he received his LL.B. from U of T's Faculty of Law. A year later, after clerking at the Supreme Court of Canada for Justice John C. Major, he returned to the law school – this time as an Assistant Professor.

Although Abraham's artistic side is never far from the surface – colleague and friend, Professor Arnold Weinrib, describes him as having a "wacky sense of humour and prone to outrageous analogies" – Abraham admits to being "overly serious about scholarship."

"I like to provoke rather than just lecture," he says. Along with teaching responsibilities in property, intellectual property, and legal and political philosophy, Abraham researches and writes in the areas of unjust enrichment, copyright, psychoanalysis and political theory. In 2003, he wrote the well-received book, *Freud's Theory of Culture: Eros, Loss, and Politics*, and is currently working on a book on copyright law and the public domain.

When Abraham isn't teaching, the 43-year-old professor spends time with wife, Catherine, and their two sons, Noah, 10, and Emmett, 3. This summer, Abraham says he'll teach the boys how to improve their soccer skills, so that, you guessed it – they can be on top of their game. ■

NEWS IN BRIEF

FACULTY OF LAW WELCOMES ISLAMIC LAW SCHOLAR TO ITS ROSTER


Professor Anver Emon

The University of Toronto, Faculty of Law will add Islamic Law to its core curriculum in July with the addition of Assistant Professor Anver M. Emon. Fluent in Arabic, Emon has studied at the University of Texas at Austin, UCLA, and Yale Law School where he trained as a medieval Islamic historian focusing on legal theory, substantive legal doctrine, and theology. He has taught Islamic law at both the University of Texas at Austin School of Law and Fordham Law School. Emon's research emphasizes the relevance of the medieval past for understanding the modern Muslim world. Currently, he is completing a PhD at UCLA's history department where he is researching the medieval natural law tradition in Islamic law. Emon is also a JSD candidate at Yale Law School, and is writing about Islamic legal hermeneutics, with special reference to the historical treatment of non-Muslims under Islamic law. He received his BA from UC Berkeley (1993), JD from UCLA (1996), MA in medieval Islamic legal history from the University of Texas at Austin (1999), and LLM from Yale Law School (2004). Emon is called to the California State Bar. He has published a dozen articles for academic and law journals including the *UCLA Journal of Islamic and Near Eastern Law, International Journal of Middle East Studies,* and *Middle East Affairs Journal.*

FOUR PROFESSORS WIN SSHRC AWARDS

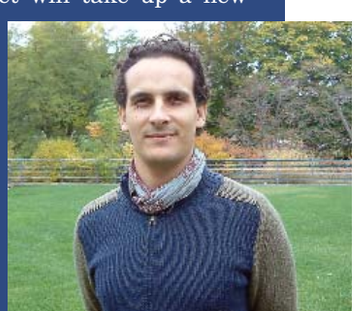
Professors Jutta Brunnée, Bruce Chapman, Steven Waddams and Brenda Cossman have each been awarded one of the most widely recognized academic research grants in the country by the Social Sciences and Humanities Research Council (SSHRC). The funds will allow faculty members to explore, invent and develop deep expertise in a wide variety of disciplines, as well as target research to specific social needs. Prof. Brunnée, together with Prof. Stephen Toope of McGill University, will work on a book, *Legitimacy and Persuasion: The Hidden Power of International Law.* Through examples, the book will urge political decision-makers to consider how international law actually informs and shapes public policy. A companion book will aim to promote understanding of international law among a wider audience. Prof. Chapman's project, *Reasonable Interactions and Collective Responsibilities,* will develop an account of human interaction based on law and legal theory, which proposes that people interact according to a shared understanding of what is reasonable behaviour. Prof. Waddams' project will build on his previous work in contract law and legal history, and will examine the extent to which 19th century writers were successful in identifying and formulating principles of contract law. Prof. Cossman will explore changes in the cultural representations and practices of motherhood. She will consider the 'opt out revolution' where more and more women are opting out of the labour market to stay home with children.


Professor Brenda Cossman


Professor Jutta Brunnée

Professor Frédéric Mégret Leaving for McGill University

Just a year-and-a-half after his start at U of T law school, International Human Rights Professor Frédéric Mégret will take up a new post as Assistant Professor at Montreal's McGill University in January 2006. "On behalf of everyone at the Faculty, I want to wish Frédéric all the best as he returns to McGill, and hope and trust that he will continue to have lots of interaction with the Faculty," said Dean Ron Daniels in an internal memo. At McGill, Frédéric will teach international criminal law and pursue projects already started in Toronto, such as a critical theory of the laws of war and a study of the UN's accountability mechanisms for human rights abuses by peacekeepers. The Faculty is saddened by the loss of such a notable scholar. He will continue to teach two courses this Fall including the workshop on *Law and Globalization.*


Professor Frédéric Mégret

Toronto's Homeless to Receive Help from U of T Students

DOWNTOWN LEGAL SERVICES has launched a new pilot project, funded by Legal Aid Ontario (LAO), to provide access to justice for the homeless population of Toronto. LAO has provided funding for DLS to increase lawyer review hours, hire an extra summer student and develop training materials, as well as identify a group of law students who will defend provincial offences charges for the homeless. Mary Misener, Criminal Review Lawyer at DLS, says provincial offences cases are relatively straightforward and provide first years with experience before taking on more complicated criminal work in their upper years. "DLS can make a difference to the most disadvantaged in our society and at the same time, provide a meaningful community service experience for students," she says. DLS will work in co-operation with social service agencies across Toronto to address a growing need for legal services among the homeless.

PROFESSOR AYELET SHACHAR ADVISES BOYD REPORT

Prof. Ayelet Shachar

The much-anticipated *Boyd Report – Dispute Resolution in Family Law: Protecting Choice, Promoting Inclusion* – cites Prof. Ayelet Shachar's extensive research on the tension between accommodating religious diversity and protecting women's rights in family law disputes. Shachar was consulted by the Ontario Government in November 2004 for her expertise on women's rights within minority cultures. The Report, led by former Attorney General Marion Boyd, cited Shachar's research in its analysis of the relationship between multiculturalism and gender equality. Shachar agrees the issue is a complex one and believes the report did a good job of representing the different voices in the debate over the proposed use of Islamic law in arbitration, but believes it fell short. "Although the report is impressive, it did not go far enough in terms of safeguarding women's rights and interests," she says. "This proposal is unique in comparison to other models of religious accommodation that I have studied in other jurisdictions across the world. What makes it a particularly hard case is the fact that it proposes the use of private dispute-resolution mechanisms to address a public dilemma: how to respect cultural and religious differences and protect the hard-won citizenship rights of vulnerable group members, in particular women." Shachar emphasizes that if this proposal goes ahead, the real challenge will be to find appropriate legal ways to represent a woman entering the arbitration process, without losing sight of her rights as a minority woman and as a full citizen of the Canadian political community. The provincial government is currently reviewing the report.

SPECIAL VISIT FROM U.N.'S STEPHEN LEWIS

Stephen Lewis, U.N. Special Envoy for HIV/AIDS in Africa, made a special visit to the law school on February 9 to discuss *AIDS, Africa and the Rule of Law.* In a speech to more than 200 students and faculty, Lewis made an impassioned plea for the plight of African nations in the AIDS pandemic. Lewis noted that the question of the right to development has been debated and argued internationally for years, and has centred on the issue of whether it should be considered an aspirational right or an absolute entitlement for the world's poorest countries. "The right to development is not easily enshrined in international law," said Lewis. "Western nations are uncomfortable with this because they do not want to have to assume the costs that are implicit in the realization of this right." Yet Lewis was adamant about the right of all people to basic health, education and equality. "A madness has possessed the world," said Lewis. "We would need just one per cent of the world's expenditure on arms to keep these people alive, and yet we can't do it." International covenants are meant to enshrine economic rights, said Lewis, in order to help overcome poverty. All of these covenants suggest an authority to give them substance. Yet it never happens. Lewis went on to discuss the Millennium Development Goals – eight basic goals agreed to by nations to address the basic needs and imbalance of the developing world. Yet every single one of these goals, according to Lewis, is being sabotaged by the pandemic of HIV/AIDS. It is having an "apocalyptic impact" on millions of the citizens of the world, with no country in the world able to escape its force. "How can these societies continue to function when every sector is being eviscerated by the pandemic," said Lewis. "The heart of their productive years is being yanked out of the soul of the country." Despite the enormity of the problem and the overwhelming pervasiveness of death, Lewis ended his talk with hope for the future. He pointed out that Canada is the only country in the world that has passed legislation (Bill C-9) that is allowing for compulsory licenses to be issued for generic drugs. He also noted that Canada gave the highest single contribution to the World Health Organization for the international vaccine initiative. To learn more about Lewis' work and how you can help, visit www.stephenlewisfoundation.org.

Stephen Lewis

STUDENT RESEARCH HELPS U.N. AIDS ADVOCACY

ON APRIL 6, the Faculty of Law hosted a workshop for *The HIV/AIDS in Africa Project,* a directed research course initiated by Dean Ron Daniels and International Human Rights Program Director, Noah Novogrodsky. Stephen Lewis, the UN Special Envoy for HIV/AIDS in Africa, asked the Faculty for several research tasks to assist him in his advocacy work against AIDS. The 3-credit course was designed to provide Lewis with targeted research and analysis in advance of the *2006 World AIDS Conference* to be held on August 13-19 in Toronto.

The AIDS pandemic has ravaged Africa, killing millions of people and creating a host of legal problems closely related to the disease (see "Special Visit from UN's Stephen Lewis"). The course created a capstone experience for 21 mostly upper year J.D. students, who united theory and practice in the service of HIV/AIDS advocacy. For research direction, law students worked with Lewis, Anurita Bains (Special Assistant), Paula Donovan (Lewis' Boston-based advisor on women and children), and Gerry Caplan, Ph.D (an expert on African politics and history). Students were asked to address applicable international obligations, domestic law, the local reality and best practices, including model legislation. Their research topics included legal discrimination against women and the pervasive problem of sexual violence; the rights of children and orphans; education and medical user fees; trade and debt-related problems for AIDS-ravaged states; and intellectual property concerns related to the HIV/AIDS medications (particularly anti-retroviral drugs.) At the workshop, Lewis and his team were impressed with the level of research and analysis apparent in the student presentations, many of which uncovered simply heartbreaking realities. Debbie Jorgenson (2005 LLM) reported that in Swaziland, where women have the legal status of minors, discrimination against women and the absence of reproductive rights has contributed to one of the world's highest infection rates. Research completed by third year student, Bryce Ruddick, showed that although user fees for uniforms and books have been formally abolished, hidden fees prevent AIDS orphans and other vulnerable children from attending school in some countries. In Uganda, Ruddick noted, the occasional "homework correction fee" serves as a barrier to education. Although the workshop lasted more than six hours, several students commented that the course had been the highlight of their law school experience. At its conclusion, Donovan and Lewis mused that it would be interesting to see how the AIDS pandemic could be addressed if UN staff in international financial institutions and at the *United Nations Global Fund for AIDS* were to allow the students to take a crack at their jobs.

LAW REVIEW HONOURS FACULTY ADVISOR

Prof. Sujit Choudhry

Each year, the *University of Toronto Faculty of Law Review* celebrates the launch of two new volumes for the year, and awards prizes to students for exceptional writing. Editors-in-Chief Oren Bick (2005) and James McClary (2005) say the launch of Volume 63(1) in March was particularly special this year because it marked the official end of Professor Sujit Choudhry's five-year tenure as faculty advisor. Guests paid special tribute to Professor Choudhry, who was persuaded to stay on for one more year. LL.M. student Dirk Zetzsche was awarded the Shearman & Sterling Business Law Prize for his article, *"The Need for Regulating Income Trusts: A Bubble Theory,"* which was also featured in the *National Post.* Tamara Kagan (2006) won the Cassels Brock & Blackwell Prize and the Martin L. Friedland Prize for her article, *"Recovering Aboriginal Cultural Property at Common Law: A Contextual Approach,"* which was revised with the assistance of a J.S.D. Tory Fellowship. Tamara will be Editor-in-Chief of the Review for Volume 64, along with fellow J.D. student, Helena Likwornik (2006). Recent graduate David Gourlay (2004) won the Torys Prize for his comment piece, *"Access or Excess: Interim Costs in Okanagan."* David also won the Borden Ladner Gervais Public Law Prize.

Prof. Kent Roach Advises Senate on Anti-Terrorism Act

EARLIER THIS SPRING, Professor Kent Roach made recommendations on the *Anti-Terrorism Act* before the Special Committee of the Senate. He recommended that the Committee examine the possible use of special advocates to challenge the government's case during the security certificate and related processes. The Committee is conducting a three-year review of the provisions and operations of the Act, known as Bill C-36, which was introduced to the House of Commons on October 15, 2001 to help combat terrorism. This was not the first time Prof. Roach has appeared before the Committee. In November 2001, Professors Roach and Sujit Choudhry presented a joint submission to amend provisions of the Criminal Code to prohibit racial and ethnic profiling. The Federal Department of Justice is currently looking into anti-profiling measures.

FACULTY WEIGHS IN ON MUGESERA CASE AT SCC

(L - R): Rahat Godil, Lucas Lung, Noah Novogrodsky, and Ivana Djordjevic at SCC

Noah Novogrodsky and three International Human Rights Clinic (IHRC) students are eagerly awaiting a decision by the Supreme Court of Canada. On December 8, 2004, Novogrodsky and the students appeared before the Supreme Court on behalf of the IHRC as an intervener in *Mugesera v. Citizenship and Immigration Canada,* an appeal to decide the fate of Léon Mugesera. In 1992, Mugesera gave an incendiary speech in Rwanda referring to members of the Tutsi ethnic group as "cockroaches" and calling for their extermination. He subsequently immigrated to Canada. After the Rwandan genocide of 1994, the Minister of Citizenship and Immigration commenced proceedings to deport Mugesera based on his incitement to genocide. IHRC law students Rahat Godil (2006), Ivana Djordjevic (LL.M.) and Lucas Lung (2005) worked with Novogrodsky and law firm partner, Goodmans LLP (counsel for Canadian Jewish Congress), in preparing the joint factum. The factum was signed by the IHRC, CJC and Human Rights Watch. The clinic was responsible for the majority of the initial drafting while Goodmans provided advice, direction and drafting, as well as their in-house support services. "It's unusual for a new organization such as ours to get intervenor status at the Supreme Court, so it's a high honour," says Novogrodsky. "If the Supreme Court finds Mugesera deportable for inciting genocide, we can attribute some of that success to the U of T law students who helped bring the definition of genocide to the country's top court's attention. That decision would be history-making for the country and the IHRC."

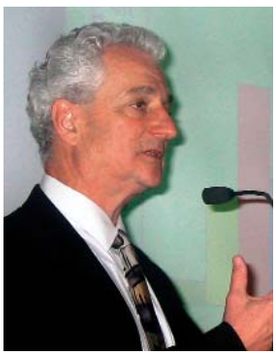
The Honourable Martin Cauchon

The Honourable Martin Cauchon Visits Law School

ON JANUARY 17, the Faculty of Law welcomed the Honourable Martin Cauchon, former Minister of Justice and Attorney General of Canada. Mr. Cauchon provided an insider's perspective on the federal government's decision to proceed with a reference to the Supreme Court of Canada on the question of same-sex marriage. In particular, he addressed the federal government's decision to abandon its appeals, and to refer three questions to the Supreme Court on the constitutionality of the draft bill allowing same-sex marriage. His remarks were put within the broader context of the social policy issues that he attempted to advance as Canada's 45th Minister of Justice, from 2002 to 2004, under former Prime Minister Jean Chrétien. After the speech, U of T Law Professors Sujit Choudhry and Brenda Cossman provided their comments and reactions. Mr. Cauchon is a Special Partner with Gowling Lafleur Henderson LLP in Montreal.

LAW FOUNDATION OF ONTARIO INITIATIVE OPENS UP PUBLIC INTEREST OPPORTUNITIES

The Law Foundation of Ontario has launched a new initiative that promises to dramatically transform the landscape of public interest law and access to justice in Ontario. This summer, up to six organizations will be selected to participate in the program. The organizations will receive funding to hire articling students who will commence their articles in September 2006. The Articling Fellowships will be granted annually for an initial program period of four years. As a result of this initiative, up to six organizations across the province will now have a dedicated full-time articling student acting on their behalf for at least one 10-month period. This will notably enhance legal services in the public interest in our province at the same time as it will significantly increase the supply of public interest articling positions for the numerous students eager to develop legal skills and careers in this area. Pro Bono Students Canada (PBSC), which has strong connections with both public interest organizations and law students throughout the province, will be the administrative home for new Fellowships. PBSC is a national program with chapters in every law school in Canada and is housed at the University of Toronto, Faculty of Law. For more information, please visit LFO's website at www.lawfoundation-on.org.


Dr. Daniel Kaufmann

GOOD GOVERNANCE AND ANTI-CORRUPTION MEASURES PAY OFF

Dr. Daniel Kaufmann, Director of the World Bank Institute, says it's important to analyze quantitative data that measures good governance and corruption levels. Through collection and analysis of data, from surveying businesses to risk rating agencies, he says governance and corruption can be better understood and various myths debunked. Dr. Kaufmann delivered *Debunking Myths on Worldwide Governance and Corruption: The Challenge of Empirical Evidence, and Implications for New Strategies and Policies,* at the annual David B. Goodman Lecture on February 10. Dr. Kaufmann cited the widely-held belief that corruption is linked to poverty, and increased wealth will eradicate corruption. Kaufmann's data indicates the contrary – that the correlation between wealth and corruption is in fact weak. Corruption levels in countries such as Chile and Botswana are comparable to those in Canada and the United States, and are in fact lower than in some countries such as Greece. Dr. Kaufmann also argued that culture and corruption are unrelated, and instead that the adequacy of enforcement mechanisms, such as monitoring, transparency, and appropriate incentives, determine corruption levels. He put his findings in context by posing the question of whether good governance and anti-corruption measures make people better off. The answer is yes. His data shows that a one-point standard improvement in good governance correlates with a 400% increase in national per-capita income. Similar improvements occur in important social variables such as infant mortality and literacy rates. Such results prove that good governance and anti-corruption measures allow people in any country a better social, political or economic existence.

THE HONOURABLE MICHAEL BRYANT DISCUSSES ROLE OF ATTORNEY GENERAL

ON MARCH 1, the Honourable Michael Bryant, Attorney General of Ontario (AG), was the guest speaker at the annual Morris A. Gross Memorial Lecture. Mr. Bryant detailed how the AG is responsible for the administration of justice in the province, litigation involving Ontario, and giving independent legal advice to cabinet. "The AG's duties are expansive and complex, and at times, challenging," he said. For example, Mr. Bryant says his decisions often risk unpopular reactions from the public. Citing former AG, Ian Scott, as his role model, Mr. Bryant explained that the AG must take into account human rights and constitutionalism in a principled way. While this might mean meddling in the work of different ministries, the benefit is that unconstitutional moments can be avoided without ever reaching litigation. When the AG is ahead of the law, rather than following it, he says he can scuttle unconstitutional legislation before it ever moves beyond internal government discussion. As a result, some of the AG's biggest successes will never be made public. Mr. Bryant believes that the modern AG must be constitutionally and politically relevant. But in order to be relevant, he says the AG must be activist, and at times even populist.


(L-R): The Hon. Michael Bryant, Bayla Gross and Wendy Gross

Alumni Achievements

IN OCTOBER... **Richard Ivey '75** was appointed Chairman of the Canadian Institute for Advanced Research (CIAR) Board of Directors. The Canadian Institute for Advanced Research provides funding to Canada's best researchers to tackle complex problems in the sciences and social sciences.

IN NOVEMBER... **Derek Watchorn '66** was appointed President and Chief Executive Officer of the Retirement Residences Real Estate Investment Trust. Retirement Residences REIT is the largest provider of accommodation and care for seniors in Canada with more than 200 retirement and long-term care facilities.

IN DECEMBER... Former Assistant Professor **Douglas Harris '92** joined Market Regulation Services Inc. as Director of Policy, Research and Strategy, where he will contribute to the development and implementation of the rules and policies for regulating equity trading on Canadian markets.

IN JANUARY... **Clay Horner '83** was appointed co-chairman of Osler Hoskin & Harcourt LLP. He shares this leadership role with co-chairman **Brian M. Levitt '73.**

IN FEBRUARY... Former Ontario Ombudsman **Clare Lewis '63** was named Complaints Resolution Commissioner for the Law Society of Upper Canada. Lewis will review complaint files in accordance with the Law Society Act, and provide alternative dispute-resolution services for the public and lawyers who are the subject of complaints. He began his two-year term in April 2005. The Honourable **Donald G.H. Bowman '60** was appointed Chief Justice of the Tax Court of Canada. In 1991, he was appointed a judge of the Tax Court of Canada and named Associate Chief Justice in 2000.

IN MARCH... **James Musgrove '84** was elected President of Toronto Lawyers Association. Musgrove is a lawyer with Lang Michener LLP, where he specializes in the field of competition/antitrust and advertising law. The TLA represents Canada's largest population of lawyers. **Edward Waitzer '76** was named to the Board of Directors for FundSERV Inc. Established in 1993, FundSERV is a leading provider of electronic business services to the Canadian investment fund industry. Waitzer, Chairman of Stikeman Elliott LLP since 1999, practices in the areas of corporate finance, acquisition, and restructuring transactions.

IN MAY... **Melanie Aitken '91** was appointed Assistant Deputy Commissioner in the Mergers Branch of the Competition Bureau. **Stéphane Rousseau (S.J.D., '99)** was appointed Chair in Business Law and International Trade at the Université de Montréal.

U.S. GOVERNMENT POLICY OF OUTSOURCING DISTURBING

As this year's Annual Cecil Wright Lecturer, Professor Martha Minow expressed concerns about the U.S. government's growing policy of outsourcing defence functions. Calling U.S. outsourcing a "disturbing trend," she noted that as a result of the U.S. military privatizing many of its defence functions, we do not know how many private contractors are currently in Iraq, nor the scale of the U.S. commitment there. She went on to analyze some of the problems with the situation. While there is agreement that important government functions, such as interrogating war prisoners, cannot be delegated to private contractors, privatizing other functions has led to a lack of disclosure – one that can seriously jeopardize the U.S. military. The problem, according to Minow, is that privatization makes it more difficult to monitor internally what employees of private contractors are doing. As a consequence of that lack of disclosure, abuses like those at the Abu Graibh prison in Iraq can occur. Minow, who is Harvard University's *William Henry Bloomberg Professor of Law,* says this new policy shows a remarkable departure from conventional methods of accountability. "Typically proceeding without much publicity or disclosure, the private contractors work for the military in ways that, theoretically, could have two systems of accountability: public oversight and private market discipline. But it turns out that we have neither. The checks and balances so necessary to democracy are thus neutralized."

Professor Martha Minow

200 Students Assess Public Interest Careers

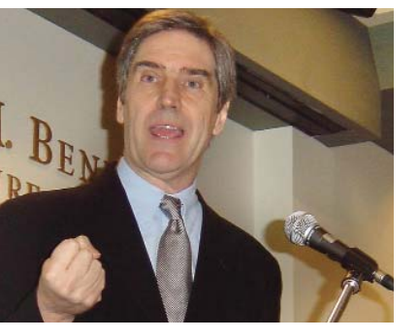
In early March, more than 200 students from law schools across the country learned about public interest legal careers. *The 4th Annual Public Interest Information & Career Day,* co-organized by U of T's Faculty of Law and Osgoode Hall Law School, included talks on diverse areas such as immigration, criminal defence, union-side labour, and aboriginal rights. Law student, Patrick Houssais, who is in his final year at U of T, says it's an opportunity to make contacts and "network with like-minded people." Keynote speaker, Cynthia A. Petersen, a lawyer with Sack Goldblatt Mitchell LLP, spoke about the years of work she has dedicated to equality rights, primarily in the area of same-sex rights. She advised students to build their career around their passions, and to have a life beyond the law. Following the keynote speech, workshops were held on topics ranging from *Doing Justice in Government* to *Social Justice in Private Practice.* Lianne Krakauer, the law school's Director of Career Development, says the event is meant to assist students in accessing information about careers in public service, legal clinics, non-profit organizations, and firms that are committed to social justice work. The event was held in conjunction with the student-run human rights conference, SPINLAW, and sponsored by the *John and Mary A. Yaremko Program in Multiculturalism and Human Rights.*

KEEP INTERNET UNREGULATED

(L-R): Dean Ron Daniels and Yochai Benkler

The open structure of the Internet is being taken for granted, and needs to remain unregulated, says Professor Yochai Benkler of Yale Law School. Prof. Benkler's comments were delivered as part of the Grafstein Annual Lecture in Communications on November 29, 2004. In his talk, *Freedom, Development and the Emergence of Sharing in the Networked Information Economy,* Prof. Benkler says it is easy to forget that activities are made possible by the open, unregulated nature of the Internet. People surf online for many purposes such as keeping in touch with friends, making travel plans, gathering information and shopping. Having reached this level of comfort with 'new technology' allows people the freedom to copy or publish material that traditional news outlets may deem inappropriate for public consumption. However, there has been a recent movement by corporations and intellectual property owners to convince governments that regulation and restriction are needed to foster economic growth and development. If we want to retain an open, unregulated Internet, Prof. Benkler says we have to maintain the "Networked Information Economy". His term explains how the Internet fosters new forms of production and new methods of distribution. But the Internet, and the Networked Information Economy that it has fostered, may very well become a victim of its own success, he says, if restrictions are imposed.

Michael Ignatieff Kicks Off Inaugural John Stransman Memorial Lecture


Professor Michael Ignatieff

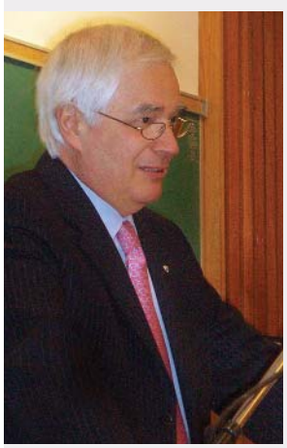
Fresh off a high profile speech at the Liberal Convention in Ottawa, Professor Michael Ignatieff visited the Faculty of Law on March 9 as the inaugural John Stransman Memorial Lecture guest speaker. The law school was delighted to have Ignatieff, who was visiting from Harvard University's Kennedy School of Government, discuss *American Exceptionalism and Human Rights.* Ignatieff told a standing-room only audience that a pattern of American behaviour on human rights has ensured a paradoxical outcome – the United States is both a leader and an outlier in the context of global human rights. According to Ignatieff, the U.S. attempts to exempt itself from international human rights treaties through its application of double standards. The U.S. has set up one set of standards for itself and its allies, and another for those unfortunate enough to fall outside its inner circle. As the most powerful nation in the world, the U.S. has few incentives to constrain itself through international treaties. The problem, says Ignatieff, is that throughout American history, there has been a tendency to view the American conception of human rights as one to export and have all nations adopt. This attitude has led Americans to feel a sense of superiority. The paradox, he says, is that if international human rights are merely American civil rights universalized, then the necessary conclusion is that Americans have little to learn from international human rights. In Ignatieff's opinion, American exceptionalism has been and will be a lasting, rather than fleeting, phenomenon, and countries such as Canada will simply have to accept this as reality. "Canada should plan on an exceptional neighbour, in other words, an exceptionally difficult neighbour," he says. Nevertheless, as the United States is increasingly viewed as an outlier, he says the transaction costs of its conduct will become ever more acute. And this may ultimately lead the U.S. to self-regulate, if not re-examine, its behaviour. In the meantime, countries such as Canada should not be paralyzed by American power, he cautions. "Canada should continue developing and expanding the content and scope of international human rights, notwithstanding the absence of American participation." The John Stransman Memorial Lecture was established by family, colleagues and friends in memory of John Stransman, one of the law school's most respected graduates, after his untimely death in 2002. After graduating in 1977, John went on to pursue an LL.M. from Harvard University, and was called to the New York Bar. He practiced for most of his career at Stikeman Elliott LLP in Toronto. Each year, this new annual lecture series will bring to the law school a leading non-lawyer to speak on a subject of interest to the law school community.

PROFESSOR ARTHUR RIPSTEIN NAMED TO PRESTIGIOUS PHILOSOPHY JOURNAL


Professor Arthur Ripstein

PROFESSOR ARTHUR RIPSTEIN has been appointed Associate Editor of *Philosophy & Public Affairs,* the leading journal in moral, legal and political philosophy. The Journal publishes philosophical discussion of substantive legal, social, and political problems, as well as discussions of more abstract questions. Prior to his appointment to the Faculty of Law in 1999, Prof. Ripstein taught in U of T's philosophy department for 12 years. His research and teaching interests include torts, criminal law, legal theory, and political philosophy, and his accomplishments include several seminal books: *Equality, Responsibility and the Law* (1999), *Law and Morality* (1996, second edition 2001, co-editor), and *Preference and Practical Reason* (2001). He is a former Associate Editor of *Ethics Journal,* serves on the editorial board of *Legal Theory Journal,* and is Advisory Editor of the *Canadian Journal of Law and Jurisprudence.*

Legal Profession Faces Mental Health Stigma

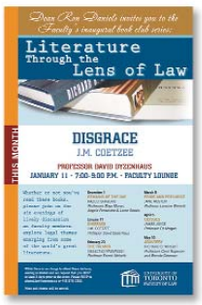

The Honourable James Bartleman

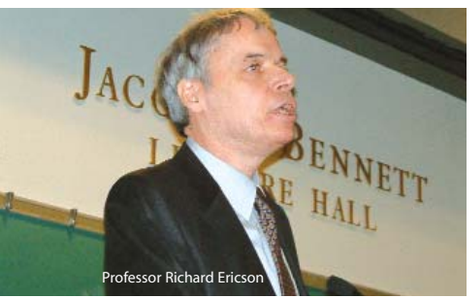
Members of the legal profession face high levels of work-related stress and anxiety, and often suffer from depression or substance abuse, says the Honourable James Bartleman, Lieutenant Governor of Ontario. Worse, he says, sufferers can be reluctant to seek help due to professional considerations or fear of stigma. To address the problem, the Hon. Bartleman has made mental health one the priorities of his tenure. On March 10, he was the keynote speaker at *Living With the Law,* a conference on mental health and the law. The Hon. Bartleman spoke passionately about the need for a broader commitment to address mental health issues, saying "Our society has done little to understand or help those people suffering from mental illness." He said many individuals with mental health problems are stigmatized, mistrusted or face discrimination in the workplace or the community. It is estimated that by 2020, depression will be the leading cause of disability in Canada, and only one-third of those suffering from mental health illnesses actually seek any kind of help. At the conference, guest speakers addressed the struggles created by the limited resources available for helping individuals to cope with mental health problems, in particular, the ongoing need to strengthen support structures at law schools and throughout the profession. The conference, run in conjunction with the Ontario Bar Assistance Program, was organized by the student group *Health Enables Legal Minds at the University of Toronto* (HELMUT).

LITERATURE THROUGH THE LENS OF LAW

Professor Ed Morgan

This past year, the Faculty initiated a new series, *Literature Through the Lens of Law,* which featured various faculty members who explored legal themes emerging from some of the world's great literature. The series began on December 1 with **Professors Mayo Moran, Angela Fernandez** and **Lorne Sossin** discussing *The Remains of the Day,* by Kazuo Ishiguro. **Professor David Dyzenhaus** led lively discussion on January 11 by bringing out a number of themes in *Disgrace,* by J.M. Coetzee. A packed Rowell Room on February 23 greeted **Professor Ernest Weinrib,** who discussed selected passages from *The Talmud,* an immense work of thousands of pages that was compiled by Jewish sages in the first centuries of the common era. The series continued on April 5 with **Professor Ed Morgan,** who discussed *Ulysses,* by James Joyce. Prof. Morgan focused on the "Cyclops" episode and the implications of that chapter for interpreting clashes of culture and legal disputes. An animated discussion and question period followed with a number of alumni offering further insights into the legal themes. On May 3, **Professors Carol Rogerson** and **Brenda Cossman** discussed *Adultery,* by Richard B. Wright, from the perspective of shifting legal and cultural norms of marriage.





Professor Richard Ericson

Insurers Post-9/11 Capitalizing on Uncertainty

Professor Richard Ericson of the University of Toronto's Department of Criminology says insurers are using the threat of terrorism to charge clients higher premiums. As a result, insurance companies have made huge profits from the post-9/11 era of enhanced security. Prof. Ericson delivered these comments as the guest speaker at the Annual John LI. J. Edwards Memorial Lecture, *Criminalization and the Politics of Uncertainty.* In his review of insurance policies, Prof. Ericson found that a single insurance company will negotiate the definition of "terrorism" differently depending on the business context. For the concept of national security, he says terrorism provides an acute example of the "ungovernability" of modern society. That is, a growing obsession with precaution and increased criminalization for failing to prevent harm from even occurring. The question, he says, is how much Canadians are willing to pay to lessen their yearning for security when insurers are "in the business of capitalizing on uncertainty." He concluded that the sporadic and unpredictable possibility of attack, coupled with the potential catastrophic loss, is a risk that cannot be discounted at any price.

Professor Stephen Waddams Elevated to University Professor

ON JULY 1ST, Professor Stephen Waddams will be elevated to the rank of *University Professor,* the highest honour the University of Toronto accords its faculty. "This is a great testament to Stephen's remarkable scholarly career and his foundational contributions to legal scholarship in Canada and beyond," says Dean Ron Daniels. His appointment brings the number of University Professors to 33. A specialist in contract law, private law, legal theory and legal history, Prof. Waddams holds the Goodman/Schipper Chair at the Faculty of Law where he has been teaching since 1968. The author of numerous books, law review articles and notes, his published books are landmarks in their respective fields and include the seminal treatise *The Law of Contracts,* cited consistently by courts in Canada since it was published in 1977. In addition to his legal scholarship, Prof. Waddams has authored several influential Ontario law reform commission reports, and received numerous honours during his career including the *David W. Mundell Medal* awarded annually by the Attorney General to an Ontario writer for distinguished contributions to law and letters. He was also a co-winner of the Owen Prize in 1987 for *The Law of Damages.* A fellow of the Royal Society of Canada, Prof. Waddams is a past editor of *University of Toronto Law Journal.* In 1990, he received an award from the university student organizations for excellence in teaching.

Professor Stephen Waddams

JUDICIAL CLERKSHIPS 2006-2007

Each year, the law school is proud to count among its graduates many students who will be clerking at courts across Canada. This year is no exception, with 19 students obtaining clerkships.

Supreme Court of Canada
Yousuf Aftab (Abella J.)
Andrew Botterell (Charron J.)
Brendan Brammall (Binnie J.)
Chris Essert (Bastarache J.)
Nader Hassan (replacement for Major J.)
Ben Perrin (Deschamps J.)

Ontario Court of Appeal
Margot Finley
Tamara Kagan
Andrew Winton

Ontario Superior Court of Justice
Ioana Bala
Paul Iskander
Helena Likwornik
Candice Suter

Federal Court of Appeal
Dana Hnatiuk (Sexton J.)

Federal Court of Canada
Aniz Alani (Kelen J.)
Rachel Halperin (Harrington J., and de Montigny J.)
Heather Frederick (Mosley J.)

British Columbia Supreme Court
Cristiano Papile
Andrew Pilliar

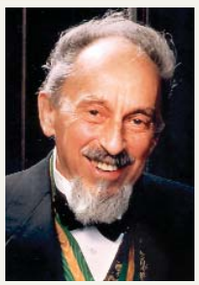
In Memoriam

THE HON. MADAM JUSTICE LYNN KING '71

A protector of youth rights, and an advocate for women during divorce, Madam Justice Lynn King became known for the human touch. Sadly, Justice King passed away from breast cancer in March 2005 at the age of 60. Her husband, M.T. Kelly, and her sons Jonah and Max, will dearly miss her. Justice King was a forceful and humane ally of young people caught up in the chaos of the legal system. From her bench in the family courts of 311 Jarvis Street, she delivered sometimes tough, often compassionate justice in family matters and to a generation of young offenders, once challenging the provincial government on their behalf. She had adjudicated primarily family law and youth cases since her appointment in 1986. Justice King had a distinguished career in family law that included publishing two books, *What Every Woman Should Know About Marriage, Separation and Divorce* and *Women Against Censorship.* On the side, she wrote book reviews for the *Toronto Star.* A Sudbury native, Justice King studied economics at the University of Toronto and returned to her alma mater for a law degree in 1978 after getting an M.A. at the Fletcher School for Law and Diplomacy at Tufts University in Boston. After graduation, Justice King went into practice with then-husband Greg King and Paul Copeland. In 1976, she formed a partnership with Harriet Sachs. When Justice King was appointed to the bench, she quickly made an impact in the area that would define her career as a judge: the rights of young people who found themselves on the wrong side of the law. When she wasn't occupied with high-profile constitutional cases, she was developing the human touch that made her a role model to her judicial colleagues and the lawyers who argued before her at the Ontario Court of Justice. Many members of the judiciary and government attended the wake and funeral, including the Right Honourable Adrienne Clarkson, the Governor General of Canada. A special tribute organized by colleagues was held for Justice King on April 19, her birthday, at the family court house on 311 Jarvis Street. On display was a special quilt made for her, which was commissioned and made possible by contributions from hundreds of her colleagues in the legal profession. (Excerpted from the *Toronto Star)*

ELIZABETH MOIRA EVELYN MASSEY '99

In 2000, Elizabeth suffered severe injuries after being hit by a car while she was cycling home from work. While recovering, she was actively involved as a volunteer with several organizations. Elizabeth Massey died on November 24, 2004 at the age of 38. A graduate of the 1999 Master of Laws program at the Faculty of Law, she also attended the law school as a transfer student from McGill University's Faculty of Law in 1991-1992. During her time at U of T's Faculty, Elizabeth served as a representative of the Graduate Law Students' Association, on the School of Graduate Studies Governing Council, and was a tutorial assistant. Elizabeth went on to practice law with the Federal Government's Department of Justice in Vancouver and later with the Ontario Ministry of the Attorney General. She will be remembered for her courage, undiminished sense of humour, her intensely civilized attitude to others and the joy she gave all who knew her through her abiding interest in music, painting and the theatre. A life that should have been rich in professional and personal achievement has been tragically ended. A scholarship in Elizabeth's name has been established in the creative arts. Donations, payable to the Canadian Federation of University Women's Charitable Trust, should be sent to Roberta Brooks, Director of Finance, CFUW Charitable Trust, 11-2103 Berwick Drive, Burlington, ON L7M 4B7.



DR. MORRIS CYRIL SHUMIATCHER '42

Dr. Morris Shumiatcher passed away peacefully on September 23, 2004 at the age of 87. "Shumy" to those he knew, graduated from the University of Alberta in 1940 with his Bachelor of Arts and in 1941 with his LL.B. He went on to receive his LL.M. in 1942 from the University of Toronto, Faculty of Law. After serving with the Royal Canadian Air Force from 1943-1945, he received his *Doctorate of Jurisprudence.* In 1946, he went to Saskatchewan at the invitation of T.C. Douglas, then Premier of the Province. He accepted the position of Law Officer of the Attorney General. Following this appointment he became the personal assistant to the Premier. While arguing a case on behalf of the province before London's Privy Council in 1948, he was first required to be a King's Counsel. This led to Shumy being appointed the youngest King's Counsel in the Commonwealth at the age of 31. A dedicated civil libertarian, he authored *The Saskatchewan Bill of Rights* and guided its passage through the legislature. It was the first *Bill of Rights* in Canada and preceded the *United Nations Declaration of Human Rights* by one year. While in government, Shumy started his lifelong association with the aboriginal community when he convened the first meeting of Treaty Indians and published a text of their treaties in 1946. So concerned with the plight of the aboriginal community, in 1971 he wrote *Welfare: Hidden Backlash.* Entering private practice in 1949, Shumy would go on to become an exceptional advocate and lawyer, one who would become a member of many provincial, national and international organizations. Appearing numerous times before the Supreme Court of Canada, Shumy had a reputation for always being innovative and articulate. In 1979, he published *Man of Law: A Model,* in which he outlined the characteristics that make up the ideal lawyer. Shumy will be deeply missed by Jacqui, his loving wife of 49 years, his family, his colleagues and many friends. (Excerpted from the *Leader-Post)*

LEONID GORELIK '00

Leonid passed away at the age of 36, on February 26 at Mount Sinai Hospital, after courageously battling cancer. He will be greatly missed by his mother Nina Mamaeva, uncle Mark Gorelik and aunt Ella Gorelik. His memory will be honoured by his many cousins, colleagues and friends. "I knew Leonid as an intelligent, hard-working and dedicated person. More importantly, Leonid was also a great friend, someone who cared about people and was very loyal to those close to him. He will be sorely missed," says Robert Innocentin, who was Leonid's friend in the Law/MBA program.

DONALD JOHN MACRAE '78

Donald John MacRae died suddenly at home in Cumberland on Saturday, February 12, 2005. Donald was the loving son of the late William Albert MacRae and the late Helen Cooke. He graduated from Carleton University with his B.A., received his M.A. in 1972, and his LL.B. from the University of Toronto, Faculty of Law in 1978. Donald will be remembered for his kindness and sincere consideration to his family, neighbours and colleagues. He was remarkably devoted to his parents Helen and Bill, and to his first cousins and their children.

THE EVOLUTION OF Law and Philosophy at U of T Law School

BY BRAD FAUGHT

Ernie Weinrib has a great view from his office. From the fourth floor of Flavelle House, the longtime law professor, who has been declaiming on torts, philosophy and occasionally – since he has a PhD in the field – the classics since 1972, overlooks the southern reaches of Philosopher's Walk. Appropriately, this sylvan walkway that connects Bloor Street to Hoskin Avenue is close to Weinrib's office because for the past 33 years he has been an integral member of the Law and Philosophy group at the University of Toronto, Faculty of Law. And over the course of these years the group has come to embody one of the most important cadres of legal philosophers in North America. Asked why this development has happened, Weinrib shrugs modestly and replies with a smile: "We started with almost nothing, that is, with me. We then made superb appointments. Theoretical debate sprouted. Workshops and discussion groups were instituted. Interdisciplinary and international connections were made. Ground-breaking books and articles were published. And now we find ourselves recognized internationally as a pre-eminent centre for legal theory."

But I'm not in Weinrib's bright, exposed brick office merely to admire his view of Philosopher's Walk. After an hour's chat on the genesis and history of Law and Philosophy at U of T – of which much more will be said later – we move on to my second stop at the law school on this sunny, late-winter day. Leaving Weinrib's office we roll our office chairs down the hallway to an

"We started with almost nothing, that is, with me. We then made superb appointments. Theoretical debate sprouted. Workshops and discussion groups were instituted. Interdisciplinary and international connections were made. Ground-breaking books and articles were published..."

appointment designed to give me a fuller answer to the question of what it is that makes the Law and Philosophy group tick? I'm going for lunch with a number of members of the group at the office of its current unofficial convenor, Professor Arthur Ripstein. Professors' offices the world-over are known for at least one thing: piles of books piled upon piles of books, which are in turn piled upon piles of paper. In this respect, Ripstein's office doesn't disappoint. Bookshelves line the walls. A table sits in the centre of the room, upon which lie lots of scattered papers, and more books. Such professorial clutter has been pushed aside, however, to make way for the sandwiches, drinks, cake, and fruit that make up the lunch. For some, such ample provisions might be enough to convince them to stop by Ripstein's office – unannounced – every week. But the food, as welcome as it is at 12:25 on a Thursday afternoon, is not the reason that 10 people will shortly gather for about an hour and a quarter of lively discussion. No, the reason they will come – as they have been coming throughout the academic year – is the long dead eighteenth century Prussian philosopher, Immanuel Kant. Yes, Kant may be a prime example of that dread species: the DWEM, Dead White European Male. But what a specimen! Truth be told, Kant has been under discussion in this weekly way for about 3 years now, with, Ripstein suggests later, another year or so left to go. Specifically, the group has been reading closely – very closely, that is – Kant's *Metaphysics of Morals.* Published in 1797 – in the middle of the French Revolutionary and Napoleonic Wars – it is a text central to the development of modern European law and politics.

Locke's work has been the staple of philosophers and, later, law schools. A hundred years after Locke was writing, Kant emerged, and with him came a renewed attempt to probe the law and its ultimate rationale, the legitimate use of force.

Nobody said philosophy was easy, so I don't know why I should think otherwise. As I sit in the corner munching on a sandwich and glancing at the covers of such cardinal legal texts as William Blackstone's *Commentaries on the Laws of England* and Thomas Hobbes's *Leviathan,* my memories of a couple of undergraduate courses in philosophy are hazy. But as the noon-hour progresses my memory sharpens. I begin to recognize the style of engagement practiced by philosophers. Slow, deliberate, ruminative, sometimes halting, the group bores into Kant's words like a collection of fine-tuned drills. Alan Brudner asks a question, Ripstein responds, followed by an interjection by Ernie Weinrib, and then a further interjection by Lorraine Weinrib. At length, Bruce Chapman comments, and then it's back to Ripstein with a comment that ends with the words: "determinative spatial boundaries that are omnilateral." Whew! To non-philosophers such talk can be heavy going. A line-by-line, textual analysis of Kant is not for the slack of mind or the faint of heart. In the *Metaphysics of Morals,* Kant explicates his theory of the "supreme proprietor." In coming to grips with Kant's theory the group grapples with the nature of property owning, and his attempt to "reverse the Lockean picture," as someone remarks. The Englishman John Locke's influence on the western conception of property, legitimacy, and government has been profound, and for the last 300 years or so – ever since he put quill to parchment in late-Restoration England – Locke's work has been the staple of philosophers and, later, law schools. A hundred years after Locke was writing, Kant emerged, and with him came a renewed attempt to probe the law and its ultimate rationale, the legitimate use of force. And the debate, the parsing of meaning, the probing of intent, goes on. For legal philosophers, such is the bread and butter of their existence.

Every academic discipline has its own style of enquiry. "How many angels can dance on the head of a pin?" asked medieval theologians. Historians, for their part, are usually ruthless about "sources." Scientists stand or fall based on their control groups. For philosophers, however, the key is to talk. That is, from the days of Socrates' philosophizing on the streets of Athens – famously, "corrupting the youth" of the leading city of Ancient Greece – down to today, the modus operandi of the philosopher is simply to talk, to reason together. In this Socratic sense, the tradition is a grandly oral one. Later, I ask Arthur Ripstein about the style employed by philosophers. He concurs: "Philosophers mostly talk and split hairs," he chuckles. "That's how philosophy moves on."

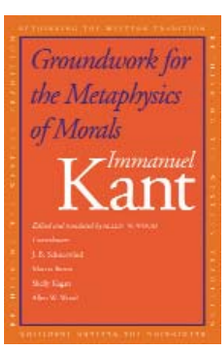
At U of T Law School, the philosophical tradition has long been "moving on," but since the late 1970s, remembers Ernie Weinrib, it has come to operate along the lines of a group similar in style to the Faculty's other such groups, like Law and Economics or Health Law. And, as is often the case, it came

Prussian philosopher, Immanuel Kant

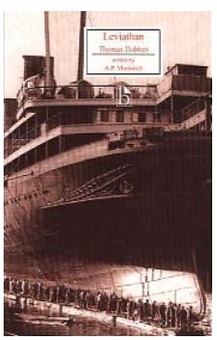
about incrementally and without conforming to any kind of master plan. Weinrib, who was present at the creation, recalls his own tentative forays into the field of legal philosophy, which came partly as a result of his own "policy" developed at the outset of his teaching career: "Never talk about a rule or a doctrine of law without trying to understand its justification." As all law professors know – indeed, such would be true for all teachers of anything, anywhere – this kind of standard is a high one, and usually is best carried out collaboratively. For Weinrib, his self-proclaimed policy applies especially to the law of tort, his main area of interest. But what developed at U of T in the 1980s was the building of a group of scholars who seemed to espouse the same rigour in their teaching and scholarship, regardless of area of expertise.

The key moment in this development came in 1979, says Weinrib. At that time, former Supreme Court justice, the Hon. Frank Iacobucci, was dean, and he gave the go ahead to Weinrib to start a legal theory workshop. "We had a budget, which allowed us to bring in a distinguished visitor every few weeks throughout the academic year. It just went from there and has evolved into one of the most respected legal theory workshops in North America. We entered the international stream." Weinrib, from what I've seen of him, is not a person given to hyperbole. But I'm a journalist, after all. If someone says, "the best," or the "most respected," or especially that most cringe-worthy of terms, "world class," then off I go in search of independent verification. In this case, I thought one of the best ways to see what the last 25 years of law and philosophy had wrought at U of T was to attend one of the legal theory workshops themselves. Luckily, there was still one left in term, featuring a visiting scholar from the London School of Economics, Nicola Lacey. She would be talking about her recent biography of H.L.A. Hart, one of the foremost legal minds of the twentieth century, and almost iconic in some legal and philosophical circles for, among other pieces of work, his seminal book, *The Concept of Law* (1961). The great man, Professor of Jurisprudence at Oxford from 1952-68, has been given the close biographical treatment by Lacey, a scholar well-known in her own right in the field of feminism and the law. Her book, a "stunning achievement," according to the current Professor of Jurisprudence at Oxford, John Gardner, was much anticipated in the field and the fact that the Legal Theory Workshop was included on Lacey's North American peregrinations is testament to its high standing.

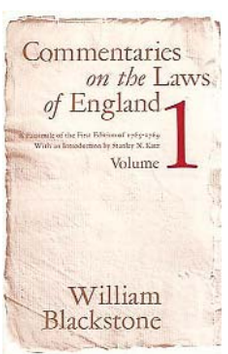
Unsurprisingly, for Lacey's talk the room is packed. Held in the atrium in Falconer Hall, and co-sponsored by the Feminism and the Law Workshop series – itself an outgrowth of the Law and Philosophy group – Lacey has attracted some 60 people variously arranged around a big rectangle made out of a series of tables, or seated around the atrium's perimeter. It's a beautiful early-spring day, and light streams through the windows that face south onto Flavelle House and Queen's Park. The Legal Theory Workshop, in addition to having a reputation for outstanding speakers, also – I've overheard a couple of students say on the way in – has an equally stellar reputation for the quality of its lunch. True to the word on the street, in neither way am I, nor the mix of students and faculty, disappointed. The lunch is great, and Lacey gives a lively talk on Hart, which sparks a number of questions. Everyone, it seems to me, eventually leaves sated, both intellectually and gastronomically. Later, I ask the chair of the day's proceedings, Professor Denise Réaume, what it is that has allowed for the creation of such a



Groundwork for the Metaphysics of Morals
Immanuel Kant



Leviathan
Thomas Hobbes



Commentaries on the Laws of England
William Blackstone

well-respected and stimulating workshop series. "Its success," she suggests, "is mostly because of adherence to the tried and true formula of great speakers and a lively audience."

Réaume herself, who works in tort law and feminist legal theory, is a good example of the way in which Law and Philosophy has prospered at U of T. There is now a long list of such scholars housed in either Flavelle House or Falconer Hall working in a variety of sub-areas: Lisa Austin and Abraham Drassinower on intellectual property; Alan Brudner on Hegel's political philosophy; Peter Benson and Catherine Valcke on contracts; Bruce Chapman on tort law; Mayo Moran, Denise Réaume and Jennifer Nedelsky on feminist theory; Sophia Reibetanz Moreau on moral philosophy; and Hamish Stewart on legal theory. Take yet another example, David Dyzenhaus, who runs the Legal Theory Workshop series. His scholarly work is on the rule of law in political and legal philosophy. Of particular interest to him is administrative law, especially with regard to the role of the rule of law in governmental responses to emergencies, such as that brought on by September 11th, 2001. At first glance, one might not see the necessary connection between Dyzenhaus's scholarly interests in public law and the preponderant strengths of the Law and Philosophy group. But that would only be at first glance. As Dyzenhaus himself puts it: "U of T's main strength is in private law theory, whereas I am interested in public law theory. However, the exposure to my colleagues' work, particularly to Ernie Weinrib's account of legal formalism, has made a big impact on me. The real strength of the law and philosophy group as a whole comes from an openness to new questions and perspectives and a willingness to work across disciplinary boundaries."

The interdisciplinary nature of the Law and Philosophy group indeed is one of its outstanding features. But not only is this true in the sense that *within* the group itself there are a great number of scholarly areas represented; but *without* the group as well there is a true interdisciplinary flavour being brought to its endeavours.

The key moment in this development came in 1979, says Weinrib. At that time, former Supreme Court justice, the Hon. Frank Iacobucci, was dean, and he gave the go ahead to Weinrib to start a legal theory workshop.

The interdisciplinary nature of the Law and Philosophy group indeed is one of its outstanding features. But not only is this true in the sense that *within* the group itself there are a great number of scholarly areas represented; but *without* the group as well there is a true interdisciplinary flavour being brought to its endeavours.

The day I sat in on the weekly lunchtime discussion on Kant, for example, two of its regular participants were from other parts of U of T: Simone Chambers from political science, and Willi Goetschel from the Department of Germanic Languages and Literatures.

The main benchmark, however, of the Law and Philosophy group's scholarly rigour and disciplinary impact must be the degree to which it has shaped the debate within any of the fields it touches. Here, tort law speaks loudest, mostly in words enunciated by Professors Ernie Weinrib, Ripstein, and Benson. Collectively called the "Toronto School," it is the new "center of gravity" for tort law theory – especially corrective justice in torts – according to an admiring George P. Fletcher, Cardozo Professor of Jurisprudence at Columbia Law School. Through works such as Weinrib's, *The Idea of Private Law* (1995), Ripstein's, *Equality, Responsibility, and the Law* (1999), and Benson's *The Unity of Contract Law,* (2001) the Toronto School has become the single most important group of legal philosophers on the continent in tort theory, the manifestations and complications of which shape ways of thinking about rights, duties, and justice in private law.

Meanwhile, the lunchtime discussions on the fourth floor of Flavelle House have ended for the term but will pick up again in September. Kant's *Metaphysics of Morals* remains under the close examination of the assembled group of philosophers; indeed, this is especially the case for Ripstein, who is working on a book about Kant's "Doctrine of Right." At a pace that he describes with a laugh as "somewhere between the Talmudic and the glacial," the search for what Kant postulated was a systematic set of principles that holds the law together goes on – both in the pages of his book-in-progress and amongst the members of the lunchtime group. Such is, at least, part of the task of the legal philosopher, a species very much alive and doing exceedingly well at U of T's Faculty of Law. ■

Brad Faught is a Toronto historian and journalist.

Theoreti

A philosopher is a person who is puzzled by things that other people find obvious. For example, everybody knows what a legal system is: it's a system made up of legislatures, courts, various enforcement bodies, people doing various things, according to prescribed institutional roles. Philosophers find these obvious facts fascinating, in part because legal systems claim powers that make them different from other kinds of social organizations. The law claims to be entitled to tell people what to do, and to force them to do as they are told. These powers are familiar in the criminal law, but they are just as much a part of the tax code or the law of private remedies. If I owe you (or Revenue Canada) money, I have to pay, no matter what I think about it. The law claims to apply to everyone within its jurisdiction. The leader of a criminal syndicate may be able to get people to do as he says (through criminal means), and might even announce his entitlement to do them, however legal systems are different. Legal systems claim to do justice, and they claim that people have an obligation to obey, unlike the crime boss, who can only provide an incentive to obey.

Legal philosophers try to explain and evaluate these various claims. How does law differ from other forms of social order? How does it differ from morality or etiquette, or the organized use of force? Nobody thinks that the law is equivalent to any of these things, but the contrasts illuminate more general moral questions about law. Is there an obligation to obey the law? If so, how far does this obligation extend? Are particular legal rules historical accidents or exercises of reason? Is law an exercise of reason, or an unfortunate compromise with the challenges of human social life?

These questions are as old as philosophy itself. Western philosophy began with Plato's investigation of the possibility of a just system of government. Lawmaking was Plato's model of the power of reason, contrasted with both passion and power. It was also the model in which he posed the question of justice.

A century ago, Oliver Wendell Holmes rejected Plato's approach in his remark that "the life of the law has not been reason. It has been experience." Holmes was famously suspicious of all appeals to principle, since he thought that excessive worry about principle led to unnecessary bloodshed in the American Civil War. But he wasn't just revealing his personal proclivities. He also issued a philosophical challenge to the law's claim to do justice.

Holmes's challenge can be raised at different levels. At the highest level of generality, we can ask whether a legal system, simply because it is a legal system, can claim to do justice, or legitimately demand that its citizens obey it. Holmes's own answer was negative. He thought that the only point in asking about the law was to help what he called "the bad man" to plan around the obstacles that were likely to be put in his way. Others have thought that the law holds out more promise, that its claim to do justice almost always has something to it. Still others have thought that as the law develops, its own structures pull it in the direction of justice. Other pressures may pull it the other way, but some have thought that legality itself imposes certain requirements.

The same challenge can be posed about the details of legal doctrine. Holmes makes his remark in the context of his lectures, *The Common Law,* in the process of a detailed exploration of the ideas animating legal doctrine. Holmes claimed to find only expressions of social tastes and policies in the law, praising its "inevitable philistinism." Others, including the scholars represented in this issue, have tried to understand legal doctrine not as a series of compromises between battling policies, but as expressions of underlying ideas of justice. Specific exercises of legal power raise questions of the understanding of social life and human interaction that it presupposes, and whether it is consistent with the freedom and dignity of those over whom it is exercised. A philosophical analysis of doctrine doesn't pretend to provide an algorithm for deciding cases. Abstract arguments are almost always silent about how to classify particulars. But that limit of what Holmes mocked as "logic" leaves room for philosophy to show that the proposed solution in a specific case is incoherent or at odds with the rest of the law.

Philosophical questions about doctrine feed back into legal ones. Does the law have a single consistent approach to this question? Is this decision a development of the law, or a move away from it? Is it consistent with the way the law has thought about a particular power or right? The only way to answer these questions is by trying to map out the structures through which the law thinks about the use of force, and tells people what they are allowed to do. Areas of law as different as constitutional law and torts may think about these questions in different ways. But they have to think about them. And so do we, as philosophers and law teachers. ■

cally speaking...

BY PROFESSOR ARTHUR RIPSTEIN

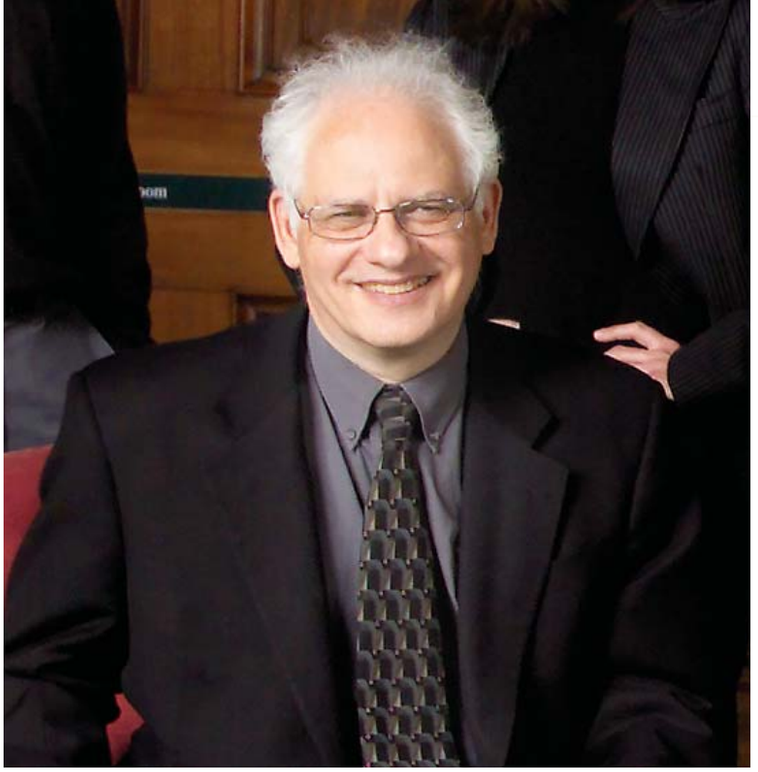
Is there an obligation to obey the law?

If so, how far does this obligation extend?

applied legal

Issues in legal philosophy range from abstract conceptual questions about the nature of law and legal systems to normative questions about the relation between law and morality and the justification for various legal institutions.

theory



Purpose in Private Law

BY ERNEST J. WEINRIB, UNIVERSITY PROFESSOR AND CECIL A. WRIGHT PROFESSOR OF LAW

The idea that one understands law through its purposes is commonly regarded as a truism. For instance, tort law is supposed to reflect the goals of compensation and deterrence. Because this idea conceives of law as an instrument for the realization of certain purposes, we can term it "instrumentalist." The questions I propose briefly to consider are these: What is involved in the instrumentalist approach? Can this approach make sense of private law? And if not, what is the alternative?

Under the instrumentalist approach, the justificatory worth of the goals is independent of the law that they justify. To continue with our tort example, deterring accidents and compensating accident victims are socially desirable quite apart from tort law. If tort law achieves these goals, so much the better, but the validity of the goals does not derive from tort law. Tort law is merely a tool for forwarding independently desirable purposes given to it from the outside.

A consequence of the focus on independently justifiable goals is that private law is only indirectly implicated in the instrumentalist inquiry. The instrumentalist starts by looking past private law to a catalogue of favoured social goals. Private law matters only to the extent that it forwards or frustrates these goals. What the instrumentalist proposes is not so much a theory of private law as a theory of social goals into which private law may or may not fit.

Moreover, the instrumentalist is concerned with whether the results of cases promote the postulated goals. Private law, however, is more than the sum of its results. It also features a set of concepts, a distinctive institutional setting, and a characteristic mode of reasoning. These aspects are components of the internal structure of private law and do not readily map on to the instrumentalist's extrinsic goals. By ignoring these aspects, instrumentalism misses what is most characteristic of private law as a legal phenomenon.

Furthermore, the favoured goals are independent not only of private law but also of one another. Thus, compensation and deterrence, the two standard goals ascribed to tort law, have no intrinsic connection: nothing about compensation as such justifies its limitation to those who are the victims of deterrable harms, just as nothing about deterrence as such justifies its limitation to acts that produce compensable injury. When these two goals are combined within a liability regime, each of them truncates the other. Can one seriously believe that compensation and deterrence are optimal when the incidence of the plaintiff's compensation is determined by the need to deter potential defendants and when the amount of deterrence imposed on the defendant is set by the fortuity of the plaintiff's injury? That would be a coincidence of Panglossian proportion. Understood from the standpoint of mutually independent goals, private law turns out to be a potpourri of unharmonised and competing purposes.

A preferable view is this: Private law can be understood only from within and not as the juridical manifestation of extrinsic purposes. Instead of inquiring into its goals, one should attend to its internal structure, to its way of connecting plaintiff and defendant, to its normative presuppositions, to its assumptions about fairness and coherence, to its characteristic concepts, to its institutional requirements, and to its implicit notion of human freedom. These issues deal with what is internal to private law as a distinctive normative practice. If we must express this intelligibility in terms of purpose, the only thing to be said is that the purpose of private law is to be private law.

Instrumentalists dismiss as a hopelessly unilluminating tautology the suggestion that private law has the purpose of being itself. In their eyes private law is – and can be nothing but – the expression of external goals.

Nonetheless, this dismissal of the internal intelligibility of private law is surprising. It cannot be (one hopes) that the very idea of a phenomenon intelligible only in terms of itself is unfamiliar. Some of the most significant phenomena of human life – love or our most meaningful friendships, for instance – are intelligible in this way. We immediately recognize the absurdity of the instrumentalist's claim that the point of love is to maximise the efficiency of experiencing certain satisfactions while at the same time avoiding the transactions costs of repeated negotiation. The very terms of the analysis belie the nature of what is being analyzed. Explaining love in terms of extrinsic ends is necessarily a mistake, because love does not shine in our lives with the borrowed light of an extrinsic end. Love is its own end. In this respect (and only in this respect), private law is just like love. ■

Reasons and Outcomes

BY PROFESSOR BRUCE CHAPMAN

It is generally thought that a rational decision is a decision based on reasons. In this respect one would have thought law and legal decision-making was paradigmatically rational. Advocates attempt to persuade judges with reasoned arguments, and judges typically offer reasons for the decisions they make in response to those arguments. Indeed, the authority of a judicial outcome depends in part on the quality of the reasons that are offered in support of it. Weak reasoning will undermine the authority of a judicial outcome and leave it exposed to the indignity of being distinguished into oblivion, if not completely overruled or reversed.

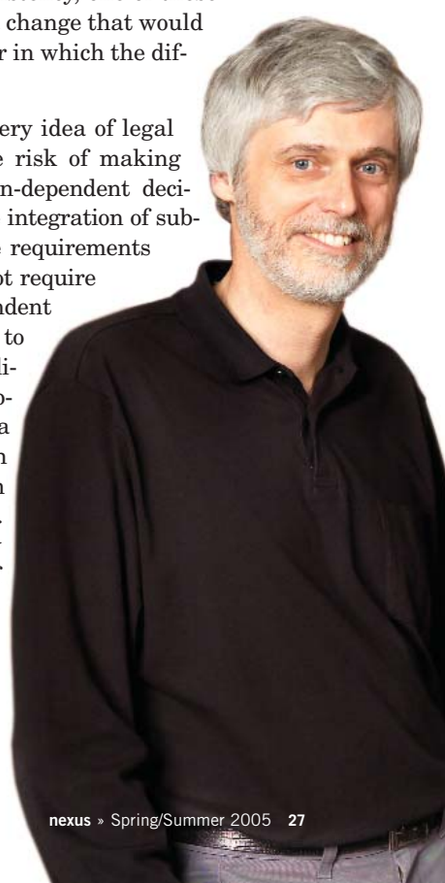
OF COURSE, IT WILL BE SAID THAT THE VERY IDEA OF LEGAL PRECEDENT EXPOSES THE COURT TO THE RISK OF MAKING ORDER-DEPENDENT RATHER THAN REASON-DEPENDENT DECISIONS.

But what if all the reasons offered by the individual judges, although individually sound, together add up to something that does not support the outcome? It is a familiar enough problem that judges may have different reasons for supporting some decision. As a consequence we may have majority support for some outcome, albeit only for a mere plurality of reasons. However less familiar and less discussed is the situation where the reasons supported by a majority (not just a plurality) of judges favour one outcome and yet a majority of the judges vote that some other outcome should prevail. This is the stuff of outright contradiction. Can a legal decision still be construed as rational in the face of such a contradiction?

Consider the following simple example. On a three member court considering a breach of contract case, Judge A believes that there was a well-formed contract, but that it was not breached. So Judge A votes for no liability. Judge B thinks that the defendant's behaviour in the case does amount to breach of such a contract, but that the contract was not well-formed. So he too would vote for no liability. Finally, Judge C votes for liability because it is her view that the contract was both well-formed and was breached. So a majority of the court believes both that there was a contract and that it was breached. Yet a majority of the court would vote for no liability because there is no breach of contract. This seems odd.

How should a court proceed in the face of such a contradiction? Should it follow its majority view of the reasons (contract and breach) or its majority view of the outcome (no breach of contract)? It is tempting to think that the court should let the reasons themselves determine the outcome (breach of contract). Otherwise there is a danger of arbitrary results – in at least the following way: the results across different cases might be entirely dependent on the order in which they arise. Suppose, for example, that the only issue to be decided was whether, on facts similar to our hypothetical, there was a contract (i.e., there was no breach issue). Then the majority view would be that there was a contract. Suppose next that a case arose where the only issue to be decided was (again on facts similar to our hypothetical) whether there was breach of such a contract. Again, a majority would determine that there was. Could a court now face the original hypothetical case, which raises both issues at once, and now, given what it has already decided in the single-issue cases, conclude that there was no breach of contract? This is what the court might be tempted to conclude without considering either the precedents of the prior decisions or its majority reasoning on the underlying issues. But how would this be rational? And if it confronted the original case, which raised both issues, first, and decided it (on the basis of a vote on the outcome, not the reasons) as no breach of contract, how could it possibly decide the subsequent single-issue cases on like facts in the same way as it did before, namely as a case where there was a contract and a case where there was a breach. For the sake of overall consistency, one of these case results would have to change, a change that would be determined by the arbitrary order in which the different cases arose.

Of course, it will be said that the very idea of legal precedent exposes the court to the risk of making order-dependent rather than reason-dependent decisions. This is true in a sense, but the integration of substantive reasons with the normative requirements of inter-temporal consistency does not require that decisions be so *arbitrarily* dependent upon the decision path. It is possible to construct an account of legal rationality that is both responsive to the substantive reasons that argue for a given result in a case *and* which allows for formal consistency with the decisions one has already made. Interestingly, it is the particularly legal notion of defeasibility, and of defeasible legal rules, which makes this possible. However, further discussion of this important claim must be left for another occasion. ■



What Holmes Can Teach Us About Economic Loss

BY PROFESSOR PETER BENSON

The *"economic loss rule"* categorically denies recovery for financial loss that is consequential upon damage to something which a plaintiff neither owns nor possesses. Established more than a century ago, this rule was developed and pushed to its limits by the very courts that were responsible for the creation and the expansion of the modern law of negligence which overthrew and discredited traditional barriers to recovery. Moreover, until recently, the rule was generally and consistently applied across the major common law jurisdictions. Now, however, it has deeply divided the common law world, with American and English courts largely maintaining this traditional rule, and Canadian, Australian, and New Zealand courts allowing recovery *if* certain conditions are met. Few issues in the law of negligence are currently more contentious.

Consider the following simple fact pattern. Defendant, failing to use reasonable care, causes his vessel to careen into a bridge, seriously damaging it. As a result, the bridge must be closed for repairs. The Plaintiff has neither a property nor a possessory right in the bridge, but she is entitled under contract with the bridge owner to have sole use of it to transport its goods. During the period of closure, the Plaintiff must find an alternative method of transportation and can do so only at greater expense, thereby sustaining financial loss.

If the bridge owner sues the Defendant for the physical damage to the bridge, ordinary principles of liability for negligence may very well permit recovery. Moreover, if, as a result of the bridge closure, the bridge owner sustains additional expenses or loses rent under its contract with the Plaintiff, this is also recoverable in principle.

But what if the Plaintiff sues for her financial loss? The traditional position of the common law, first clearly set out in the late nineteenth century, is that the Plaintiff's suit must fail in all circumstances, no matter how foreseeable its loss may have been.

The question is: supposing the Plaintiff's financial loss is foreseeable and the Defendant could have avoided it by exercising reasonable care, what might possibly justify the economic loss rule, particularly when the bridge owner may recover for the very same item of loss which is denied protection if suffered by the Plaintiff? Interestingly, both those courts upholding and those rejecting the rule give the same pragmatic answer: if recovery were *always* allowed for such losses, this could lead to escalating, ever-widening, open-ended liability, given the intricate inter-dependence of commercial interests in modern societies; and this result would be unfair to defendants and socially inefficient.

Implicitly, both sides share the same conception of liability which holds that a financial loss foreseeably caused by negligent conduct should in principle be recoverable. Both agree, therefore, that prima facie such losses should be compensated. Where they differ is in their assessment of the feasibility of fashioning and applying workable criteria that can ensure that recovery will not lead in particular circumstances to excessive and open-ended liability. In particular, Canadian and

Australian courts have allowed recovery where the "closeness," "directness," or "particular foreseeability" of the plaintiff's loss in relation to the defendant's negligence ensures that recovery will not produce this outcome. While American and English courts cannot reject the possibility of such qualifications in principle – given their conception of liability – they see them as unworkable and indeterminate.

The present division among jurisdictions reflects the inherent instability of their understanding of this issue. What both sides fail to see is that the decisions that fashioned the economic loss rule understood it on a completely different basis and that this other basis challenges the conception of liability which they currently presuppose.

thing that comes under the Plaintiff's rights as against the Defendant.

In the bridge case, the Plaintiff's only right to use the bridge is her contract right – but this is personal as against the bridge owner, *not* the Defendant. In the absence of a contractual right against the Defendant, the only way in which the Plaintiff can have a right exclusive of the Defendant is by having a property or possessory right "against the world." That is the reason the economic loss rule focuses on the absence of a property or possessory interest in the damaged thing as the decisive strike against the Plaintiff's complaint. The various qualifications proposed by Canadian and Australian courts that reject the rule do not, and cannot, meet this threshold requirement.

"To succeed, a Plaintiff must show that its loss is with respect to something from which it can, as a matter of rights, exclude the Defendant who then, but only then, can be under a duty of non-interference with respect to that thing."

The rationale for the rule is nowhere understood more clearly than by Oliver Wendell Holmes in his seminal 1927 U.S. Supreme Court decision in *Robins Dry Dock v. Flint*. In that opinion – which has influenced this area of negligence more than any other single common law decision – Holmes makes clear that the reason the Plaintiff's action (unlike the bridge owner's in our example) *must* fail is, not that the loss is unforeseeable or that recovery may have undesirable consequences, but rather that the Plaintiff does not have a claim to the use of the damaged thing (the bridge) that amounts to a *right as against the Defendant*. The fact that careless conduct causes foreseeable loss is not sufficient for liability. According to Holmes, it is also essential that the loss be in relation to some-

Thus understood, the economic loss rule supposes a conception of liability in which liability is imposed for wrongs, wrongs are violations of rights, and rights are, and can only be conceived of as, relative as between persons. To succeed, a Plaintiff must show that its loss is with respect to something from which it can, as a matter of rights, exclude the Defendant who then, but only then, can be under a duty of non-interference with respect to that thing. This requirement of a right and the conception of the relativity of rights makes the economic loss rule necessary. They also contain implicitly a whole theory of negligence which rejects the juridical salience of loss and negligent conduct unless these are with respect to claims of exclusive right by the Plaintiff against the Defendant. ■

CRIMINAL CULPABILITY AS DISTINCT FROM MORAL BLAMEWORTHINESS

BY PROFESSOR ALAN BRUDNER

Many scholars treat legal theory as the theory of something else (for example, economics or morality) applied to decisions about legal rules. Yet it is really an autonomous discipline. Legal theory focuses on obligations one may be coerced to fulfill and asks what justifies forcing free beings to respect these obligations. Let me illustrate with the following example.

Serele tells Berele she wants to buy a DVD player. Berele informs Serele of a store he knows that sells stolen electronic equipment cheaply. Berele has this on rumour; in reality the store is quite legitimate. Serele goes to the store recommended by Berele and buys a DVD player she thinks was stolen but which was in fact purchased from the manufacturer. Is Serele guilty of an attempt to handle stolen goods?

A moral theorist might reason as follows. Serele intends a wrong and takes steps which, had the DVD player actually been stolen, would have constituted a crime. That the player was in fact not stolen is a feature of the objective world that is irrelevant to our moral evaluation of Serele's choice. She believed it to be stolen and bought it nonetheless. She could have rejected her inclination to purchase the player but she chose to satisfy it instead. Her action is thus morally blameworthy. It is also culpable before the law, because criminal culpability is just the application of the moral concept of blameworthiness to conduct that breaches a legal rule. Indeed Serele is no less blameworthy than if she had actually purchased a stolen player, since the fact of the player's not being stolen was for her purely a matter of chance. It is for our choices that we are blameable, and Serele's choice was to purchase a stolen player, not to try to and fail. In any case, Serele is certainly guilty of an attempt to handle stolen goods.

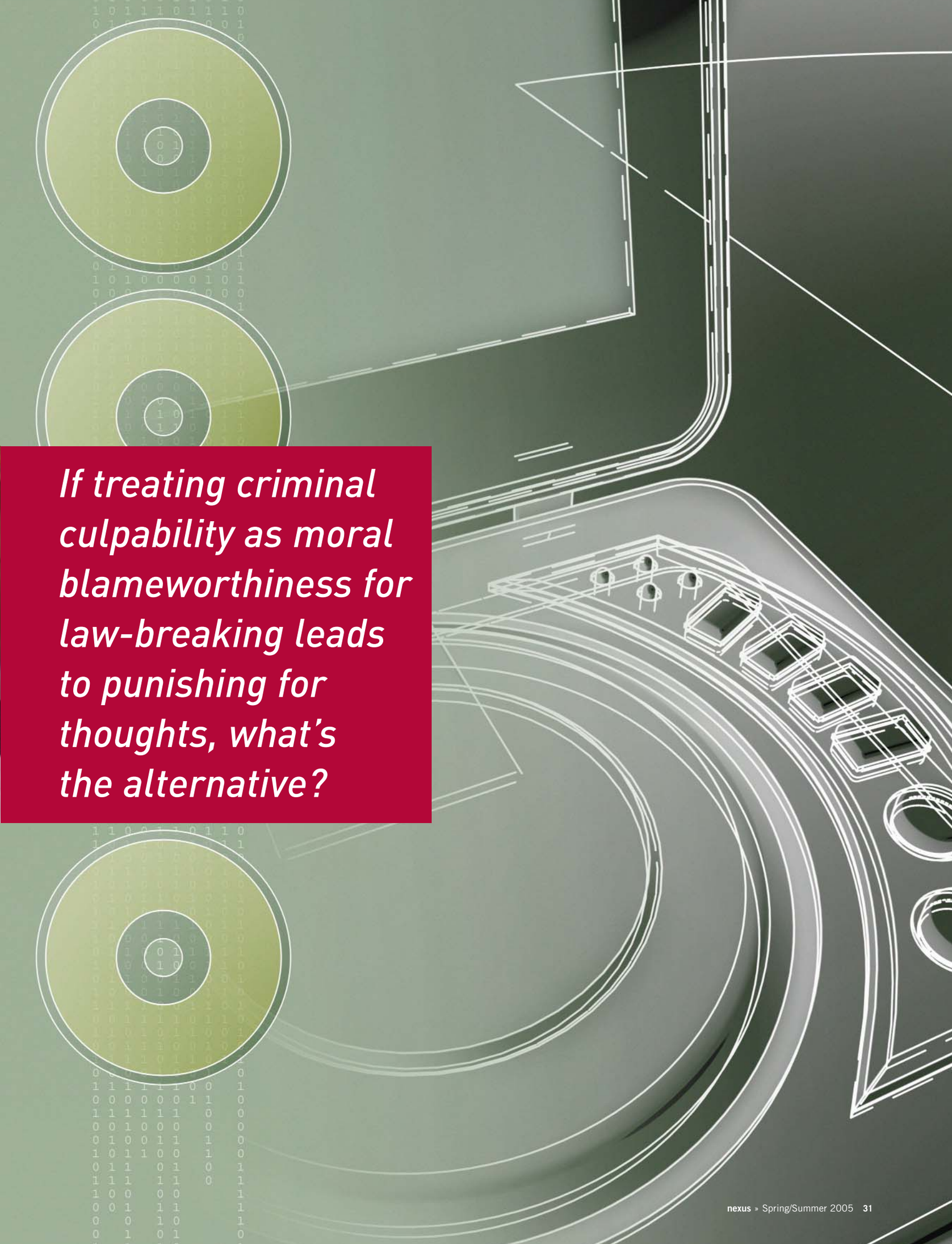
In no other field than criminal law is the temptation to treat legal theory as applied moral theory greatest. Yet consider what follows from doing so. Suppose Serele, firmly intending to buy a stolen DVD player, drove to the store but found it closed. Our moral theorist is committed to treating this too as an attempt to handle stolen goods, for the store's being closed is again irrelevant to our evaluation of her choice. Suppose she had, with the same firm intention, got into her car but then changed her mind because she remembered a more pressing errand and decided to postpone her purchase until the following day. Indeed, suppose she did nothing but choose to make her wish to buy a stolen DVD player an aim of action but took no steps to realize it because someone unexpectedly bought her a DVD player as a gift. In these scenarios, the moral theorist's reason for punishing Serele in the first case applies with equal force. She intended a wrong but did not complete it because of something irrelevant to our moral assessment of her choice.

It might be said that in the last two cases, Serele changed her mind and so her ultimate choice was not to commit a wrong. Moreover, even if her choice was to commit a wrong, how could we know this without an act evidencing such a choice?

Serele's change of mind does not affect her moral blameworthiness if what motivated the change was not the wrongness of the action but a stronger desire. For Serele has only revised her opinion of what best serves her advantage; she hasn't altered her decision to put her advantage above respect for law. And while an act of purchasing the DVD player would be cogent evidence of a blameworthy choice, it's not the only evidence; if we were otherwise sure (from a confession, let's say) of a blameable intention that she failed to execute or chose not to for nonmoral reasons, why require an act? What's the difference between punishing Serele for her immoral intentions and punishing her for an act she believes is wrong but that is wholly innocent?

If treating criminal culpability as moral blameworthiness for law-breaking leads to punishing for thoughts, what's the alternative? One possibility is to view the theory of criminal culpability as a theory specifically about what justifies judicial punishment – the deprivation of someone's rights – as opposed to what justifies moral disapproval generally. Such a theory would be a distinctively legal theory of culpability, because it would try to identify the elements, not of blameworthiness in general, but of liability to punishment by the state. Such a theory might look something like this.

A state instituted to protect rights of liberty can legitimately deprive someone of liberty only if that person has implicitly assented to the deprivation by acting on a principle that implies the non-existence of rights. Merely contemplating a wrong carries no such implication, for unless there is an act embodying the intention, the latter remains a private thought claiming no public validity. Actually violating a right is one way of publicly embodying a right-denying intent, but it is not the only way. One can also claim validity for a denial of rights by committing an act that cannot reasonably be interpreted otherwise than as manifesting a criminal intent. That would be a test for determining the point at which acts furthering a criminal intent amount to an attempt in law. On that test, Serele is innocent of an attempt to handle stolen goods, though she might be guilty if the surrounding circumstances were such as to leave no ambiguity concerning the public meaning of her act. ■



If treating criminal culpability as moral blameworthiness for law-breaking leads to punishing for thoughts, what's the alternative?


bilingual judicial system
modern multicultural society
constitutional protections for the French and English languages
language rights
changing social circumstances
individualistic bias of traditional theory
continuation of a language community

Language Rights: Theoretical Challenges

BY PROFESSOR DENISE RÉAUME

The constitutional protections for the French and English languages have traditionally been treated as little more than a political compromise – the product of successive back room deals between major players on the constitutional scene. They are capable, however, of treatment as genuine human rights, and the attempt to develop such an account requires consideration of, and sometimes rethinking of, key elements in a theory of rights. This, in turn, stands to have important implications for the ongoing interpretation of these rights.

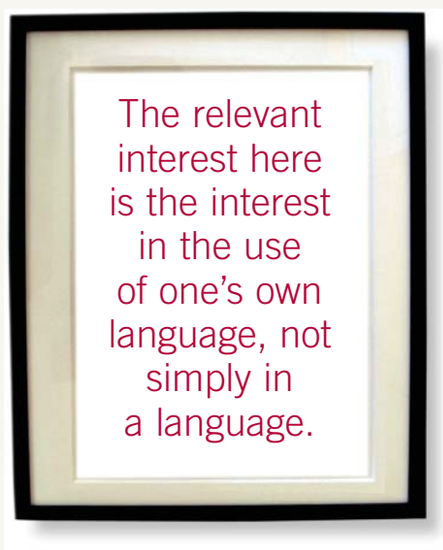
The starting point for such an analysis is an account of the nature of the interest in the use of one's own language that might be thought capable of generating duties in others to facilitate the exercise of one's right. This adopts an interest theory of rights, in contrast to a choice theory or more formalistic accounts. An interest theory conforms to what I think is the right structure of rights claims – it makes plain that it is the importance of the interest at stake that justifies the imposition of duties – and at the same time it allows us to develop a conception of important human interests that can take account of changing social circumstances.

The relevant interest here is the interest in the use of one's own language, not simply in a language. I argue that this interest must not be understood in purely instrumental terms; it is not a matter of how easy it is to get things done in a particular language. Rather, a claim to the use of one's own language must be understood to be grounded in the intrinsic value of that language as an expression of the communal life of the group of people whose language it is. Language is an aspect of culture, and its use unites its users as a community. Its use attracts protection as long as that community continues to manifest its affiliation to the language through its use in normal contexts of everyday life.

Since this interest is not capable of being fully understood in terms of the interests of individual speakers, language rights are best understood as collective in nature, as based on the interest of the group as a whole in the continued flourishing of its language. This is a stark contrast with the more usual individualistic conception of rights that dominates most other theories of rights, and requires re-examination of the individualistic bias of traditional theory. A collective account helps to explain what would otherwise be puzzling features of the official language rights, such as the fact that access to minority language education is conditioned on there being numbers sufficient to warrant its provision. Education using a specific language as its medium is obviously crucial to the continuation of a language community. Yet there must be a community to begin with for it to make sense to provide schools. Although this condition must take account of the legitimate claim of long-stressed minority communities to support in order to overcome a history of governmental neglect and even hostility, access to minority language education still requires a critical mass of speakers to make it intelligible as a good.

Despite this collective underpinning, several of the official language rights included in the Charter are accorded explicitly to individual speakers. An example is the right to use either French or English in certain judicial proceedings. Even this right, however, is best understood as grounded in the interests of the community as a whole in its linguistic security, since only this understanding can justify the creation of the complex apparatus involved in the maintenance of a bilingual judicial system. Once that apparatus is in place, access to it can be constructed as an individual right, but we should not lose sight of the justification for the apparatus itself.

This exploration of language rights as genuine human rights prompts a reconsideration of the variety of human interests capable of grounding rights claims as well as the question of who the appropriate holder of these rights is. These are both issues long considered key elements of a theory of rights, but through consideration of this concrete context, are adapted to better account for one aspect of a modern multicultural society. In turn, developing the theoretical foundation of language rights may help inform judicial decision-making which might otherwise hollow out the substantive meaning of these provisions, simply for want of a better theory capable of giving them greater depth and meaning. ■



THE CHINESE CANADIAN HEAD TAX CASE

BY PROFESSORS DAVID DYZENHAUS AND MAYO MORAN

When the Chinese Canadian community asked the Canadian government to apologize for and to repay the racially discriminatory head tax imposed on Chinese immigrants nearly a hundred years before, Canadian courts had to consider questions about the very nature and limits of law. In *Mack v. AG Canada,* the trial judge recommended political redress but did not think he could order restitution or an apology. Similarly, while the Ontario Court of Appeal described the head tax as 'one of the more notable stains' on Canada's 'minority rights tapestry,' it concurred that the claim lacked a legal basis. The Supreme Court refused leave to appeal. Only the United Nations Human Rights Committee issued an opinion in favour of redress.

From the perspective of those who sought redress, the reaction of the Canadian courts is certainly unfortunate. But it is also unfortunate from the perspective of legal philosophy because *Mack* raised important questions about the nature and limits of law which the courts did not fully confront. The plaintiffs argued that the federal government had been unjustly enriched by the head tax. As both judgments rightly note, an enrichment required by a valid statute will not ordinarily be found unjust. But the head tax law was no ordinary law – the *Mack* courts themselves described it as racist and discriminatory. So the judges had to decide whether a contemporary Canadian court, constitutionally committed to non-discrimination, could hold that even a blatantly racist law would render the federal government's enrichment 'just.'

Legal theory and comparative law had contributions to make here. In the aftermath of World War II, courts inside and outside Germany had to deal with formally valid but radically unjust Nazi law. So, for instance, should a Jewish émigré who had been stripped of her citizenship and hence her property be denied restitution because the invidious acts were accomplished by a valid law? In response, courts held that although they were normally bound to recognize formally valid law, such recognition had inherent limits. They drew on the work of German legal philosopher Gustav Radbruch in insisting that regardless of formal validity, 'extreme injustice is no law.' Adopting this reasoning, courts in the aftermath of WWII and after the collapse of Communism refused to give legal effect to iniquitous laws. Further, as the plaintiffs pointed out in *Mack,* common law courts invoke a very similar idea when they hold that 'public policy' prevents them from enforcing racist contracts or trusts, or from recognizing radically unjust foreign law.

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The underlying idea here is that certain values are necessarily brought to bear when a court considers a question. So in the 'invidious law' cases, the adjudicating courts examine the contemporary constitutional order, international law, and fundamental concepts of private and common law. The courts look to these sources because they embody legal values that have an effect far beyond the field of their direct application. An analogy is the way that Charter values demand respect even where Charter rights do not apply directly, such as in private common law. Ordinarily we see the 'influential' authority of such values at work in the interpretive process. But the Nazi law and public policy cases also reveal that respect for the fundamental values of the legal order may at times require a court to refuse to give legal effect to a law or a formally valid contract.

However, the Canadian courts in *Mack* chose not to adopt this approach. Instead, they suggested that they could only draw on law which would have applied during the time of the head tax. And so they did not consider how the influential authority of the Charter and international law might diminish the head tax statute's ability to function as a valid 'juristic reason.' The only hint of why they rejected the 'invidious law' approach is found in a final footnote, in which the Court of Appeal distinguished the head tax law by pointing out that the Canadian governments of the time were not totalitarian. If intended as a democratic justification for deferring to the head tax law however, it seems relevant that at this time Chinese citizens were denied the vote.

Because they struck out the claim before a full hearing, the courts avoided addressing these and other pressing questions about the 'wicked laws' of our own legal past. But such questions will again face our courts. We can only hope that, at some point, our courts will draw on the rich legal and moral resources that can be found in law's ongoing efforts to find the right relationship between certainty and justice. ■

See Professors Dyzenhaus and Moran's upcoming book, *Calling Power to Account,* on page 43.

RECONCILING COMPETING APPROACHES TO LEGAL THEORY

BY PROFESSOR HAMISH STEWART

It is natural to think of the purpose of the law in terms of the interests that law serves. Criminal law deters harmful conduct, tort law compensates injured persons, contract law facilitates commercial activity, the law concerning freedom of expression contributes to the search for the truth, and so forth. But another way of thinking about law – a view associated very strongly with this faculty – takes the law to have no purpose external to itself. Criminal law punishes a certain kind of wrongdoing, tort law and contract compensate wronged persons, the law concerning freedom of expression is structured by the rights of the speaker and the audience, and so forth. Call the first view an instrumental account of the law; call the second view an internal account of the law. On the instrumental account, the task of legal theory is to explore the ways in which legal doctrine promotes the law's (external) purposes, and to recommend changes to those rules if they do not further those purposes; on the internal account, the task of legal theory is to give a coherent account of the (internal) structure of legal doctrine in terms of the rights and duties of the persons to whom it applies, apart from its effects on any external goals.

Both the instrumental and the internal accounts are appealing. The instrumental account speaks strongly to our sense that the law is not a "brooding omnipresence in the sky" but a human creation that serves human purposes; yet the internal account has been extraordinarily successful in explaining and justifying many features of legal doctrine that are incomprehensible to the instrumental account. However, on closer analysis, each account also has its limits. Instrumental accounts run up against the question of why the value that the law is supposed to be pursuing is actually valuable, a question it cannot answer. But internal accounts cannot avoid reference to purposes external to the law in choosing among the various legal doctrines that are consistent with the demands of the internal approach itself. So it is natural to ask whether there is some way to reconcile the two accounts in a way that would capture the appealing features of each. My theoretical work over the last several years has been directed at the possibility of such a reconciliation, both in the abstract and with specific reference to some central problems of criminal law. I argue that the principled arguments characteristic of the internal approach generate a field of possible legal doctrines, within which the empirical arguments characteristic of the instrumental approach can operate. In this way, the structural features of the law that the internal approach illuminates are preserved without sacrificing the possibility that the law can be made to serve external purposes; or, to put the same point the other way around, the fact that the law can indeed be made to serve external purposes does not require the sacrifice of its internal structure. ■

THE "COMMON WILL" OF OFFER AND ACCEPTANCE

BY PROFESSOR CATHERINE VALCKE

At common law, the existence of a valid contract is determined by the parties' *declarations,* not by their private *intentions.* Such was the thrust of Justice Blackburn's now famous statement in *Smith v. Hughes:*

> If whatever a man's real intention may be, he so conducts himself that a reasonable man would believe that he was assenting to the terms proposed by the other party, … the man thus conducting himself would be equally bound as if he had intended to agree to the other party's terms.

The court went on to state that a contract for the sale of oats could be valid despite the buyer having entered it under the assumption that the oats were old, whereas they turned out to be new.

Immanuel Kant's writings are helpful for purposes of clarifying the reasons behind this "objective theory" of contract. In *The Doctrine of Right,* Kant explains that property in things can be acquired originally (through *de facto* possession) or derivatively (through contract). Original acquisition is possible only where the thing is not already owned. Where the thing is already owned, only derivative acquisition can operate a direct transfer of property from the original to the new owner. (An *indirect* transfer would in contrast involve the original owner first abandoning the thing and the new owner subsequently acquiring it as a thing then no longer owned.)

Transfer of property through contract is "direct" in that it proceeds from what Kant calls the "united will" of two persons: "Transfer is therefore an act in which an object belongs, for a moment, to both together, just as when a stone that has been thrown reaches the apex of its parabolic path can be regarded as, for just a moment, simultaneously rising and falling…" But how can two separate individuals "unite" their wills in this way? Presumably, this requires, at the very least, that these wills be expressed simultaneously. Yet, the offer and acceptance necessarily are successive, since an acceptance by definition is formulated as a response to an offer.

This difficulty can only be resolved, according to Kant, by distinguishing the intellectual from the empirical standpoints. From a strictly empirical standpoint – in real time and space – the parties' mutual declarations can only be successive. But from an intellectual standpoint, it is possible to conceive of the initially empirical declarations of the parties as detaching themselves from their respective empirical conditions and merging into one another as "pure will." From the intellectual standpoint, therefore, contract proceeds from the objectification of the parties' subjective intentions into a single, common will.

The intellectual perspective similarly entails that the parties themselves be conceived, not as empirical subjects, with particular bodies, ambitions, needs, desires, etc…, but rather as objective will-bearers, as Right holders:

> The concept of Right … has to do, *first,* only with the external … relation of one person to another, insofar as their actions, as facts, can have (direct or indirect) influence on each other … *[S]econd,* it does not signify the relation of one's choice to the mere wish (hence also to the mere need) of the other … but only a relation to the other's *choice. Third,* … no account at all is taken of the *matter* of choice, that is, of the end each has in mind with the object he wants …

Thus was poor old Hughes forced to take delivery of the new oats which he never intended to buy, only because he had objectively manifested his intention to do so… ■

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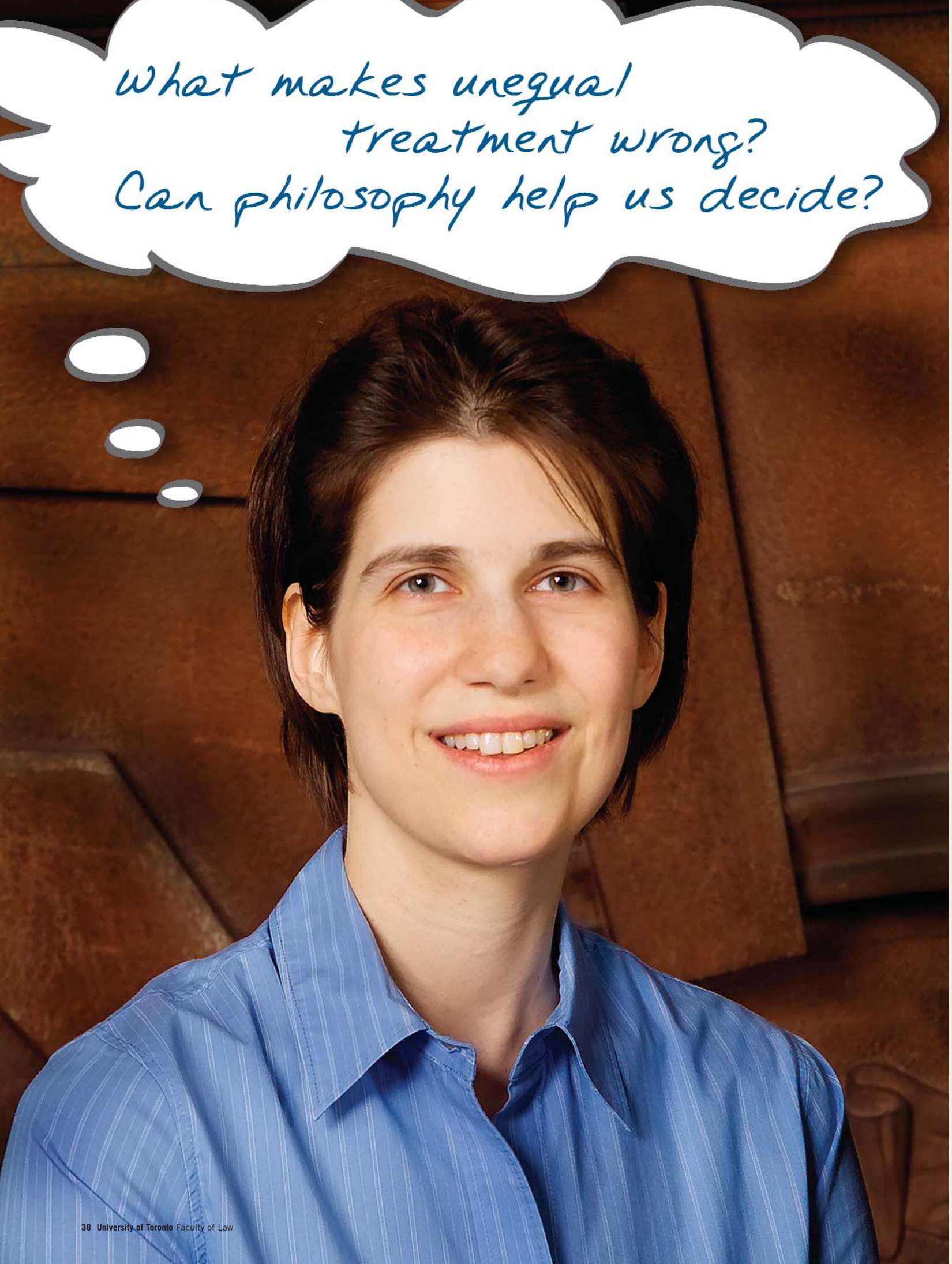

What makes unequal
treatment wrong?
Can philosophy help us decide?

BY PROFESSOR SOPHIA REIBETANZ MOREAU

Most of us believe that governments, along with Crown agencies and corporations, have a duty to treat citizens equally, at least in certain respects. This belief is reflected in both s.15 of the *Canadian Charter of Rights and Freedoms* and the *Canadian Human Rights Act*. We also agree that individual citizens stand under duties of equal treatment when they enter the public realm of providing goods and services, or accommodation, or employment; and this is reflected in our provincial human rights codes. But our agreement masks a deep uncertainty over the purpose and extent of these duties. What types of unequal treatment are wrong, and why? Are they always wrong for the same reason? Or can cases of discrimination involve a number of quite different wrongs?

It may seem that, whatever we want to say with respect to these questions, *philosophical* analysis can be of little help in articulating it. Most contemporary philosophical debates on equality focus on the question of which general principles for resource distribution should guide legislatures; and this is not the question faced by the rights claimant who is trying to explain why she has been wronged, or the court that is hearing her claim. Furthermore, philosophical discussions tend to focus on goods that can be privately owned, such as income and real property. But victims of discrimination are more often concerned with equal access to things that are not privately appropriable – for instance, access to public spaces that have been designed in such a way that everyone can move easily through them, or to the freedom to present one's relationship in public as involving the most extensive kind of commitment that our society recognizes.

But even if philosophical discussions of equality are not helpful in understanding equality rights, philosophical methods of analysis may be. One method often employed in philosophy is to take an idea and try to break it down into its different conceptual parts, with the aim of then examining which of these conceptual parts is logically related to which others, how they are related, and what each of them entails. We can fruitfully do this with the idea of equal treatment.

Probably the most common substantive understanding of equal treatment in our jurisprudence is as treatment that is free from prejudice and stereotyping. Unequal treatment wrongs individuals, on this view, because it denies them benefits on the basis of reasons that do not really apply to themselves, and also because it publicly defines them using an image that is not their own, but that of another group (and usually demeaning). A different but related understanding of equal treatment is as treatment that does not permit one individual or group to retain an unacceptable amount or kind of political or social power. On this view, the wrong of unequal treatment is that it subjects individuals to a form of oppression. Both of these views of equality can be seen at work in the early *Charter* case of *Vriend v. Alberta* [1998] 1 S.C.R. 493, involving the Alberta government's failure to protect against discrimination on the basis of sexual orientation. A third view of what equality demands and why it matters can be seen in one of the complaints made by the claimant in *Gosselin v. Quebec (A.G.),* [2002] 4 S.C.R. 429. Part of Louise Gosselin's objection to the social assistance scheme in this case was that it did not provide her with enough to live on: in other words, it denied her access to certain basic goods. So understood, the wrong of unequal treatment is that it denies an individual something that is basic to her well-being. Fourthly and finally, equal treatment is sometimes identified with equal consideration for each individual's feelings of self-worth; and correspondingly, the wrong of unequal treatment is seen as injury to a person's self-respect.

ONE METHOD OFTEN EMPLOYED IN PHILOSOPHY IS TO TAKE AN IDEA AND TRY TO BREAK IT DOWN INTO ITS DIFFERENT CONCEPTUAL PARTS, WITH THE AIM OF THEN EXAMINING WHICH OF THESE CONCEPTUAL PARTS IS LOGICALLY RELATED TO WHICH OTHERS, HOW THEY ARE RELATED, AND WHAT EACH OF THEM ENTAILS.

Each of the above conceptions requires much more exploration and delineation. But we can already note one arresting implication. Not all of these conceptions imply that what matters about equality is the individual's position relative to others. For instance, if what we value about equal treatment is freedom from stereotyping and prejudice, we can assess whether this has been achieved without recourse to any comparator group. The same is true of access to basic goods. This means that, contrary to our current jurisprudence, it may not be necessary to establish a comparator group in all cases. Furthermore, even where a comparator group is appropriate, this group may not be the same as the group that received the benefit. If, for example, we are concerned with unequal treatment in the specific sense of denial of a benefit in a manner that perpetuates oppressive power relations, the relevant comparator group will be the group that wields the power in question, and this may or may not be the same as the group that was not denied the benefit.

There clearly remains much further work to do on the issue of why equality matters and how we should understand equality rights. Our political and judicial debates on this question would benefit from greater conceptual clarification. So, although none of us wants to defer to a "bevy of Platonic guardians," we should certainly consider using some of their conceptual methods ourselves. ■

Relational Autonomy, Relational Rights: Alternatives to Core Legal Concepts

BY PROFESSOR JENNIFER NEDELSKY,
PROFESSOR OF LAW AND POLITICAL SCIENCE

Many egalitarian liberals argue that we must pay attention to the conditions for autonomy. My version of relational feminism has a particular approach to these conditions: what makes autonomy possible is not independence, but constructive relationships–with parents, teachers, employers, and the state. Autonomy is neither an aspect of human beings that can simply be posited for the purposes of assigning rights and responsibilities, nor a characteristic that one acquires once one achieves adulthood. It is rather a capacity that can be fostered or undermined throughout one's life.

Legal rights are crucial in shaping the relationships that foster or undermine autonomy. The law shapes not only the foundational parent-child relationships (for example, through law on parental obligation, mandatory schooling, children's rights, custody, access and child support), but the relations between employers and employees. The laws of property define relations of power and responsibility between property owners and other owners and non-owners. Virtually everyone relies on contracts to buy and sell goods and services and is thus involved in relations of power, trust and responsibility constructed by the law.

"Buyer beware" or caveat emptor is a popularly known version of such relations, but more obscure modern doctrines which attempt (or fail to) take account of power imbalances are just as important in constructing these relationships. It is thus vital that legal rights be defined and applied with attention to the way they structure relationships central to autonomy.

But the general public, and even political scientists know too little about the way "private law" of property, contracts and torts shape basic relationships crucial to autonomy, as well as equality and dignity. Within the world of law and political theory, property and contract law have traditionally been thought of as crucial to facilitating autonomy, but without adequate attention to the relationships that foster autonomy and the role of law in shaping them.

This way of thinking about autonomy leads to a fundamental shift in the way we approach questions about the relationship between individuals and the state. The liberal project has been to protect individual autonomy from the intrusion of the state. It has focused on boundaries of rights around individuals, boundaries to keep the state (and others) out. But law affects virtually every aspect of our lives. And in the modern world, people are enmeshed in state authority from public education and health care to securities regulation and welfare. The project cannot be to keep the state out, but to construct the relations with the state so that they are autonomy enhancing. The basic question is how to ensure individual autonomy in the face of collective power. In answering this question we must see interdependence as the central fact of political life, not an issue to be shunted to the periphery. This is the heart of the argument that leads to a reconceptualization of rights and of the scope of the state and the optimal scope of constitutional protection.

One of the particular issues I have addressed is violence against women. Among the uncontested objectives of a liberal regime is the protection of its citizens against violence. Yet liberal states such as Canada have failed in

IN THE MODERN WORLD, PEOPLE ARE ENMESHED IN STATE AUTHORITY FROM PUBLIC EDUCATION AND HEALTH CARE TO SECURITIES REGULATION AND WELFARE. THE PROJECT CANNOT BE TO KEEP THE STATE OUT, BUT TO CONSTRUCT THE RELATIONS WITH THE STATE SO THAT THEY ARE AUTONOMY ENHANCING.

The first volume of Professor Nedelsky's two volume project, *Law, Autonomy and the Relational Self: A Feminist Re-visioning of the Foundations of Law,* is expected to be published by Oxford University Press in 2006.

AMONG THE UNCONTESTED OBJECTIVES OF A LIBERAL REGIME IS THE PROTECTION OF ITS CITIZENS AGAINST VIOLENCE. YET LIBERAL STATES SUCH AS CANADA HAVE FAILED IN THIS BASIC TASK WITH RESPECT TO WOMEN AND CHILDREN.

this basic task with respect to women and children. If we take this failure seriously, we must rethink the scope of the liberal state and the conception of rights optimal for making good on liberalism's most basic aspirations. This rethinking comes out of the claim that violence against women cannot be prevented until the relations between men and women are transformed; since these relations are structured by law, the transformation of these social and intimate relations must be an objective of the liberal state. A conception of rights that routinely directs our attention to structures of relationships is better suited to facilitate that transformation than one, like the traditional liberal conception, aimed at protecting boundaries.

In sum, my project is to provide relational alternatives to the core concepts of autonomy and rights, and to show how the new conceptions enable better analysis of legal disputes by revealing the core values that are at stake and how the law can best promote them. ■

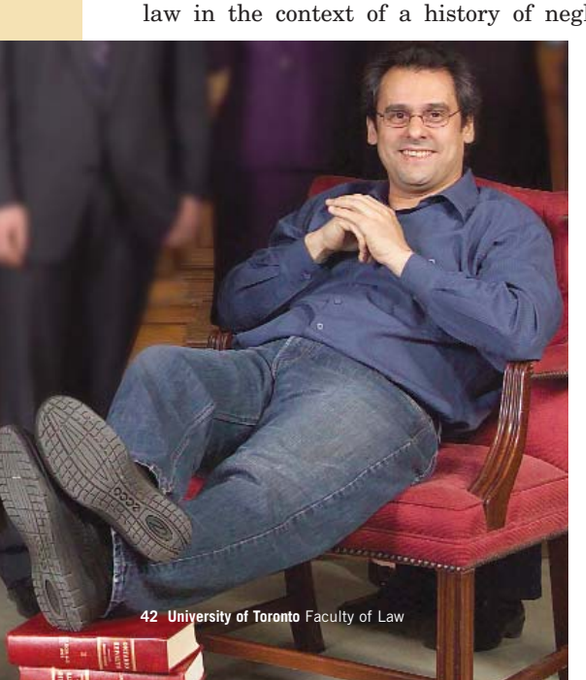
FAIR DEALING – Getting Copy Right

BY PROFESSOR ABRAHAM DRASSINOWER

The recent landmark Supreme Court of Canada decision, *CCH Canadian Ltd. v. Law Society of Upper Canada* integrates the public domain squarely into the heart of copyright jurisprudence. In the Court's eyes, copyright law is as much a law of user as it is of author rights. Thus the defence of fair dealing, which specifies permissible uses of copyrighted works in the absence of the copyright owner's consent, is to be understood and deployed not negatively, as a mere exception, but rather positively, as a user right unequivocally integral to copyright law.

The Court's affirmation of the public domain takes place in and through the familiar vision of copyright law as a balance between dual objectives: promoting the public interest, on the one hand, and obtaining a just reward for the creator, on the other. Yet the bare assertion that copyright law is a dual objective system is not in and of itself sufficient to accomplish the task of integration. In the absence of an elucidation of the unifying principle holding author and public together, it is by no means clear that copyright is a "system" at all. That is, the question is how copyright is to be understood as indeed one thing with dual objectives, rather than two things that, so to speak, happen to have been thrown together in the same place for no apparent reason. The elucidation would focus neither on the author nor on the public but on the conditions for the possibility of the "balance" linking them as aspects of a single system. Authorial and public domains would appear thereby as moments of a single yet differentiated whole.

To be sure, it is possible to suggest that the word "integral" in *CCH* means nothing more than that the fair dealing provisions, contrary to much of previous Canadian jurisprudence, are to be interpreted liberally and generously. Along these lines, what *CCH* requires is not something as grand and perplexing as a reduction of author and public to a single principle, but rather a pragmatic affirmation of the public dimension of copyright law in the context of a history of neglect. Yet the point is precisely that, in the absence of the principle that integrates them, author rights and user rights would remain exceptions to each other, not aspects of an integrative and integrated vision.



The oddities of the resulting situation could be described as follows. On the one hand, because it would appeal to considerations external to authorship itself, the defence of fair dealing – and therefore user rights – would remain an exception to the normal operations of copyright law. On the other hand, because fair dealing would at the very same time be posited not as a mere exception but as an irreducible internal dimension of copyright law, the status of user rights as mere exceptions would be intolerable. Thus, in order to affirm and acknowledge the constitutive role of the defence, we would be compelled to assert that author rights should themselves be grasped as an exception to the normal operations of user rights. The inevitable upshot would be that the Supreme Court's achievement in *CCH* would be reduced to the level of staging a raging battle of exceptions in search of an absent rule. It is therefore difficult to avoid the conclusion that the Court's aspiration turns on the possibility of grasping user rights as an incidence of authorship itself.

> *"Fair dealing stands for the proposition that responding to another's work in one's own does not mean that one's work is any less one's own."*

The defence of fair dealing permits the defendant to establish that, in spite of the appearance of infringement, the defendant's work is after all his own, not truly a copy of the plaintiff's. Fair dealing teaches that substantial reproduction is not per se wrongful. The very existence of the defence is ample proof of that proposition. Fair dealing stands for the proposition that responding to another's work in one's own does not mean that one's work is any less one's own. The defendant who makes out the fair dealing defence is in this sense an author in her own right. Fair dealing is a user right rather than a mere exception because it arises from and affirms the very same principle that gives rise to the plaintiff's entitlement. Exceptional would indeed be the expectation that the plaintiff assert her own authorship in a manner inconsistent with the defendant's.

My point here is not that the Supreme Court of Canada in *CCH* has expressly adopted the foregoing construal of its concept of user rights. Rather, my point is that, if it is to be more than yet another episode in a raging battle of exceptions, the Court's aspiration to integrate user rights squarely into Canadian copyright law, and thereby to provide a positive account of the public domain, both posits and presupposes a construal of the mutually constitutive and limiting relation between author and public. ■

faculty publications

RETHINKING THE WELFARE STATE: THE PROSPECTS FOR GOVERNMENT BY VOUCHER

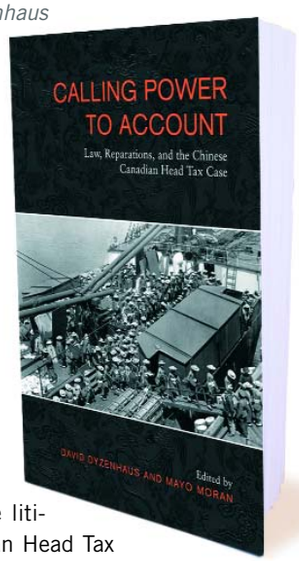
Dean Ron Daniels and Professor Michael Trebilcock

ISBN: 0-415-33777-1
Publisher: Routledge
Suggested retail price: $46.50 (SC) $154 (HC)

FROM THE PUBLISHER: This book offers a comprehensive and comparative analysis of social welfare policy in an international context, with a particular emphasis on the US and Canada. The authors investigate the claim that a decentralized delivery of government supported goods and services enables policy objectives to be achieved in a more innovative, efficient and cheaper way. They also examine the effectiveness of the voucher system as a solution to problematic welfare concerns. The voucher system, which includes all forms of government subsidy, whether in the form of tax deductions, credits or means-tested consumer entitlements, places the resources directly into the hands of citizens and allows them, rather than a government agent, to determine which goods they will consume from competing private suppliers.

CALLING POWER TO ACCOUNT: LAW, REPARATIONS, AND THE CHINESE CANADIAN HEAD TAX CASE

Co-edited by Professors David Dyzenhaus and Mayo Moran



ISBN: 0802038085 (SC) 0802038727 (HC) Publisher: University of Toronto Press
Suggested retail price: $43 (SC) $75 (HC)

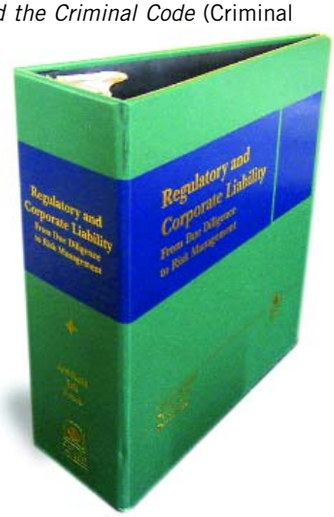
FROM THE PUBLISHER: Courts today face a range of claims to redress historic injustice, including injustice perpetrated by law. In Canada, descendants of Chinese immigrants recently claimed the return of a head tax levied only on Chinese immigrants. *Calling Power to Account* uses the litigation around the Chinese Canadian Head Tax Case as a focal point for examining the historical, legal, and philosophical issues raised by such claims. By placing both the discriminatory law and the judicial decisions in their historical context, some of the essays in this volume illuminate the larger patterns of discrimination and the sometimes surprising capacity of the courts of the day to respond to racism. A number of the contributors explore the implications of reparations claims for relations between the various branches of government while others examine the difficult questions such claims raise in both legal and political theory by placing the claims in a comparative or philosophical perspective.

REGULATORY AND CORPORATE LIABILITY: FROM DUE DILIGENCE TO RISK MANAGEMENT

Professor Kent Roach (with the Honourable Todd L. Archibald, Superior Court of Justice, and Kenneth E. Jull, Adjunct Professor, York University)

ISBN: 0-88804-420-8
Publisher: Canada Law Book
Suggested retail price: $192 (looseleaf)

FROM THE PUBLISHER: This publication is one of the first resources in Canada to look at regulatory and criminal liability as it relates to corporations. It is also among the first to offer an in-depth analysis of Bill C-45, an *Act to Amend the Criminal Code* (Criminal Liability of Organizations), which could hold organizations criminally liable for their shortcomings. The book looks at how to enhance due diligence systems within regulated organizations as well as providing methods to reduce clients' risk of prosecution for regulatory and criminal breaches. It also contains expert guidance and insightful analysis on topics such as the basis for liability, both regulatory and criminal, and how the Charter and principles of sentencing will impact a client's particular situation.



HARD CHOICES, SOFT LAW: VOLUNTARY STANDARDS IN GLOBAL TRADE, ENVIRONMENT AND SOCIAL GOVERNANCE

Professor Michael Trebilcock (co-editor with Professor John J. Kirton, U of T Political Science)

ISBN: 0 7546 0966 9
Publisher: Ashgate Publishing
Suggested retail price: $128 (HC)

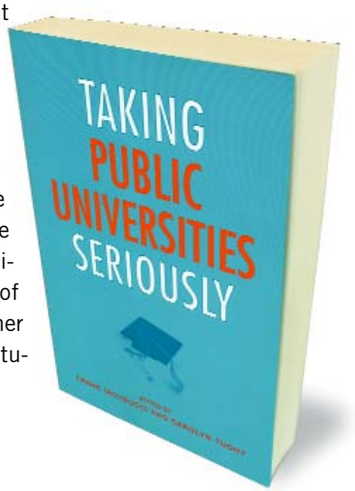
FROM THE PUBLISHER: *Hard Choices, Soft Law* asserts that voluntary standards, or 'soft' law, are an important supplement to international law in a number of areas. This key work firstly outlines the approach taken to combining soft and hard law and trade, environment and labour values in the WTO and NAFTA, and in the prospective Millennium Round. Then, using the forestry sector – a realm where formal international law remains largely absent – the book provides a detailed examination of the role of soft law in action. It demonstrates how soft and hard law can be combined to promote trade, environmental and social cohesion, in ways that also permit sustainable development. Topics include the emerging role of voluntary standards and codes of conduct in international government regimes, in contexts such as sustainable forestry, labour standards, the environment and corporate-social responsibility.

TAKING PUBLIC UNIVERSITIES SERIOUSLY

Co-edited by Frank Iacobucci ('89 LL.D.), former Justice of the Supreme Court of Canada and Interim President of the University of Toronto and Carolyn Tuohy, Vice-President, Government and Institutional Relations, University of Toronto

ISBN: 0802093760
Publisher: University of Toronto Press
Suggested retail price: $81 (SC)

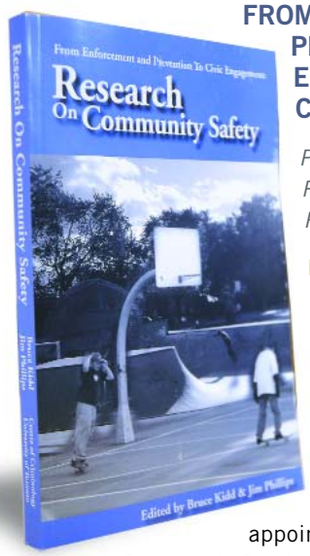
FROM THE PUBLISHER: The Government of Ontario announced a comprehensive review of the design and funding of the province's post-secondary education system, chaired by former premier Bob Rae. In response to the "Rae Review," U of T convened a conference in December 2004 to focus on the evolving role of the public university in industrialized democracies, and the implications of this role for creating optimal government policy. The conference involved leading policy makers, university administrators, and scholars from Canada and abroad, including U of T law professors Michael Trebilcock, David Dyzenhaus, Andrew Green, Lorne Sossin, Sujit Choudhry, David Duff, Ben Alarie, Arthur Ripstein and Dean Ron Daniels. *Taking Public Universities Seriously* includes all the papers given at this conference. Some of the topics discussed include the rationale for funding public universities, the proper role of tuition in the funding of higher education, and the models for student assistance.



FROM ENFORCEMENT AND PREVENTION TO CIVIC ENGAGEMENT: RESEARCH ON COMMUNITY SAFETY

Professor Jim Phillips (co-edited with Professor Bruce Kidd, Dean, Faculty of Physical Education & Health, U of T)

ISBN: 0-919584-91-8
Publisher: Centre of Criminology, University of Toronto
Suggested retail price: $20 (SC)



FROM THE PUBLISHER: Toronto Mayor David Miller has placed community safety at the centre of his strategy to revitalize the city, appointing a blue-ribbon Panel on Community Safety to address an apparent crisis in youth violence. This collection of papers, authored by academics from the University of Toronto, York University, and elsewhere, was first presented at a community colloquium in the summer of 2004. U of T Professors Jim Phillips and Bruce Kidd introduce this research project. The book includes the most up-to-date research on the challenges of youth violence and community safety from the perspectives of the criminal justice system, public education, and the world of recreation.

Topics include issues such as trends in homicide in Toronto, youth gangs, crime prevention, inclusive communities, midnight basketball, zero tolerance, and community-school relationships.

STYLE IN HOME

BY JANE KIDNER '92

Alumni Re-invent the Home Decor Market

JULIA WEST '76

Furniture that earns its Keep

What a difference a phone call can make, especially if it's from one of the producers of the Oprah Winfrey Show. Indeed, Julia West '76 had a hard time believing the call, which came in to her office late one evening after her employees had left for the day.

"I thought, this is a joke," says the owner and founder of furniture design studio, *Julia West Home*. "The caller must have noticed the hesitation in my voice, because she quickly assured me it really was the Oprah Show."

After the program aired in September 2002 – featuring a display of Julia's trademark multi-purpose furniture in a 290-square-foot Boston apartment – Julia's phones started ringing off the hook. One was from her Internet provider – her web site had crashed after getting nearly 50 hits a minute. "He told me that the only other site to get traffic like that was a pornography site," chuckles Julia.

Since 2002, her burgeoning furniture design and production company has become somewhat of a household name, growing into a multi-million dollar business, with 14 full-time employees and sales across North America. Its wares are regularly featured on television decorating shows and in design magazines. But the success is not entirely due to Oprah. Julia's custom designed tables, beds, desks and dressers are meeting a growing demand for basic home furnishings that are both beautiful and practical. "Today we need multifunctional furniture because we have small living spaces," explains Julia. "People want and need an uncluttered, minimalist space. My designs fit that need – they are like a Swiss Army Knife – able to twist one way or another to produce different things."

Soft-spoken, articulate and still bearing a hint of her childhood "Cockney" accent, the 60-year-old mogul exudes a youthful air as she relaxes in her showroom, a veritable candy store of home furnishings. Nestled at the foot of Casa Loma, in Toronto's design district, the 8,000-square foot design space and retail store sparkles with bolts of brightly coloured cloth hanging along one wall, Gustavian-influenced pale-wood furniture, and "arts and crafts" pillows and duvet covers.

Trying to pinpoint exactly when she got her start in design takes her back to her childhood in post-war, working-class Britain. "I have always designed furniture – even as a child I would look at furniture and say to myself, how can I improve upon that? I formed opinions about things that most small children don't even think about." While her friends were learning how to ride bikes, Julia was busy playing with shapes, reorganizing the shoe boxes and hat boxes she kept under her bed. She also took note of the homes in her working-class subdivision. The 300 or so "arts-and-crafts-style" houses were identical in design (albeit smaller) than the monster estates in neighboring affluent areas. "The architects were influenced by the design revolution of the late 19th century which believed that ordinary people should be exposed to beauty," says Julia. "Almost every house had some unique detail – window casings, the brackets that held up the front porch, or a different roof line. I couldn't help but notice these things as a child. They were so beautiful and so different from where other people lived."

Julia demands that her furniture not only be multifunctional, but also beautiful and affordable. "There is no excuse for inexpensive things to be ugly..."

But it would take her many more years to marshal her interests into her present career. A self-described "day-dreamy" child, Julia had Attention Deficit Disorder, although she didn't know it at the time. "When I was a kid it wasn't as well known as it is today. I would stare at the ceiling and go off in my imagination." She quit school at age 15 to pursue acting (landing small parts in television shows and movies) and married at age 19. "I didn't expect to return to school." After following her first husband to Canada in 1969, she landed a job as a library clerk at Carlton University. With encouragement from her boss, she enrolled in two courses and, to her amazement, got good marks. "I didn't have my high school diploma. I frightened myself into believing I would fail miserably, so I overworked and did well."

Eventually, she would complete an undergraduate and law degree at U of T, along with her current husband Richard Wernham. Says Julia, "I chose to go to law school, in retrospect, because I wanted to be taken seriously. As a young girl from a working class background in England, I felt that what I had to say would never be taken seriously."

After graduating, she joined McMillan Binch LLP and surprised herself by loving the practice of law. "I never planned to stay for long, but I got into commercial litigation and really liked it." A decade later, with her first child on the way, Julia decided to work part-time as an agent for other lawyers and prosecutor for the Law Society. In the evenings, she helped her husband with his company – Canadian mutual fund firm, *Global Strategy* – by liaising with the architects and designers building office spaces for the growing business. Overseeing the build-outs for five different locations, Julia rediscovered her passion and knack for design. "It all seemed so fascinating to me. I would get regular compliments from the interior designers and architects I worked with on design issues. To some extent, it was my apprenticeship."

With encouragement from her husband, Julia launched her own business in 1998, at first supplying finished products such as drapery and furniture to designers and architects. "I had learned so much, I didn't even stop to make a business plan." Since then, her business has expanded into a broad range of design, production, wholesaling, retail, and custom work. As for Julia, she still spends much of her day in marketing and design, happily hiring others to take care of the accounting, personnel and everyday business management. She perfers everyday pieces that morph easily from one use to another, such as a coffee table that surprisingly turns into a bed or desk. Julia refers to the

Julia invites alumni and others to visit her showroom:

Julia West Home
140 Kendal Ave., Toronto

(416) 324-7500 or toll free
1-800-300-9390

www.juliawesthome.com

approach as a "marriage of material and technology" to create something unexpected – a new shape, texture or application. Indeed, coffee tables have become a symbol of her design philosophy – "furniture that earns its keep." She adds: "I hate coffee tables. They take up too much real estate for the tasks they fulfill."

But her approach, she says, is hardly a new idea. Julia cites the example of British officers in the 18th Century who toted along desks, chairs and beds to war – what was known as campaign furniture. "They had to be able to break down the furniture, throw it onto a wagon and reassemble it. An officer likely used the same desk for writing and shaving. Today, we need multi-purpose furniture for a different reason, but it's the same concept."

Julia demands that her furniture not only be multifunctional, but also beautiful and affordable. "There is no excuse for inexpensive things to be ugly. To some extent market forces establish degradation of beauty. But there are exceptions. IKEA is a good example – some of which is very well made. For me, functionality and beauty must always be there. People expect good design at reasonable prices – and they are right to expect it."

Likewise, Julia believes her legal education has played a role in her present success. "In many ways, what I do today is very similar to what I did as a lawyer. Lawyers absorb a body of knowledge and try to apply it in truthful but creative ways. As a designer, I have to take certain design principles and apply them to human circumstances. I am reinterpreting history every day, twisting it and playing with it." ■

MITCH WINE '82

Bringing Innovation to Art

The procedure is such a highly guarded secret that more than ten different patents in twice as many countries protect it – and only a dozen or so people around the world know how it's done. Class of '82 law alumnus Mitch Wine is one of those people. "It's sort of like the Colonel's secret sauce," says Wine. "You can't let it out, because it will be copied by everybody."

The 46-year-old lawyer and entrepreneur with Hollywood good looks and polished style is referring to the confidential technology behind his latest business venture, *Brushstrokes Inc.* A fine art "reproduction" company that launched two years ago, Brushstrokes has captured the international market for high-quality, near-perfect replicas of original oil-on-canvas paintings. "In 200 years there has been no major innovation in art," says Wine. "This is it. There is nothing quite like a Brushstrokes."

Indeed, his Richmond Hill production facility and showroom looks like a gallery in Paris's Musée D'Orsay with a mix of old masters – Van Gogh, Monet, Modigliani, Degas, and Renoir – and renowned contemporary artists – Pino, Perez, Botich, Holman, and Tremier – lining the walls. Not the originals, of course. His company's secret technology – a combination of art and science – mimics, in minute detail, the three-dimensional brushstrokes, surface texture, nuances and colour of the sometimes multi-million dollar originals.

The oil paintings are so precise that Wine's partner, founder and inventor Harvey Kalif, refuses to use the word "reproduction." Says Wine: "It's not in his vocabulary – he likes to say that if you buy a Brushstrokes, you have bought an original. The word doesn't even show up in our brochures." Even the company "tag line" – *"the closest you can get to the original"* – has been the source of heated arguments among Kalif and principals of the company. "That's what makes Harvey so wonderful. He continues to think we are doing something incredible, and he's right."

Investing millions of dollars of his own money in the start-up, and believing that great art should be available to ordinary people, the 76-year-old Kalif worked for years with various engineers to develop his technology. "He's a perfectionist," says Wine, "so when they weren't able to get the brushstrokes to sharp points, he said it's not good enough – it's not the way people paint. He wanted it to be as authentic to the original as possible."

So how did Wine – a self-confessed art novice – end up joining forces with a man whose life mission is to bring Monet and Renoir into our homes? Serendipity – and a bit of gut instinct. Growing up in Montreal, as the middle child of three siblings, Wine dreamed of being a lawyer from a very early age. "I wanted to be Perry Mason. It was only after I had the opportunity to try, that I started to think maybe I didn't want to." After graduating from U of T Law School in 1982 – where he met fellow classmates and lifelong friends Lorne Cameron, Dave Hoselton and Dave Shore (featured in *Nexus,* Winter 2004) – Wine articled at Toronto law firm McCarthy Tetrault LLP and stayed on for another four years. Marriage to fellow law grad, Judith Wine (née Greisman) '86 and a leave of absence to do his MBA at Columbia would take Wine in a new direction – joining his father's company, the marketing promotional firm WSP International. "Some people are miserable in law so it's an easy decision to leave. But I enjoyed it, so it was hard."

More than a decade later, a business opportunity with Kalif's company (at that time U.S. mail-order business, *Atelier America)* would introduce Wine to the world of art. That deal fell through, but Wine was so impressed with the high-quality reproductions that he bought one for his home – a Robert Holman oil called *Valley of Light* that dominates his foyer. "Friends would come to my house and say wow that's beautiful – who's the artist? They would never ask me if it was an original. They just assumed it was and wanted to know who painted it."

A few months later, Atelier was in receivership. Wine jumped at the chance to invest in the one-of-a-kind product. With some quick due diligence to get a head start on other bidders, Wine bought the assets. "We had to act fast. We probably didn't do as good a job as we should have – but it was gut instinct. You don't have to be a genius to know that this is something very special."

After purchasing the company in 2003 along with several partners, one of whom is his father, Wine changed the name to Brushstrokes and quickly set about expanding the mail-order business into retail. "Harvey was an old catalogue-order guy. He mailed millions a year to people's homes. We wanted to get into retail so that people could actually see the product before their eyes. So that's where we have been focusing our attention." Today, the business has nearly 200 employees (in both Toronto and Mexico), including 12 full-time artists, mostly from the Ontario College of Art and Design. They work in the brightly-lit, spacious studio adjoining Wine's gallery showroom – their principal task is touching up each piece of art before it is sold.

Perhaps surprisingly, the confidential technology involves relatively little computer-generated imaging. Rather, it's almost all a machine manufacturing process, with human artistic talent factoring into the beginning and end-production of each painting.

"The first one takes weeks to recreate," says Wine. "After the first one, it's mass reproduction. There is also some human contact finishing each piece – sometimes as much as an hour of the artist's time."

Brushstrokes now has two sales channels – the original catalogue mail order including some e-commerce over the Internet (just over 30% of sales), and the retail furniture trade and mass market (close to 70%). The move into retail has proved to be a profitable decision. With their ever-expanding repertoire of several hundred paintings, some of which

The oil paintings are so precise that Wine's partner, founder and inventor Harvey Kalif, refuses to use the word "reproduction." Says Wine: "It's not in his vocabulary – he likes to say that if you buy a Brushstrokes, you have bought an original. The word doesn't even show up in our brochures."

One is the original, worth nearly $20,000. The other, a Brushstrokes that sells for $2,500 U.S. Any attempt to guess the real thing is just that – a guess.

are featured in Sears Home Stores and a number of other international furniture retailers, profits have exploded – multiplying by six times in less than three years.

And the future looks yet brighter for Brushstrokes, who remain virtually alone in offering high-quality, three-dimensional reproductions. For many years, "paper lithos" (or numbered prints) dominated the market. Then, 10 years ago, a process called "giclée" improved authenticity by printing the image on canvas. But those images are still two-dimensional. "That's where the market is today," says Wine. "Our only competition for three-dimensional art is produced on assembly-lines in Chinese factories and sold for very little at the K-Marts of the world. Untrained artists churn out literally thousands of paintings daily. They might do 10,000 of Van Gogh's *Café* in the course of one day. Somebody will paint the tables. Someone else will do the chairs. They are 'originals' but the finished product bears only a remote similarity to the real thing."

To reinforce his point, Wine proudly demonstrates what he refers to as the "high water mark" of their business. Two identical paintings by contemporary artist Amanda Dunbar hang side by side on a nearby wall. One is the original, worth nearly $20,000. The other, a Brushstrokes that sells for $2,500 U.S. Any attempt to guess the real thing is just that – a guess. Ironically, the verisimilitude has at times made it more difficult for Wine to convince some artists to allow their work to be copied and sold by Brushstrokes. For most it's a way to make more money from their art. For others, it's a concern. Says Wine: "I love demonstrating the technology to artists who have never heard of it before. I'm successful (in signing them) about 90% of the time. The only ones who ever say no to us are those who worry it's *too close* to the original. I say to them, don't you want to share your real vision and not some pale imitation? Don't you want them to appreciate the beauty that the person who owns the original does? That's when they usually agree."

But Wine is careful to add that they make it clear they're producing reproductions by attaching a Brushstrokes certificate of authenticity and the number in the edition on the back of each.

If convincing the artists to license their work with Brushstrokes can be a challenge, selecting those to represent can be even tougher. Wine confesses that one of *his* choices sold only two pieces. "You have to be careful about your own taste. We now have a committee that decides. I hate treating it like pork bellies. But there are winners and there are losers."

Décor art – the picture that contains this year's "in" colours – is easier to predict. "We try to capture the colours that are hot out there. But as the price point gets higher and we move into limited editions, we are more interested in who the artist is and what he or she has done."

Another challenge is the constant race to improve and protect the technology from being copied. "The sad truth is that if somebody wants to knock you off they may find a way, or they may not care – and then you are forced to defend the patent," says Wine. "The other defense is to always get better. That way if someone copies you, they are copying you four years ago."

That is just what Brushstrokes has done. And Wine is clearly enjoying his success with two awards from a 2004 Atlanta Art and Décor Expo, plans to break into still untapped international markets, and a dream of one day becoming a household name. "Art brings something special into people's homes," says Wine. "Nothing speaks to people's emotions like art – that's what we are tapping into. When you can offer a product to the market that is proprietary, that no one else can offer, that's like heaven." ■

Mitch invites alumni and others to visit his web site: www.BrushstrokesDirect.com

campaign UPDATE 2005

In order to remain one of the world's truly great law schools, the U of T Faculty of Law relies heavily on the support of alumni and friends. We are enormously thankful for the generosity and vision of the following philanthropic supporters, whose financial contributions have allowed us to offer innovative student programs that help to preserve our scholarly excellence and societal leadership.

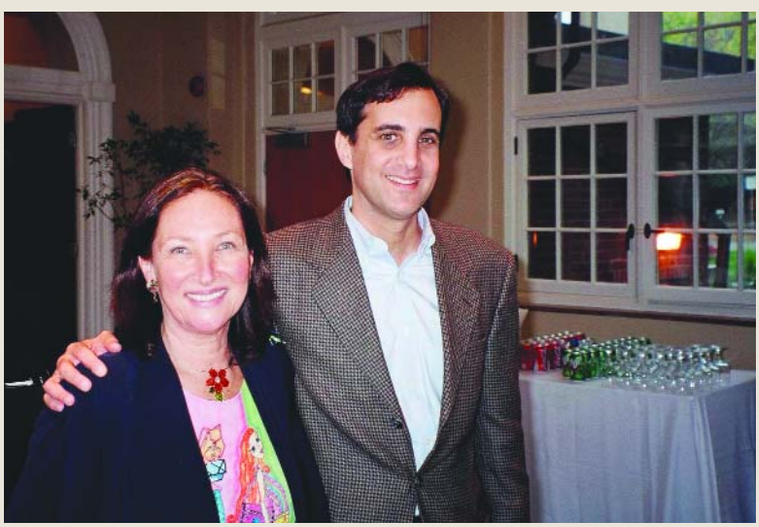
Rosalie Silberman Abella Moot Court Room

A new state-of-the-art, high-tech Moot Court Room will be dedicated to the Honourable Madam Justice Rosalie Silberman Abella, a 1970 alumnus who has dedicated her life to the betterment of the legal profession and legal institutions. The gift recognizes Abella's outstanding contributions to the administration of justice in Canada, and celebrates her appointment to the Supreme Court of Canada in 2004.

"As one of only four females sitting on the SCC, Rosie is the first female graduate of the Faculty of Law to receive this highest of honours," says Dean Ron Daniels. "It's only fitting that one of the most important classrooms at the law school, where students learn the art of advocacy in a courtroom setting, be named in her honour."

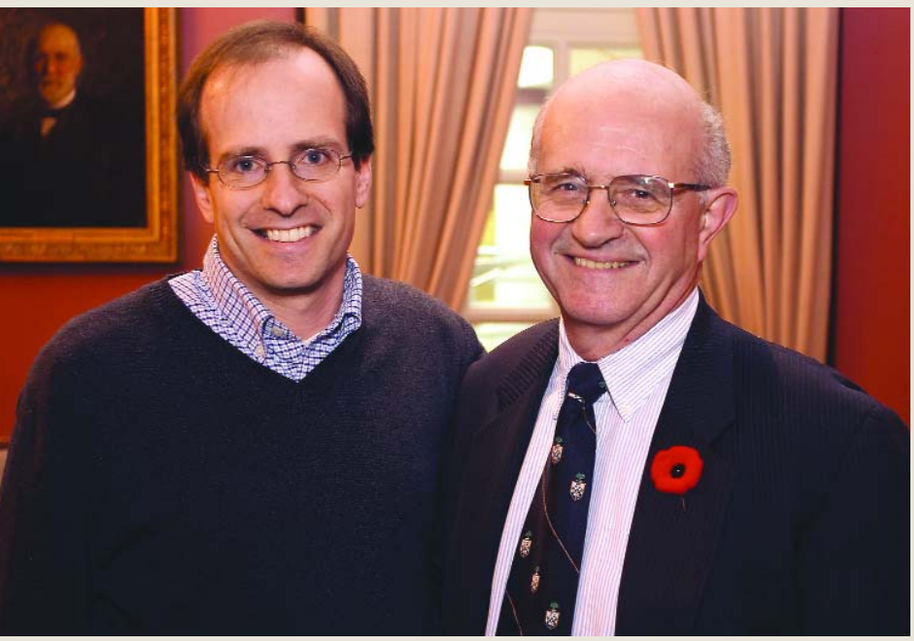
"Rosie," as she is affectionately known throughout the legal community, was born in Stuttgart, Germany, and immigrated to Canada in 1950. She obtained her B.A. from the University of Toronto in 1967 and her LL.B. in 1970. Over the course of her career, she has been awarded 19 honorary degrees, authored more than 70 articles, and written or co-edited four books. After being called to the Bar of Ontario in 1972, she was engaged in a general litigation practice from 1972 to 1976, and from 1983 to 1984, acted as Sole Commissioner of the Royal Commission on Equality in Employment, where she coined the phrase, "employment equity." Many more community roles and accolades followed. In 1990, *Maclean's Magazine* decorated her with an Honour Roll Medal; in 1992, she won a Distinguished Service Award from the Canadian Bar Association (Ontario); and in 1996, the University of Toronto, Faculty of Law honoured Rosie with its Distinguished Alumnus Award. A year later, Rosie became a Specially Elected Fellow at the Royal Society of Canada. After being appointed to the Ontario Provincial Court (Family Division) in 1976, making judicial history as Canada's first female Jewish judge, she joined the Ontario Court of Appeal in 1992. She was appointed to the Supreme Court of Canada in August 2004. Married to Irving M. Abella, a York University Professor of Canadian History, Rosie has two children, Jacob and Zachary.

The Rosalie Silberman Abella Moot Court Room will be a centrepiece of the Faculty's new building. It was made possible through the generosity of a number of Rosie's friends and admirers, who pledged a total of $1 million to the project. The lead donors include Charles and Andrea Bronfman, Stephen and Claudine Bronfman, Andrew Hauptman and Ellen Bronfman Hauptman, Ralph Halbert, Hal Jackman, Jonas Prince, Joseph Rotman, Lionel and Carol Schipper, Gerald (Gerry) Schwartz, Edward Sonshine, and the late Milton Harris. Other significant supporters of the project include Ephraim Diamond, Martin Goldberg, Martin Goldfarb, Leo Kolber, Larry Tanenbaum, and the firm of Gluskin Sheff & Associates. ■



(L-R): Madam Justice Rosalie Silberman Abella and Dean Ron Daniels

Hon. Frank Iacobucci Bursary



(L-R): Prof. Ed Iacobucci and then U of T Interim President, Frank Iacobucci

Friends of the Honourable Frank Iacobucci have joined together to establish the *Hon. Frank Iacobucci Bursary* at the University of Toronto, Faculty of Law.

The funds for the bursary were raised at a tribute dinner to celebrate Frank's immeasurable contributions to the legal community. The event raised $20,000, which was generously matched by the law firm, DelZotto Zorzi LLP. The $40,000 gift was in turn matched by the Ontario government, creating a total endowment of $80,000 in support of student financial aid.

Founding member of the firm, Elvio DelZotto, Q.C., and his partner, Harry Herskowitz, say that the decision to match the initial gift was unanimous among all DelZotto Zorzi lawyers. "Frank is one of the finest individuals I've ever met. He's humble, extremely intelligent, but not overly impressed with his intelligence," says DelZotto. "He's a great model for any community." DelZotto is Founding President of the National Congress of Italian Canadians Foundation (1987), and was President of the Liberal Party of Canada (Ontario) from 1988 to 1990. DelZotto Zorzi specializes in real estate, litigation, dispute resolution, IP and wills.

The Hon. Iacobucci grew up in Vancouver, B.C. after his parents immigrated to Canada from Italy. After obtaining his law degree from UBC in 1962, he completed his Masters of Law at Cambridge in 1964 before commencing legal practice in New York. In 1967, Iacobucci returned to Canada as an Associate Professor at the Faculty of Law, beginning a long affiliation with the University of Toronto that continues to this day. A beloved Dean of the Faculty of Law from 1979 until 1983, he then served as Vice President and Provost, before leaving the University of Toronto in 1985 to become Deputy Minister of Justice and Deputy Attorney General of Canada. In 1988, he was named Chief Justice of the Federal Court of Canada, and in 1991, he was elevated to the Supreme Court of Canada, where he served until his retirement on June 21, 2004. In September 2004, the University welcomed Iacobucci home in his role as Interim President.

The Faculty of Law is delighted to be able to offer the *Hon. Frank Iacobucci Bursary,* which will allow students with financial need to follow in his footsteps, and have a chance to make a difference. ■

John and Mary A. Yaremko Program in Multiculturalism and Human Rights

The Faculty of Law gratefully acknowledges the generosity and vision of the Hon. John Yaremko and his late wife Mary, who donated $600,000 to establish the *John and Mary A. Yaremko Program in Multiculturalism and Human Rights* at the University of Toronto, Faculty of Law. The establishment of the Yaremko Program continues the family's long tradition of philanthropy to the law school, including the creation of the John Yaremko Opportunity Fund, the John Yaremko Award in Human Rights and the John Yaremko Leadership Award.

A 2003 Arbor Award recipient, the Hon. Yaremko studied law at University College in the late 1930s under legal scholars Bora Laskin, W.P.M. Kennedy and Jacob Finkelman. Following his graduation from the University, he embarked on a brilliant career in the public service. As a Member of Provincial Parliament from 1958-1974, he was appointed the first Secretary and Minister of Citizenship of Ontario in 1961. During his career in government, Canada became the first country in the world to adopt an official multicultural policy that would preserve and enhance equality and defend Canadians of diverse heritage from discrimination. It was a fitting legacy for the first Ontario parliamentarian of Ukrainian descent.

The Yaremko Program sponsors a wide range of activities at the Faculty of Law each year relating to the study of human rights and multiculturalism, including conferences, student experiences, and visiting professorships. Since its inception the Yaremko Program has sponsored three major conferences: *Achieving Human Rights in a Multicultural Society: Institutional Competence and the Law,* which addressed the issue of remedies for human rights abuses against immigrant groups; *Equality and the Family,* which explored the effects of twenty years of Charter jurisprudence on the social conception of "the family"; and *Bridges and Barricades: A Roadmap to Domestic Human Rights,* a student-organized forum that addressed a number of pressing domestic human rights issues.

In addition to these public events, the Yaremko Program has supported law students participating in summer fellowships focusing on domestic human rights, and has provided funding for visiting professors offering specialized courses in human rights and multiculturalism. Over the past two years, the Faculty has welcomed Professor Judith Resnick of the Yale Law School, who taught an intensive course *Gender, Locally, Globally: The Role of Law in Responding to Forms of Inequality.* The Yaremko Program also sponsored a comparative course entitled *"The Supreme Court and Constitutional Rights,"* taught by the Hon. Frank Iacobucci, the Hon. Dieter Grimm, and the Hon. Mr. Justice Aharon Barak, which examined the development and interpretation of human rights law in Canada, Germany and Israel. ■

(L-R): Mary and John Yaremko

Martin Teplitsky '64 Gives Generously to Establish the LAWS Program

A generous gift of $50,000 from alumnus Martin Teplitsky will be used to fund a ground-breaking collaboration between the University of Toronto, Faculty of Law and the Toronto District School Board (TDSB).

On April 28, the Faculty of Law and TDSB launched LAWS (Law in Action Within Schools) – the country's first law-and-justice-themed high school program. The program will be implemented in two downtown high schools, using two separate models. Central Technical School will integrate the study of law and legal themes into the three-year high school curriculum for a cohort of 50 or so selected students beginning in grade 10. At Harbord Collegiate Institute, law and justice themes will be integrated in the curriculum of core classes for all grade 10 students.

High school students from both schools will work with U of T law students to hold moot courts and mock trials, go on field trips, use the law library and attend special lectures. A mentoring and tutoring program is also in the works.

Nearly 1,000 high school students, parents, teachers, alumni and members of the law school, legal and educational communities packed the auditorium of Central Tech to celebrate the program. A group of high school students kicked off the event with a stirring R&B rendition of *O Canada.* Students and principals read letters of support for the program from Chief Justice Roy McMurtry, Attorney General Michael Bryant, and Mayor David Miller '84. Alumnus Cornell Wright '00 gave a rousing address urging students to "stand up and be counted" by pursuing their educations, voicing their opinions, and participating fully in Canadian society.

In the keynote speech, the Hon. Frank Iacobucci spoke movingly about his experiences growing up as the son of Italian immigrants, and invited students to realize their dreams, just as he has. The central key to achieving those goals, he said, is education. "I believe education is not just a ticket to earn a living, but a passport to learn how to live." At the end of the ceremony, two Central Tech students presented bronze sculptures made in their art class to speakers Iacobucci and Wright.

The program will commence this Fall and is expected to increase high school completion rates among students and encourage them to go on to university or college. Many of the students are from diverse backgrounds, and will be the first in their families to have an opportunity to consider a higher education. "We are confident that this exciting collaboration will be critical to the lives and futures of the students," says Dean Daniels, who initiated the program.

> *"I believe education is not just a ticket to earn a living, but a passport to learn how to live."*
>
> – The Hon. Frank Iacobucci

Born in 1941, Mr. Teplitsky graduated from the Faculty of Law in 1964. Since that time, he has shown an unwavering commitment to the law school. He created a gift at the Faculty in memory of his parents – *The Jack & Ida Teplitsky Memorial Bursary,* and initiated other gifts, including the *Teplitsky Colson Entrance Scholarship*. Mr. Teplitsky has also been a supporter of other innovative community justice and outreach initiatives. In 1998, he founded the Law Society of Upper Canada's *"Out of the Cold"* program, which continues to help feed the homeless in Toronto. Currently, he is a senior partner at Teplitsky Colson Barristers, where he focuses on counsel work before the courts and administrative tribunals. Earning a reputation as one of the country's best mediator-arbitrators, he has been instrumental in settling various provincial disputes including teacher and health-care worker job actions. In addition to his legal and community advocacy, he is also the author of *Making a Deal: The Art of Negotiation,* as well as numerous academic journal articles on tort law, arbitration and mediation. ■

Martin Teplitsky '64

last word

BY JEREMY D. FRAIBERG '98

Like most graduates of the Faculty, I am not a legal philosopher. On the contrary, I am a Bay Street corporate lawyer. Aristotle, Kant and Hegel do not play a major role in my daily practice. I will go out on a limb and assume the same is true for most other graduates. What, then, is the value of studying legal philosophy?

In my view, legal philosophy is an indispensable component of a complete legal education, and the Faculty's law and philosophy group is one of its greatest strengths.

Legal philosophy provides excellent training in how to think, read and write clearly – the basic skills every lawyer must possess. It requires not only knowing the rules, but the reasons for them. The ability to think critically and systematically about the justification of a rule or body of law is essential to being a good lawyer.

In addition to developing practical skills, studying legal philosophy helps make graduates more informed citizens. John Rawls argues that one task of philosophy "is to focus on deeply disputed questions and to see whether, despite appearances, some underlying basis of philosophical and moral agreement can be uncovered". He observed that the chief conflict in the tradition of democratic thought is balancing the claims of liberty and the claims of equality, and that "there is no public agreement on how basic institutions are to be arranged so as to be most appropriate to the freedom and equality of democratic citizenship".

A perfect illustration is the Supreme Court's landmark decision in *Chaoulli v. Quebec,* in which the Court struck down a Quebec law prohibiting private health insurance. At bottom, this case is about whether an individual's right to liberty trumps the state's interest in protecting the equal rights to health care of all citizens. In considering whether the case was rightly decided, recourse to precedent is essential. But the case also raises basic philosophical questions: What is justice? What rights do we have? What is the proper role of the courts? Every thinking person considers these issues at some point in their lives. Lawyers in particular have a special interest in them, given our role in making, interpreting and applying the law.

Finally, studying legal philosophy is fun. There is a simple pleasure in philosophic contemplation. The pursuit of knowledge for knowledge's sake is an end in itself – and certainly one to be encouraged at an academic institution.

Although it has great value, legal philosophy is tough to do well. A nineteenth century English judge once said of the public policy doctrine that "it is a very unruly horse, and when once you get astride it, you never know where it will carry you". Lord Denning famously responded that "with a good man in the saddle, the unruly horse can be kept in control". The same can be said of legal philosophy. Fortunately, the Faculty is blessed with some exceptionally good men and women with a great deal of intellectual horsepower.

WHAT IS JUSTICE? WHAT RIGHTS DO WE HAVE? WHAT IS THE PROPER ROLE OF THE COURTS? EVERY THINKING PERSON CONSIDERS THESE ISSUES AT SOME POINT IN THEIR LIVES.

The Faculty's law and philosophy group is internationally recognized as one of the world's finest. This issue of *Nexus* provides a snapshot of the depth and breadth of these scholars. Equally if not more important, however, is the quality of teachers among them.

As a first year law student, I was lucky to have Professor Brudner as my small-group professor for criminal law and Professor Weinrib for torts – easily two of the best courses I have ever taken. Professor Brudner approached criminal law through a Hegelian theory of retributivism, while Professor Weinrib propounded an Artistotelian and Kantian conception of private law. Both were passionate about the search for theoretical coherence and offered students a framework through which to understand the law. They demanded that students take ideas seriously. Classes were always intellectually stimulating, challenging and lively.

I hope the Faculty continues to build on the great strengths of the law and philosophy group. While Aristotle, Kant and Hegel may not play a major role in legal practice, thankfully they play a major role in legal education at the Faculty. ■

Jeremy D. Fraiberg is a senior associate at Torys LLP in Toronto. He specializes in corporate finance and mergers & acquisitions for both public and private companies. He is an adjunct professor at the Faculty, where he teaches a course on hostile take-over bids and proxy contests. Jeremy recently served as senior policy advisor to the Wise Persons Committee to Review the Structure of Securities Regulation in Canada. Prior to joining Torys, Jeremy was a law clerk to Chief Justice Antonio Lamer at the Supreme Court of Canada. He received his undergraduate degree in philosophy from Harvard College, where he wrote his senior thesis under the supervision of John Rawls.

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CAE

FACULTY OF LAW ALUMNI WEEKEND 2005

alumni reunion

DATE:

Friday, October 14, 2005
(Reunion reception at the law school)

Individual class reunion dinners will take place on Friday, October 14th and Saturday, October 15th

DON'T MISS OUT!

Look for your reunion invitation in the mail later this summer and be sure to register. For more information contact **Corey Besso** at (416) 978-1353 or corey.besso@utoronto.ca

HONOURING THE CLASSES OF:

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1960	1985
1965	1990
1970	1995
1975	2000

SAVE THE DATE!

Class of '75 reunion dinner, at the home of J. Robert S. Prichard and Ann Wilson, June 2, 2005

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