

# Oxford Law News



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Barry Roberts / laurelstudio.com

## *From the Chair of the Law Board*

The Oxford Law Faculty values the support of its exceptional community of alumni and friends. The Law News has been one way of keeping in touch but, over the next few years, we hope to explore new opportunities to strengthen our ties with our broader community. The first of a series of events designed at bringing that community together will be held at the Mansion House in London on 3 November 2003 by the kind invitation of an alumnus, the Lord Mayor, Alderman Gavyn Arthur, and with the generous support of Shearman & Sterling. The size of the venue means that we have essentially invited London-based alumni and friends to this event, but if anyone who has not received an invitation will be in the capital that evening and could join us, do let me know. Over the next few years we will be holding further events in the major

regional centres. In addition, we hope to supplement the annual Law News with a more informal newsletter to keep you informed of regular developments in the Faculty. To this end, it would be very helpful if you could let us know of any updated contact details on the form enclosed, and also of the contact details of anyone you believe would be interested in receiving either the Law News or the planned newsletter. Since I began my term as Chair of the Law Board I have been very aware of the warmth of support for Oxford Law that exists outside the Faculty. That support is very important to us as we face new challenges in the University sector. I must thank our alumni and friends for all that they continue to do for us.

*Michael Spence*

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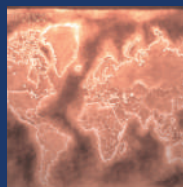
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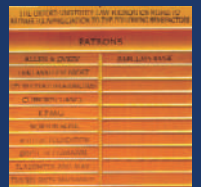
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# TAX LAW WITHOUT BOUNDARIES?

Tax law frightens people. Even lawyers of great eminence and erudition in other fields seem to think tax is dry, technical, complicated and full of numerical calculations. Giving an inaugural lecture in tax law was therefore a daunting challenge, especially as it marked the foundation of the new KPMG Chair in Taxation Law. I took my task to be to show why tax law is a key area for study by lawyers – and interesting too! It is highly conceptual and links with many other areas of study, both legal and in other disciplines. The study of tax law is rich in principles and can be doctrinal, contextual, theoretical and interdisciplinary. It is certainly not all a question of computation (not at least, in my classes).

The title was deliberately enigmatic and dealt with several different types of boundary. The first area for discussion was the boundaries, if any, of the *discipline* of tax law. What is its place in the university law faculty and what is the role of tax law in tax research, policy making and the business world? The lecture set out to show that the study of tax law is not remote from the study of law generally, but is both anchored in other areas of legal study and helps to shape those other areas. Neither is tax law a mere mechanism to be applied once the economists and politicians have determined tax policy. It has a role in helping to shape policy that goes well beyond simple implementation.

This can be illustrated by examining the taxation of small businesses. The failure of government to recognise the legal issues surrounding whether a business is run as a company, a partnership or a sole tradership, or whether a person supplying labour is employed or self-employed, has led to policy mistakes, the fruits of which we continue to reap. Tax legislation has been seen as separate from, not part of, company, partnership and employment law. This has created opportunities for taxpayers to make tax savings through a tax driven choice of legal form. Government policy accentuates the degree to which tax is based on artificial concepts rather than economic reality.

Not only has this situation cost the Exchequer large amounts of money but it

## INAUGURAL LECTURE 12 May 2003 PROFESSOR JUDITH FREEDMAN KPMG PROFESSOR OF TAXATION LAW

has also created complexity for many ordinary taxpayers due to the consequent anti-avoidance legislation. Taxpayers who, not surprisingly, attempt to use the opportunities created by the varying tax treatment of different legal arrangements, are countered by special legislation. For example, the so-called IR35 treats some company owners as if they were employees, so trying to undo some of the harm done by government not paying enough attention to legal form in the first place. It does this in a complex and uncertain way, without reference to employment rights, causing confusion and taxpayer discontent. This is just one example of the way the failure to consider tax as part of the general legal system has led to difficulties.

A second type of boundary is the boundary as a tool of tax law. I used this in the lecture to show the relationship between a central tax question and other areas of legal research, such as legal theory, regulation, criminal law and corporate responsibility (including the work of Dworkin, Endicott, Braithwaite, McBarnet, Black and Ashworth). Tax law attempts to draw a boundary between **evasion** (illegal) and **avoidance** (legal). Sometimes it is argued that we can subdivide avoidance further as **acceptable** (that is, effective) and **unacceptable** (ineffective) avoidance. The focus on

boundaries in this context has proved particularly problematic. Some of these lines seem to be impossible to draw with precision and yet on which side of the line a taxpayer falls can have dramatic consequences. Is this focus on boundaries always the right way forward? To what extent, and in what circumstances, is the failure to draw a clear line a deficit of the rule of law? Could it be that, in some cases, what matters is not whether the boundary lines are clear but how we deal with the inevitable lack of clarity? Is the move for greater corporate social responsibility of any relevance in controlling tax avoidance?

I argued that strict rules are needed to determine what constitutes **criminal evasion**, even if this means they are under-inclusive. The 'rule of law benefits' outweigh the need to cover behaviour at the boundaries. The current test of dishonesty judged by the standards of ordinary decent people may be inadequate to test whether complex tax schemes amount to evasion or merely avoidance and more specific disclosure requirement and penalty regimes may be required.

When it comes to differentiating between so-called acceptable and unacceptable avoidance or, to use non-judgmental terms, effective or ineffective avoidance, the position may be different. Attempts to achieve certainty result in problems of their own, encouraging compliance with the letter but not the spirit of the law. Specific anti-avoidance legislation sometimes creates loopholes as well as removing them. Arguments relying on economic reality may be unhelpful, given that the tax system itself is not founded on economic reality but often builds in tax incentives, such as capital allowances, or taxes quite deliberately on the basis of legal form, as we have seen.

Against this background, I put forward a case for a general anti-avoidance principle (GANTIP) governing



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approaches to tax avoidance and providing a framework for managing uncertainty through dialogue and interaction between taxpayers, professionals and revenue authorities. A GANTIP is needed to modify the established principle that taxpayers may organise their affairs to pay the minimum possible under the law. Corporate governance principles now show us that profit maximisation needs to be seen within a broad context, taking into account the effect on shareholder value of corporate behaviour on a range of stakeholders. Likewise, directors need to be able to judge the effect of tax avoidance schemes in a wider context. A general anti-avoidance *rule* has been rejected in the past in the UK for lack of certainty. This applies the wrong test. What is needed is not a detailed *rule*, which will not achieve certainty in any event, but a *principle* to balance the tax minimization principle.

The breaking down of a **third** type of boundary, the geographical, further complicates these issues. It creates opportunities for international tax planning or avoidance and raises questions about the responsibilities of the citizen, especially the multi-national corporation, towards the state. Inter-state co-operation is essential if avoidance is to be tackled sensibly.

The objection is sometimes voiced that tax law is difficult to teach because it builds to such an extent on other areas of substantive law and is so inter-related with other disciplines. This is not a reason for leaving tax out of the legal curriculum but a reason for inclusion. Tax law can cast light on the way other areas of law have evolved and underline the importance of fundamental concepts. Frequently it is in tax cases that fundamental issues of general importance have been moulded and clarified. Likewise, as seen above, a proper knowledge of the underlying legal concepts is essential for a real understanding of tax policy. Academic tax lawyers have much to offer across disciplinary boundaries, both within the legal world and beyond.

*For a fuller discussion of  
Tax and Corporate Responsibility,  
interested readers should see  
Freedman, The Tax Journal, 2 June 2003.*

# CRIMINOLOGY

*Major changes are taking place in the Law Faculty's criminology community. **Professor Roger Hood** retires on 30 September 2003 after 30 years as Director of the Centre for Criminological Research, and the new Professor of Criminology, **Professor Richard Ericson**, takes up his post in January 2004. **Dr Federico Varese** has been appointed to a new University Lecturership in Criminology from 1 September. **Dr Lucia Zedner**, Reader in Criminal Justice and Fellow and Tutor in Law at Corpus Christi College, takes up a British Academy Research Readership on 1 October 2003, and will be on research leave for two years. **Ben Goold** will join the Criminology teaching group as a Fellow and Tutor in Law at Somerville College. The Centre for Criminological Research is beginning preparations for its move in summer 2004 to the new building for the Centre for Advanced Studies in the Social Sciences, behind the Law Library on the St. Cross site.*



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Professor Roger Hood came to Oxford as University Reader in Criminology in 1973, and was elected a Fellow of All Souls. During his long tenure of the directorship he has built up the Centre for Criminological Research into a major force in British criminology. In the late 1970s he persuaded the Home Office to fund the expansion of the Centre's research staff through a five-year rolling grant and, although that arrangement ended when the government altered its financing arrangements in the early 1980s, the Centre continued to attract grants for its path-breaking work in fields such as burglary, victims in the criminal justice system, prosecution policies, race issues in criminal justice and so forth. Professor Hood's success in obtaining funding for major research projects could not, however,

provide the Centre with the university posts needed to give criminology a permanent base within the Faculty. His advocacy of the need for more than one established post bore fruit in 1992: the first University Lecturership in Criminology was created (held first by Andrew Sanders and now by Richard Young), and a second University Lecturer (Carolyn Hoyle) was appointed in 2000. A Review of the Centre for Criminological Research reported positively in 2001, and in consequence the Lecturership held by Colin Roberts (who had been seconded from the Department of Social Policy and Social Work to be Head of the Centre's Probation Studies Unit) was transferred to the Law Faculty in 2002; the new Lecturership to which Federico Varese has been appointed was created; and the

Faculty has accepted the case for the establishment of a new University Readership in Criminology from 2004. Throughout all these changes the Centre has continued, under Professor Hood's guidance, to undertake major research projects which substantially enhance the Law Faculty's research profile, and to provide teaching for the FHS, the BCL, and the new M.Sc. in Criminology and Criminal Justice.

Despite the burdens of running the Centre for 30 years, Professor Hood has himself produced many major works on criminology. The long list includes volume 5 of the *History of English Criminal Law* (1986, with Sir Leon Radzinowicz), *The Death Penalty: a World-Wide Perspective* (1989, 3rd ed. 2002), *Race and Sentencing* (1992), and *The Parole System at Work* (2000, with Stephen Shute). Professor

*Hood* (edited by Lucia Zedner and Andrew Ashworth). Roger Hood leaves the Centre for Criminological Research in fine shape. He will spend the academic year 2003-2004 as Visiting Professor of Criminology at the University of Hong Kong, and will then return to continue with research and writing among his colleagues in Oxford.

His successor, **Professor Richard Ericson**, is Professor of Law and Sociology at the University of British Columbia, and Principal of Green College, Vancouver; he was elected a Fellow of the Royal Society of Canada in 1987. He has acquired an international reputation as a criminologist, through his works on policing, the criminal process, the role of the media, and latterly assessments of risk and the insurance industry. He obtained his Ph.D. from the University of Cambridge, and was a Visiting Fellow at All Souls College in 1998-99. When he takes up the chair and the directorship in January 2004 he will be a Fellow of All Souls and will be teaching on the BCL and the M.Sc. in Criminology and Criminal Justice.

**Dr Federico Varese**, Assistant Professor at Williams College, Massachusetts, has been appointed a University Lecturer in Criminology with effect from September 2003, and will be a Fellow of Linacre College. He will have special responsibility for developing a course on methods of criminological research as part of the M.Sc. programme. Federico Varese obtained his D.Phil in Oxford in 1997,



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Dr Federico Varese

and has produced an acclaimed study of the Russian mafia together with several articles and book chapters.

**Dr Lucia Zedner** emerged successful from the always fierce competition for a British Academy Research Readership, which provides the cost of replacement teaching for two years whilst the Research Reader has an unbroken period of study and writing. Lucia Zedner's topic is "Security and Justice: an enquiry into the normative issues raised by changes in the governance of crime." This will involve an examination of the challenges posed to criminal justice by changes in the governance of crime, under the broad rubric 'the pursuit of security'. These changes include the rise of risk assessment, prudential strategies, crime prevention, community safety initiatives, and, above all, the rapid growth of the private security industry.



Professor Richard Ericson

Hood's eminence in criminology has been recognised in the many honours he has received, including the C.B.E., Q.C. *honoris causa*, DCL, Fellow of the British Academy, the Presidency of the British Society of Criminology from 1987 to 1989, and the prestigious Sellin-Glueck Award for Distinguished International Contributions to Criminology, from the American Society of Criminology. In June 2003 he was presented with a *Festschrift* written in his honour by several colleagues from across the world: *The Criminological Foundations of Penal Policy: Essays in Honour of Roger*

## BEN GOOLD

Ben has been appointed to a tutorial fellowship in Law at Somerville College from October 2003. Ben is a graduate of the University of Tasmania with degrees in both Economics and Law. He came to Oxford as a Rhodes Scholar in 1994 for the BCL and stayed to write a DPhil on the introduction of public surveillance CCTV. Fluent in Japanese, Ben

is a person with an unusual range of talents. He has already taught in Australia, the United States, Japan and the United Kingdom and has an impressive list of publications. While in Oxford as a student he also managed to pick up a Blue for his sporting prowess and he has been active in volunteer organisations such as Liberty, Justice and the Free Representation Unit. Ben joins a proud tradition of migration from Australia to the Oxford Law Faculty!



## BAKER & MCKENZIE SEMINAR AND DISCUSSION ROOM

In early 2003 Baker & McKenzie agreed to support the Law Faculty through a generous donation to the Bodleian Law Library. Their gift of £200,000 over five years will be used to help provide students with a hybrid collection of printed and electronic materials essential to their studies.

In recognition of their generosity, a seminar room in the Library has been renamed the Baker & McKenzie Seminar and Discussion Room. It is available to readers as a discussion area or quiet work place when not in use for seminars. In this era of rapid change, it is essential for libraries to adapt their services and premises to meet their readers' changing styles of work and so the Bodleian Law Library is delighted to be associated with Baker & McKenzie in the promotion of this new workspace. A publicity campaign of posters, notices and bookmarks launched the room and will be repeated in October.

An informal reception to mark the donation and the naming of the room was held in the Library and the Senior Common Room on 22 May 2003. Jane Hobson, Simon Hughes, Jeremy Goldring and Richard Hawtin from Baker & McKenzie saw the Room (slipping into it between seminars) and the publicity and then chatted with members of the Law Faculty, students and Bodleian Law Library staff at an informal reception.

The Law Faculty and the Bodleian Law Library are very grateful to Baker & McKenzie for their support and are delighted with this new link between the Faculty and the legal profession.



## INSTITUTE OF EUROPEAN AND COMPARATIVE LAW

The Institute has had a very good year in which it has sought to consolidate its links with other European universities and institutions concerned with the study and practice of European and comparative law, to create new links with further such institutes, and to promote and facilitate teaching and research in European and comparative law within the Law Faculty.

There have been a number of auspicious arrivals of new appointees at the Institute, and departures to distinguished appointments elsewhere. Professor Denis Baranger of the University of Paris II, who specialises in comparative constitutional legal history, took up the seconded post which is funded by the French Government and a Deputy Directorship of the Institute in October 2002, in succession to Professor Otto Pfersmann now returned to the University of Paris I, but still in close contact with the Institute. Dr Katja Ziegler took up the DAAD Lectureship and a Deputy

Directorship of the Institute also in October 2002, in succession to Dr Stefan Enchelmaier who has continued to work in the Institute in a research capacity this year and who now holds a post in the Max Planck Institute for Intellectual Property, Competition and Tax Law in Munich. In September 2002, Dr Diamond Ashgiabor, formerly a doctoral researcher at the European University Institute in Florence, was appointed to a Career Development Fellowship in European Community Law held at the Institute, along with a Junior Research Fellowship at Worcester College. Denis Baranger, Katja Ziegler and Diamond Ashgiabor are all now fully involved in research and writing and teaching within the Institute and the Faculty.

Dr Gerhard Dannemann, the Brost Lecturer in German Private Law, was elected to a new Chair in British Studies at the Humboldt University in Berlin and took up his Chair in January 2003. We are most grateful to him for continuing to act as the editor of the internet based German

Law Archive and as one of the editors of the Oxford University Comparative Law Forum. There is a very real prospect that, as the result of the continuing generosity of Dr and Frau Schumann on behalf of the Brost Foundation, it may be possible to upgrade the lectureship into a chair within the coming year.

The University conducted an election for the vacant Chair in Comparative Law and we are pleased to record that Mr Stefan Vogenauer, who was elected to that Chair, will take up his post by October 2003 and has agreed to become the Director of the Institute in October 2004.

Professor Tony Bradley, formerly of King's College London, and Dr Simon Whittaker, were invited and accepted to be Senior Research Fellows of the Institute and are now working in association with the Institute and making significant contributions to its activities.

In addition, a number of members of the Faculty and associates of the Institute have been deeply involved in its work. Mr John Cartwright

continues to put enormous energy and care into the running, with Jenny Dix, of the Law Faculty's Law with Law Studies in Europe programme. Professor Stephen Weatherill, Professor Ulf Bernitz and Ms Catherine Redgwell (about to become Professor of Public International Law at University College London) have all put tremendous effort into the Institute's programme of conferences and seminars. In October 2002 Professor Derrick Wyatt was appointed Chair of the Institute's Management Committee. Professor Wyatt is himself a major authority on EU law.

All the academic personnel associated with the Institute have sought to maintain a full and significant scholarly output despite their extensive teaching and academic responsibilities. Books and major articles published during the year by them include Professor Mark Freedland's book on *The Personal Employment Contract* and Dr Katja Ziegler's book *Fluchtverursachung als völkerrechtliches Delikt*.

Among a succession of distinguished visitors to the Institute in the course of the year have been Professor Dagmar Coester-Waltjen of the University of Munich, Professor Kyoko Kimpura of Chiba University, Professor Sergio Cámara Lapuente of the University of La Rioja, Professor Harry Arthurs of Osgoode Hall Law School, Professor Katherine Van Wezel Stone of Cornell Law School, and Professor Juergen Basedow of the Max-Planck Institute in Hamburg, all of whom gave very significant seminars within the Institute and the Faculty.

The Faculty continues to be very gratefully in the debt of the many donors and institutions which support the Institute's activities in such significant ways. It continues to be appropriate to single out the firm of Clifford Chance for very special mention and to refer to the support which the firm of Linklaters provide for the Institute's activities in connection with Italian universities.

## STEFAN VOGENAUER

Stefan Vogenauer, currently Research Fellow at the Max Planck Institute for Foreign and International Private Law and part-time lecturer in comparative law at the Bucerius Law School, Hamburg, has been appointed to the Professorship of Comparative Law with effect from 1 October 2003.

Educated at Kiel University, northern Germany, Trinity College,

Oxford, and Regensburg University in Bavaria, Mr Vogenauer has also spent time studying in Paris. He gained a degree in Jurisprudence from Kiel University and an MJur in European and Comparative Law at Trinity College, Oxford, before going to Regensburg University to study for a PhD and complete his practical legal training. Only 34 now, Mr Vogenauer has worked as a research assistant and an assistant lecturer prior to his current posts, as well as doing a mandatory two-year spell in the German Army.

His major work, *Die Auslegung von Gesetzen in England und auf dem Kontinent* has been widely acclaimed. Professor John Bell praises it as a "monumental" work that demonstrates the "remarkable breadth of the author's understanding of his subject." Mr Vogenauer's appointment is a strong addition for the Faculty and continues its fine tradition of comparative law — a tradition including major figures such as Lawson, Kahn-Freund, Nicholas and Rudden.



## WHOSE EUROPE?

In April 2003 a conference was held in the Said Business School under the title "Whose Europe? National Models and the Constitution of the European Union". The event was founded on the premise that whatever form it might take a 'European Constitution' cannot and should not reproduce at the European level the constitutional logic of the nation-state in general, nor of any state in particular. At the same time national political cultures constitute the fundamental historical and conceptual building blocks for constitutional thinking in the EU. So while the EU should not become a "state writ large", in practice, the design of its institutions has been and continues to be inspired by "what we know". This tension between the old and the (as yet unknown) new pervades the whole European constitutional debate. A number of high-profile speakers, including several members of the Convention on the Future of Europe chaired by Valéry Giscard d'Estaing, provoked an

interesting and, indeed, inspiring debate across a memorable Oxford weekend. The Conference was a joint enterprise involving several different entities within the University with interests in the general phenomenon of European Studies. The Institute of European and Comparative Law, for these purposes representing the Law Faculty, has been lately active in promoting closer links with cognate disciplines in the University and this conference was in part designed as a high-profile advertisement of the successful prosecution of this task. Professor Stephen Weatherill served on the Steering Committee of the Conference, while Professor Paul Craig and Professor Derrick Wyatt both



delivered papers, examining the nature of constitution-making and the role of the principle of subsidiarity respectively. Moreover close to twenty other members of the Faculty attended the conference and participated in the lively discussions, both inside and outside the conference room. The Faculty has never been an island and we hope this event will have helped us to get to know our intellectual near-neighbours better. The Convention on the Future of Europe submitted the results of its deliberations to the Thessaloniki Summit in June 2003, and, convinced that our deliberations in Oxford in April have enduring value in the developing debate about the proper institutional and constitutional architecture for a Europe of 25 States



and more, the decision was taken to encourage speakers to prepare papers for publication. These will explore how national 'models' have inspired a possible European Constitution and how in turn the EU as a polity can and should diverge from such models, and will take as prominent themes choice of modes of representation, the allocation of powers and subsidiarity, and the role of citizenship for a polity of peoples. Right now, and perhaps for all time, Europe is 'peoples' not 'people': what does this mean for our future? The papers will be published in Autumn 2003 under the joint editorship of Stephen Weatherill (Law) and Kalypso Nicolaidis (International Relations).

## SUB-NATIONAL ACTORS

A conference on "Sub-National and Regional Actors in the European Union" was held in Lincoln College in late April 2003. The event was staged under the auspices of the Oxford-Stockholm Association funded by the Wallenberg Foundation, which has its home in the Institute of European and Comparative Law and is in the care of Professor Stephen Weatherill and Professor Ulf Bernitz, who spends part of his time in Oxford under the auspices of this venture while also maintaining a role at the University of Stockholm. The topic, the involvement of self-governing sub-national and regional levels of governance in EU law and policy-making, allowed us to bring comparative perspectives to bear on a general inquiry into the extent to which the EU does - and should - engage with public actors beyond central government in the Member States. Case studies provided us with the opportunity to

examine Germany, the Basque Country and the Finnish Aland Islands. Speakers were Peter Mueller Graff (University of Heidelberg), Joxerramon Bengoetxea (University of the Basque Country) and Niilo Jaaskinen (Finnish Supreme Administrative Court). Intriguing tales were told of conflict, caution and co-operation. We also enjoyed excellent contributions by John Usher (University of Edinburgh) and Charlie Jeffery (University of Birmingham), who considered relevant general principles of law and political science respectively, and Joakim Nergelius, who provided an insider's (but by no means uncritical) view of the performance of one of the EU's less well-known institutions, the Committee of the Regions. The event concluded with a 'round table' discussion involving Otto Pfersmann (University of Paris I), Kalypso Nicolaidis (St Antony's College, Oxford) and Professors Weatherill and Bernitz. It is planned that the papers will be published in book form, probably in 2004.

## THE CENTRE FOR SOCIO-LEGAL STUDIES

Research at the Centre for Socio-Legal Studies in the last year has included the topical and controversial issues of corporate responsibility post Enron, self-regulation and the internet, and the provision of water as a human right.

Long before the Enron scandal exploded in the headlines, the Centre was researching exactly the kind of 'creative accounting' methods the energy firm used, among other techniques, to deceive investors, employees and regulators. This research suggests that such 'creative compliance' can be just as detrimental as outright fraud and undermines the basic concept of the rule of law. Ongoing research in the business and the law programme will develop this

work through a focus on corporate social responsibility and business ethics and the law.

The issue of corporate social responsibility also arises in the regulation of the internet and other new media, which has been the subject of much controversy particularly in the debate over self-, versus statutory-, regulation. The Programme on Comparative Media Law and Policy's [www.self-regulation.info](http://www.self-regulation.info) project at the Centre is developing models of self-regulation and mechanisms for certification as well as cataloguing and analysing existing codes of conduct from internet, press, broadcasting, videogames and other converging media sectors, with the aim of creating in-depth knowledge and public



awareness about the role of media self-regulation.

The shocking events in Cochabamba, Bolivia, in 2000, where violent conflict led to the termination of a government concession granted to multinational corporation Bechtel which had made it illegal for poverty-stricken villagers to collect rainwater without a company permit, raised the question of whether the provision of safe drinking water should be treated as a commercial service to be purchased or as a human right. Centre research, funded by the ESRC, addresses this vital issue, trying to bring together on the one hand, the seemingly outrageous deprivation of a basic good from those who need it most, and on the other, a perfectly normal instance of an exclusivity clause, widely accepted as a legitimate part of long-term infrastructure concessions.

Centre interest in the rule of law and transition societies continues. Understanding the apparent failure of law in post-Soviet countries presents a challenge to the assumptions of western jurisprudence, and among Centre publications this year is a book which uses case studies to examine the

researching this across several countries of Europe and Asia. At a practical level Director Denis Galligan has also co-led an international team in a study of the Bulgarian administrative justice system, funded by the UNDP and British Embassy in that country, as background for the preparation of a Bulgarian administrative justice code.

Following on from work on the (non-)emergence of disputes in the field of social welfare, research is now being undertaken on internal administrative review in local authority decision-making, tracking the incidence and use of internal review processes in homelessness law decision-making. A related project explores the processes of communication between the two professional groups involved in the production and use of social enquiry reports – social workers and judges.

Other current research at the Centre includes work on: human rights; international law and the relationship between the global and the local; and the role of lawyers in government, their impact on policy and their relationship with administrators. The Centre was also involved in organising the Oxford Public Interest Lawyers Programme

which was launched in October 2002 and has since been contributing *pro bono* legal research support to both *pro bono* litigation and public policy.

The Centre's visitors scheme has once again attracted academics and practitioners from around the world, its Monday seminar series continues to thrive, the themes this year being corporate social

responsibility and the law, and self-regulation in the media, and several workshops and symposia have been held throughout the year on such themes as the new media, the Communications Bill, socio-legal methodology, and lawyers and government.

*For further information contact the Centre's administrator  
tania.boytt@csls.ox.ac.uk*

## REGULATION

Regulation is a topic of central importance to the emerging shape of the 21<sup>st</sup> century state. It increasingly functions as both a technique for resolving tensions between, and a site of debate about, two important trends of the last twenty years: market liberalisation and the associated 'shrinking of the state' on the one hand, and (more recent) calls to infuse policymaking with a greater dimension of 'social inclusion' on the other hand. The Oxford Law Faculty is increasingly well positioned to contribute to these debates. For the last three years, an option in Regulation has been offered on the BCL/MJur programme. Designed by Dr Bronwen Morgan and Dr Karen Yeung, the course adopts an essentially interdisciplinary perspective on regulation as a mode of governance, including a focus on non-legal techniques, the social context of enforcement, the significance of non-state actors, and the ways in which regulation operates as a placeholder for arguments about democracy and contested political visions. The course has two halves: the first introduces students to a range of analytical and conceptual issues relevant to regulation, which are then applied in the second half to a range of case studies that encompass both traditional and emerging areas of regulation. This year's course explored utilities regulation, broadcasting regulation, food safety regulation, regulation of the health sector and bureaucratic (internal governmental) regulation.

Like the Regulation course, the range of Regulation-related research work in the faculty has both a socio-legal and a more traditional legal dimension. The work of several faculty within the Centre for Socio-Legal Studies focuses on regulation: including **Doreen McBarnet's** work on regulation and corporate responsibility, the **Programme for Comparative Media Law and**



AIZAR RALDES / AFP / Getty Images

*Protestors in Cochabamba, Bolivia block the road with stones*

functions and effectiveness of law in the countries of the former Soviet Union. Russia is also the setting for further research exploring how the role played by law in a particular society is affected by components of that society such as its history, social values, political institutions and economic interests. A new joint project with Stanford University will develop further the theme of the relationship between democracy, development and the rule of law,



**Policy's** work on media self-regulation, **Simon Halliday's** work on internal administrative review in local authority decision-making, and **Bronwen Morgan's** work on emerging linkages between international, national and local levels of regulation in the context of urban water services.

In the wider law faculty, **Anne Davies** has research interests in the regulation of the medical profession and in internal regulatory techniques within the NHS. **Karen Yeung's** research sets out to identify the normative values that shape and condition the legitimacy of regulatory compliance techniques, paying particular attention to the role of constitutional values. **Liz Fisher** works on the interface between public law and risk regulation and, in particular, the problems created by scientific uncertainty in national and transnational regimes. Her recent work includes research on comparative US and EU tobacco regulation, 'risk' as a regulative concept, the BSE crisis, and a forthcoming book on risk regulation and administrative constitutionalism. **Steve Weatherill** has a general interest in the extent to which the ostensibly deregulatory project of European market-making generates (often unexpected and sometimes unjustified) demands aimed at suppliers of regulation at European Union level. He is currently exploring this by focusing on the objectives and limitations of the programme of harmonisation of laws in the EU.

Regulation is a 'bridging topic', one that facilitates dialogue between different parts of our faculty, between the law faculty and other faculty, between students studying apparently disparate areas of doctrinal law, and between academics and the policymaking community. It is certain to flourish in the years to come, within Oxford and beyond.

## Dr Karen Yeung

Karen came to Oxford in 1993 as a Rhodes Scholar, originally to read for the BCL, bearing a combined Law/Commerce degree from the University of Melbourne. A Tutorial Fellow in Law at St Anne's since 1996,

principled regulation, and was specifically requested for inclusion in a recent Ashgate collection of the most noteworthy article-length contributions to the regulation literature. She has acted as advisor to the Australian



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she is also a Barrister and Solicitor of the Supreme Court of Victoria (Australia), and has held visiting fellowships at the JF Kennedy School of Government and Harvard University (2001) and the University of Melbourne Law Faculty (1998). Karen's research interests lie at the intersection of public law and economic regulation with particular emphasis on issues relating to regulatory enforcement. She is crafting a unique research profile in an interdisciplinary-influenced intersection between public and private law. Her doctorate, which Hart will publish later this year in monograph form, explores the use of bargaining and punishment as regulatory compliance techniques, posing challenging arguments about the principled limits to their legitimate use. Karen's expertise is much sought after: her work on penalty setting formed a significant part of a major Australian Law Reform report on

competition regulator (the Australian Competition & Consumer Commission (ACCC)) in a number of issues relating to the enforcement of Australian competition law, and has made significant contributions to several governmental reform projects in the area of regulatory enforcement. She is presently developing, in both empirical and normative directions, an exciting new research focus on the use of media 'shaming' as part of an arsenal of regulatory enforcement techniques. Her work in this field has been influential in shaping the recommendations of the Committee of Inquiry established by the Parliament of Australia (the Dawson Inquiry) to review a number of facets of Australian competition law, including the the ACCC's use of the media in carrying out its enforcement duties. She teaches regulation, administrative law, constitutional law and company law.

## Dr Bronwen Morgan

Bronwen Morgan is the Harold Woods Research Fellow in Law at the Centre for Socio-Legal Studies, as well as a Fellow of Wadham College. Previously a Research

Associate to Sir William Deane, then of the High Court of Australia, an Associate Lecturer in Law at the University of Sydney and a Tutorial Fellow at St Hilda's College, she holds honours degrees in both literature and law from the University of Sydney, Australia, as well as a Fulbright-funded Ph.D. from the University of California at Berkeley's interdisciplinary Jurisprudence and Social Policy Program. Her research focuses on the political economy of regulatory reform, the intersection between regulation and 'second-generation' (social and economic) human rights, and global governance (especially issues such as citizenship that link social theory and political economy). She recently published a monograph *Social Citizenship in the Shadow of Competition: The Bureaucratic Politics of*

*Regulatory Justification*, which explores the political dynamics of how economic concepts and tools are reshaping regulatory law, drawing on an extended case study of Australian reforms. Her current research, funded by the ESRC as the only socio-legal project in an exciting new interdisciplinary Research Programme on 'Cultures of Consumption', focuses on the commodification of water in international comparative perspective, especially on links between the status of 'global consumer', water as a human right and patterns of global governance around water. Bronwen's research is particularly striking in weaving together disparate insights gained by adopting a strong interdisciplinary and empirical grounding, thereby moving well beyond theoretical speculation. She teaches jurisprudence at undergraduate level, and regulation at postgraduate level, and has previously taught administrative and constitutional law.



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## FROM THE DIRECTOR OF GRADUATE STUDIES (TAUGHT COURSES)

When I undertook the BCL many years ago, 1974 to be precise, I was in what was felt to be a large group, about some 38 students in all. Those were still the days when choice of courses was 'structured'. Graduate students had to take Conflict of Laws and either Evidence or Restitution. I well remember stimulating seminars on the Conflict of Laws with John Morris and Peter North, and intense debates in Restitution between Guenter Treitel and a young academic called Peter Birks.

Well things have moved on somewhat since then. The BCL remains a rigorous taught graduate degree, which is respected throughout the common law world. The numbers taking the course have roughly doubled since 1974, with candidates from the UK, Canada, Australia and New

Zealand making up the majority of those taking the degree. We also have a significant number from India and the United States who read for the BCL. Many who have taken the degree have had significant careers back home, whether as academics, practitioners or judges. Oxford has been enriched by a graduate body of this size, quality and diversity. The range of subjects on offer has expanded and the credit system has enabled students to choose courses with the knowledge of the overall weight of work involved.

The Magister Juris has been a resounding success. The degree is a variant of the BCL, tailored for those from a civil law, as opposed to a common law, background. When we initially introduced the course most of us expected that applicants would come

principally from continental Europe, France, Germany, Holland, Italy and the like. We do indeed have very high quality applicants from these countries. What was less expected was the number and quality of applicants from further afield. The reputation of the degree has spread and we now have candidates from countries as diverse as Iceland and Mexico, China and Chile, Russia and Slovakia. The consequence has been a truly cosmopolitan graduate body. It will be common for a teacher of a seminar containing 12 students to have 10 different nationalities. This means that there is always comparative expertise on virtually any topic, even where the seminar is not formally comparative. The numbers of those taking the MJur are now not very different from the numbers doing the BCL, and many of





the courses will be open to both groups of students. Students from common law backgrounds can benefit from understanding civil law modes of analysis and vice-versa. The very diversity of approach within different civil law systems will also often be apparent.

Those taking the BCL or the MJur can elect to stay on for the MPhil, which is a further year of work on a dissertation. It provides a natural stepping stone towards doctoral work, as well as an element of continuity in the graduate body in Oxford.

Paul Craig

## ***LAW FACULTY/SAID BUSINESS SCHOOL JOINT SEMINAR***

In May 2003 the Law Faculty and the Said Business School (SBS) welcomed Professor Alan Schwartz, Sterling Professor of Law at Yale Law School to give the first of what it is hoped will be a series of joint seminars. Members of SBS and the Law Faculty have shared interests in various areas including corporate governance, corporate finance, insolvency, commercial law and taxation. The seminars should provide an opportunity to meet researchers in other disciplines working on related topics as well as to hear of new research from visiting academics.

Professor Schwartz is a leading US expert on commercial law, corporate finance and bankruptcy and so he was an excellent speaker to inaugurate the series. He presented a paper written jointly with Professor Ronald Gilson on material adverse change and material adverse effect clauses in

merger agreements. Such clauses, and the exceptions to them, result in substantial litigation and occupy centre stage in the negotiation of merger agreements. In brief, the paper explains the existence of these clauses and the exceptions to them by showing how they allocate transaction risks to the party that can most efficiently bear them. An empirical part of the paper examines actual merger contracts and reports preliminary results consistent with the explanations reached by the economic analysis.

At a dinner following the seminar, Professor Schwartz was thanked for providing such a stimulating start to the seminar series. It was agreed between representatives of the Law Faculty and SBS that this had been an experiment well worth repeating and that there was potential for further joint activity. Plans are now in progress for a second seminar.

## **PUBLIC INTERNATIONAL LAW**

With timely support from the Faculty and donors, Public International Law (PIL) in Oxford is going from strength to strength. It was as recently as 1999 that the first University Lectureship in the subject was approved, to complement what was otherwise the only established PIL post, the Chichele Professorship, to which Vaughan Lowe was elected the same year. Vaughan has been and continues to be an inspiring leader in the PIL Group, ever ready with ideas and possessed of apparently boundless energy.

Catherine Redgwell, who will be leaving us for a Chair at University College, London, in December, took up that first university lectureship in 1999, and pioneered the teaching of international environmental law as a BCL/MJur option. And since then, teaching, supervision and research capacity have been further strengthened. In 2000, Sir Frank Berman, KCMG, QC, was appointed Visiting Professor of International Law on his retirement from the post of Legal Adviser in the Foreign and Commonwealth Office. His long experience in the practice of international law has proven an invaluable resource (and corrective, too) for colleagues and students alike, to whom he has regularly and generously given his time, in addition to sharing in the teaching responsibilities of the group.

This year, PIL at Oxford reached critical mass, with the arrival of Dan Sarooshi (to a University Lectureship in International Economic Law funded by Herbert Smith), and of Stefan Talmon (to a second University Lectureship in Public International Law). Both come with international reputations and a proven track record of teaching and research, and both are already looking to develop their interests in some of the newer and

more challenging questions facing States and organizations.

Perhaps the most obvious marker for interest in PIL is the number of options in the BCL/MJur programme: International Economic Law (from 2003), International Environmental Law, Law of the Sea, International Dispute Settlement, and International Human Rights and the Law of War. This year, too, saw over 100 undergraduates sitting the PIL paper in Finals, after following a very full 32 hours of lectures shared among the Group; if recent experience is a guide, we can expect steady and probably increasing demand for instruction and supervision at the graduate level.

In this world of globalization and conflict (not that the two are related, are they?), this interest in the role of international law and organization may be thought unsurprising. Still, it is remarkable how consistently the numbers of those attending the lunchtime discussion groups have exceeded the very generous donation of sandwiches by OUP, and how popular remains our joint course and seminar series with the Department of Politics and International Relations on 'The Function of Law in the International Community'. This link is greatly valued on both sides; International Relations and Law recently co-operated with colleagues from History and Philosophy in a successful project submission to the Leverhulme Trust on the changing character of war, which has resulted in a grant of £1.1 million over five years.

The value of interdisciplinary approaches to contemporary problems is especially evident to the student of international law, whether dealing with business and the world economy; the transnational dimensions of crime; migration, refugees and the obligations of States; national security and collective security; or human rights and national, social and cultural identity. The PIL Group expects to expand its research and teaching links across disciplines, while strengthening also its ability to provide instruction and supervision in both core and topical issues. It is giving full support, for

example, to the Refugee Studies Centre in its efforts to fund a post in international refugee and humanitarian law, and is looking forward to a healthy interchange of knowledge and experience.

Research into both burning issues and the core problems facing public international law continues to occupy a substantial amount of the PIL Group's time. Professor Vaughan Lowe has recently completed revision of a major work in the field; Catherine Redgwell has published widely on international environmental law; Dan Sarooshi is engaged in further investigation of the World Trade Organization; Stefan Talmon is looking at the present and future role of the EU/EC as an actor on the international plane; Agnès Hurwitz (now at the Refugee Studies Centre) is keeping up with European developments on asylum, while Guy Goodwin-Gill, who was elected to a Senior Research Fellowship at All Souls College in October 2003, continues to examine the ever-controversial and (too) topical questions of migration and refugee movements, and to review aspects of the laws of war and the 'confrontation' with terrorism.

It has also been a busy time for comments to the media (BBC Radio 4, the World Today, and the World Service being regular requesters), as the PIL Group is regularly called on to field questions on the international law dimensions of this or that news moment — the treatment of prisoners in Guantanamo, the UK's asylum process, the use of force against Iraq, and the future of the United Nations, to name just a few.

With Catherine Redgwell's departure for UCL in December, the Faculty will be advertising again for a University Lectureship in Public International Law. Whoever the successful candidate may be, she or he can be assured of membership in a enthusiastic and lively group, within a Faculty determined to advance scholarship in a field of increasing daily relevance.

## SIR FRANK BERMAN

### APPOINTMENT TO THE INTERNATIONAL COURT OF JUSTICE

Sir Frank Berman QC, Visiting Professor of International Law, has been appointed as a Judge ad hoc on the International Court of Justice. He will be the second member of the Oxford Law Faculty to sit on the World Court. Sir Humphrey Waldock, then holder of the Chichele Professorship, was elected to the Court in 1973, and served as its President from 1979 to 1981.

The Court, which sits in the Peace Palace in The Hague, is the principal judicial organ of the United Nations. It hears disputes between States and is empowered to issue Advisory Opinions to the UN General Assembly and Security Council and to other bodies and organs within the UN system. Its Judgments and Opinions have played a major formative influence in the development of international law over the past century.

The Court consists of 15 permanent judges. Under its Statute additional judges can be appointed ad hoc where the Court has no permanent judge of the nationality of one or more parties to a particular case. The permanent British judge is Dame Rosalyn Higgins, who was awarded an Honorary DCL by the University last year. Ian Brownlie QC, the former Chichele Professor, is one of the most highly respected and sought-after advocates before the Court.

Sir Frank's appointment is further evidence of Oxford's growing strength in international law, which was identified in 1999 as one of the priority areas for the Faculty's development. There are now four full-time University posts, with other specialists active in this and related fields, and the subject is in great demand both at the undergraduate level and for the BCL/MJur.



# REGULATING TRANSNATIONAL MARKETS

In September 2002, as a part of the Faculty's on-going link with New York University School of Law, a team from the Faculty participated in a two-day seminar in Manhattan. The seminar title was "Regulating Transnational Markets: Between State Sovereignty, Integrated Markets and Transnational Communities" and the general intellectual agenda as well as the more detailed programme were shaped in discussions between Professor Stephen Weatherill (Oxford) and Professor Mattias Kumm (NYU) conducted with the support of the scheme. Both organisers had enjoyed the opportunity to visit each other's institution earlier in 2002 in order to plan the seminar and also to participate in classes and pursue research. The seminar was dedicated to examination of a core set of questions that have arisen in the context of the World Trade Organisation, the European Union and the North American Free Trade

Area and are likely to arise wherever transnational economic integration occurs. Is the establishment of transnational markets a technical as opposed to a political project? No it is not! But what does this entail? How are choices about the structure of the market and regulatory choices concerning public health, environmental protection and social protection related? Under what circumstances is appeal to 'distortion of competition' caused by diverse State laws a sufficient reason to allocate regulatory responsibility for the matter in question to the transnational level instead of permitting local autonomy and diversity? And, if regulatory power is re-located to central, transnational institutions, how are those actors to be made accountable for the decisions they take? How can citizens get rid of scoundrels who get it wrong, if we have shifted the place they make their errors out of the familiar national arena of representative

democracy and periodic elections? It is easy to identify these debates in relation to today's EU and today's WTO. Indeed, they are the propulsion for the discontent that has spilled on to the violent streets of Seattle and other cities that have had the mixed blessing of acting as host to meetings of world leaders and trade negotiators. Our discussions in New York were a little more placid, at least on a physical level, but they were intellectually demanding and they were inspired by the belief that these are enduring issues deserving close examination. However one interprets the implications and even the meaning of 'globalisation', it jolts cosy assumptions about the capacity of States to fend for themselves. Faculty participants were Catherine Redgwell, Stefan Enchelmaier, Liz Fisher, Bronwen Morgan, Dan Prentice, Adam Tomkins, Diamond Ashiagbor, Samantha Besson, Christopher McCrudden and Stephen Weatherill.

## DAN SAROOSHI

Dr Dan Sarooshi joined the international law team at Oxford in Trinity 2003, taking up the University Lecturership in International Economic Law generously funded by Herbert Smith, and a Praelectorship at the Queen's College.

Dr Sarooshi was previously Reader in International Law and convenor of international law subjects at University College London. He has also taught international law at the London School of Economics, and has held visiting academic positions at New York University School of Law and at the University of Cambridge. As the title of his post indicates, Dan will be pioneering the teaching of international economic law as a BCL/MJur option, with the first course to be offered in the academic year 2003-2004. He will also contribute to the

teaching at undergraduate level, while continuing a steady programme of research.

Among his publications is *The United Nations and the Development of Collective Security*, (1999); this was awarded the 2001 Book Prize by the American Society of International Law to 'a work of great distinction', and the 1999 Guggenheim Prize by the Guggenheim Foundation in Switzerland to 'a monograph on public international law of outstanding importance', and has naturally been of particular relevance in recent times. Dan is currently co-editing (with Malgosia Fitzmaurice), a collected volume of essays on *Issues of State Responsibility before International Judicial*



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*Institutions*, and co-authored a chapter with Judge Rosalyn Higgins DBE, QC, on 'Institutional Modes of Conflict Management', published in *National Security Law* (2003).

# STEFAN TALMON

Dr Stefan Talmon also joined the Faculty in Trinity 2003, taking up the second University Lecturership in Public International Law to be established by the Faculty in recognition of the need to strengthen capacity in this increasingly popular discipline. He was also elected to a Tutorial Fellowship in Law at St Anne's College.

Originally from Germany, Stefan Talmon studied law at Tübingen, Munich, Cambridge (LL.M), and Oxford, completing his D.Phil. under the supervision of Professor Ian Brownlie. Stefan is a Rhodes Scholar, Scholar of the Konrad-Adenauer Foundation and the German National Scholarship Foundation, winner of several other scholarships and prizes as well as the University Teacher of the Year Award 2000. He is Associate Professor (*Privatdozent*) at the University of Tübingen and has held visiting professorships at the University Aix-Marseille III, Yeditepe University, Istanbul, and the Jaroslaw-Mudryi

Academy in Charkow. As a practising German barrister (*Rechtsanwalt*), he has acted in the International Court of Justice as Counsel and Advocate for the Republic of Botswana in *Kasikili/Sedudu Island* (1996-9) and as Adviser to the Republic of Nigeria in *Land and Maritime Boundary Between Cameroon and Nigeria (Cameroon/Nigeria)* (2000).

His principal publications include *Kollektive Nichtanerkennung illegaler Staaten* (2003); *Recognition in International Law. A Bibliography* (2000); *The Reality of International Law: Essays in Honour of Ian Brownlie* (1999, with Guy Goodwin-Gill); *Alles fließt. Kulturgüterschutz und innere Gewässer im Neuen Seerecht* (1998, with Wolfgang Graf Vitzthum); *Recognition of Governments in International Law* (1998).



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## VICTORY IN THE WLR NATIONAL MOOTING COMPETITION

Teams from Universities and Law Schools from all over the country entered this competition, including the colleges of Oriel, Worcester, Hertford and Mansfield in the University of Oxford. The team from Mansfield College (Simon Hale and Kevin Whibley) progressed through the rounds, winning moots on breach of confidence, common law negligence, homicide, the *Rylands v Fletcher* rule and the



Kevin Whibley, Simon Hale, The Hon. Mr Justice Neuberger and Kerry-Louise Lawson (University of Hertfordshire)

right in Article 6 of the European Convention of Human Rights.

The final, between Mansfield College and the University of Hertfordshire, was held in the Old Hall at Lincoln's Inn on 3

April before The Hon. Mr Justice Neuberger. The judge said of the winning Oxford team that it had nearly convinced him of a hopeless case!



# CONCOURS ROUSSEAU

2003 saw the first participation of an Oxford team in the **Concours de proces simulé en droit international Charles Rousseau** memorials and pleadings in French, s.v.p.

argue the cause of la Dioné, for La Laurentie against Eldorado in a scenario of cultural diversity, 'invasion' and reaction strangely reminiscent of Québec, Céline Dion,



*Guy Régimbald, Dr. Guy S. Goodwin-Gill, Melpo-Menie Josephides, Joséane Chrétien and Mélanie Joly at a farewell dinner at 'Le Procope'*

Through Michaelmas and Hilary terms, the four francophone members (Joséane Chrétien, Mélanie Joly, Melpo-Menie Josephides and Guy Regimbald) researched and drafted their 30-page mémoires for submission by 31 March 2003. They also kept up their own courses (Joséane and Mélanie for the MJur, Guy for the BCL, and Melpo for the Diploma in Law), helped take Oxford to ice hockey victory over Cambridge, and Brasenose women to major success on the river. With such enthusiasm and application, there was little finally for the Rousseau Faculty adviser to do.

May found the team in Paris, thanks to funding from the Faculty, and from Brasenose and Wadham. Eighteen other teams were present, from France, Canada, Romania, Chad, Togo, Belgium, Switzerland, many with long experience in this international competition.

Guy and Mélanie were first in the field against Paris I. Their brief: to

and the conquest of the world. That the problem was the brainchild of Professor Daniel Turp (Université de Montréal) probably says it all. Next found Joséane and Melpo defending against the Graduate Institute for International Studies, Geneva, then a second round for both teams, Guy and Mélanie against Lomé, Joséane and Melpo against Bucharest.

And every evening, believe it or not, was spent hard at work in a cellar (hotel conference room) across from the Panthéon. But then there was a chance to meet and mix with the other teams, and enjoy the hospitality of the organizers, including a farewell dinner at Le Procope (est. 1686), following in Voltaire's steps. The semi-finals eluded the team, but a final ranking of ninth was itself a creditable first for Oxford, competing against others for whom the competition was usually a part of their academic curriculum.

## ARIEL EZRACHI

Dr Ariel Ezrachi will join the Faculty in the Autumn of 2003 as the holder of a new post, the University Lecturership in Competition Law. The post is sponsored by Slaughter and May, to whom we are enormously grateful for active support in helping the Faculty to realise its ambition to promote competition law learning and scholarship in Oxford. Dr Ezrachi currently holds a post at the Law School at Warwick, but his move to Oxford is at least in part a return home. He spent three years in Oxford in successful pursuit of a DPhil degree, completed under the supervision of Professor Stephen Weatherill, which examined patterns of and prospects for bilateral and multinational co-operation in merger control. The topic is both intellectually rich and commercially significant, and, moreover, its study is of profound current concern, for the most sophisticated bilateral arrangement, that existing between the US and the EU, is subject to the strains to which all transatlantic ties have become subject in recent months. Dr Ezrachi, an Israeli and French national, will assume leadership of the Faculty's competition law team, and will teach at undergraduate level as well as taking over primary responsibility for the shaping and delivery of the popular BCL/Mjur course in competition law. He also plans to sustain and develop his active commitment to research in the subject. Dr Ezrachi will be a Fellow of Pembroke College.



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## BEN McFARLANE

Ben McFarlane has been elected to a Fellowship in Law at St Peter's College, and to a CUF Lecturership in Law. This marks his 'Arrival' in the Faculty to an established post — although he 'arrived' some years ago. After reading for the BA and BCL at University College, Ben was elected to the Penningtons Studentship in Law at Christ Church in 1999 — a career development post in which, over the last four years, he has developed his teaching both in tutorials for Christ Church and many other colleges, and in giving lectures for the Faculty. He has already built up a strong base of research and publications. His areas of specialisation include Land Law, a subject in which the Faculty has recently had a real shortage of specialists, and his appointment to an established post within the Faculty helps to secure Land Law teaching for the future. At Christ Church Ben has made his mark not only as an inspiring and dedicated teacher but also as an indispensable member of sports teams, both for the JCR and for the SCR. The Christ Church SCR football team really should be looking to St Peter's for a transfer fee! But it is enough to know that he has now 'arrived' as part of the permanent establishment of the Faculty — and he is a very valuable addition to it.

## ALAN BOGG

We are very pleased to welcome Alan Bogg to the law faculty. Alan studied for his BA and his BCL at Exeter College, achieving outstanding first class honours degrees in both. He is currently completing his doctorate, which straddles political theory and labour law in an innovative and challenging manner. His first teaching post was at Birmingham University, where he was highly regarded in the faculty, both as a popular and inspiring teacher, as well as an excellent administrator. He was elected to a fellowship at Hertford college in June.

Alan has already achieved an impressive publication record, with an article in the *Modern Law Review*, one in *Ratio Juris*, and several in the pipeline. He has also shown an intense commitment, not just to academic achievement, but also to social issues, and has never stinted with his time and effort in either respect.

Alan will be an asset to the Faculty, an energetic and innovative researcher and a lively and supportive teacher and colleague.

## THOMAS KREBS

Ten years ago, facing the retirement in quick succession of Sir Guenter Treitel, Sir Roy Goode, and Francis Reynolds, we feared for the future of our unrivalled strength in commercial law. But first class predecessors attract first class successors. Professors Andrew Burrows and Ewan McKendrick are the new leaders of their generation.

A new University Lecturership in Commercial Law, with a Fellowship at Brasenose, has now been created. Dr Tom Krebs will take it up in October. His election quiets another needless anxiety, namely that no first class commercial lawyer could be attracted to a university career. Tom gave up a glowing future at the Bar to follow his academic vocation. Having taught the commercial law course at LSE, sharing it with Bill Blair QC, he applied for a lecturership at UCL. There he worked in commercial law with Professor Michael Bridge. He also became known for his mastery of IT. It is from UCL that he join us.

Tom gained his LLB at Kent, came to us for the BCL, and stayed for his doctorate. He is bilingual in English and German and studied in Germany in connection with the research for his D Phil. All his published work has a strong comparative line. The book which emerged from his doctorate *Restitution at the Crossroads: a Comparative Study* (2001) won two prizes. It analyses the differences between the common law's approach to the law of unjust enrichment and that of the German law. It cautiously defends the former. When English law finally chooses its direction, his work will be acknowledged as pivotal, even if, as seems likely, the choice ultimately favours the road signposted by §812 BGB.

The Faculty has cause to be proud of the continuing strength of our commercial law tradition. It is timely to remember that we have special reason for constant gratitude to Norton Rose for funding of the Chair of Commercial Law.

## LEGAL PHILOSOPHY COLLOQUIUM

The annual Oxford Legal Philosophy Colloquium took place on 10-11 March 2003, partly at Balliol College and partly at the Rothermere American Institute on South Parks Road. Stephen Perry from NYU spoke on harm in tort law, Larry Temkin from Rutgers University spoke on equality, Klaus Guenther from the University of Frankfurt spoke on criminal responsibility, Veronique Munoz-Darde from UCL spoke on justice and pluralism, and James Penner from the LSE spoke on interpretation. There were also local contributors: Samantha Besson, John Gardner, and MPhil student Elisa Holmes presented work in progress. Every paper

had a commentator from Oxford or elsewhere. These colloquia, funded by the Law Faculty and the Oxford Centre for Ethics and Philosophy of Law, are now an established event in the Oxford calendar. As well as high-profile academic visitors, they attract many faculty members and graduate students from both law and philosophy. This year about 60 people attended for some or all of the sessions. For BCL/MJur students studying Jurisprudence and Political Theory, the colloquium also serves as a final intensive training session before the topics for assessed essays are announced at the end of Hilary Term.



# OXFORD INTELLECTUAL PROPERTY RESEARCH CENTRE

The academic year 2002-2003 was an active one for the Oxford Intellectual Property Research Centre, based at St Peter's College. Apart from the weekly seminars the Centre ran, it organised an inaugural International Intellectual Property Moot jointly with the Intellectual Property Institute (IPI), an IP Forum 2003 also jointly with the IPI, an IP mock trial, initiated an IP database, and is running a summer international IP programme. Economists Dr Christine Greenhalgh and Dr Mark Rogers also won an ESRC grant to conduct economic research on patents, trade marks and copyrights.

Weekly Tuesday seminars drew faculty and students from across the university, as well as some lawyers and patent attorneys. The range of seminars cut across wide areas in intellectual property law, featuring experts such as Professor Jeremy Phillips (UCL & Slaughter and May) on "An Unorthodox View of Community Trade Marks" and Professor Wendy Gordon, Boston

University School of Law on "How Long is a Piece of Copyright? Dreading Eldred".

The International IP Moot ran on 22 and 23 March 2003. Twenty-one teams from the UK and the Republic of Ireland participated by presenting skeleton arguments and then attending St Peter's College for a four round knock-out series of oral argument before expert practitioner judges. (No team from Oxford participated this year.) The final moot took place before an audience in the Examination Schools. The finalists, Westminster College and King's College, London (which eventually prevailed) argued their cases before a panel comprising Lord Justice Mummery, Mr Justice (now Lord Justice) Jacob and Mr Michael Tugendhat QC. University College Dublin won the prize for the best skeleton argument, and a student from Brunel University won the best oralist prize.

An IP Forum on "The Commercial Exploitation of Academic Science: A Contradiction?" took place on 25 April 2003, featuring leading academics and practitioners from science, law and economics. Over 120 attendees registered for the forum. At the conclusion, six postgraduate law students launched an Electronic Database of Intellectual Property (EDIP), making available various IP research of Oxford students and staff. EDIP can be accessed from the IP Research Centre's database ([www.oiprc.ox.ac.uk](http://www.oiprc.ox.ac.uk)).

The mock trial this year featured argument over the alleged copyright infringement of a work called '360 seconds' of silence by another work '90 and a bell'. The case was based on an actual dispute in 2002 between the publishers of John Cage's silent work 4'33" and the producers of a CD that included a track comprising a minute of silence. Henry Carr QC and Michael Silverleaf QC of 11 South Square Gray's Inn argued the case and cross-examined witnesses (played by Harry Small of Baker & McKenzie and Anna Edwards-Stewart of 11 South Square) before Lord Justice Jacob and an audience of about 100 at the courtroom in the Oxford Town Hall.

This summer the OIPRC is hosting a six-week programme on international and comparative intellectual property law, in collaboration with the University of Victoria (Canada) and the University of Illinois, and supported by law firms Bird & Bird, Smart & Biggar (Canada) and Brinks Hofer Gilson & Lione (US).



*Anthony Murphy, Director, "Future of Europe", Department of Trade and Industry, with OIPRC Director Prof. David Vaver*

## ANALYTICAL LEGAL PHILOSOPHY CONFERENCE

The Analytical Legal Philosophy Conference is the major international congress for scholars working in the analytical tradition in jurisprudence. For its first ever excursion outside the United States, the conference came to Oxford on 16 and 17 May 2003. The Old Library at All Souls provided the venue for two days of intensive discussions

focusing on five pre-circulated papers, by Connie Rosati (UC Davis), Timothy Macklem (KCL), Joseph Raz (Oxford), Michael Blake (Harvard) and John Broome (Oxford). Topics included rights, multiculturalism, and interpretation. Around 40 of the world's best-known philosophers of law were present, augmented by a few Oxford

research students. The Law Faculty provided hospitality and the Oxford Centre for Ethics and Philosophy of Law provided logistics. Next year the conference will return to New York, but we look forward to welcoming it back to Oxford again in the future. To judge by the delighted reactions of 2003 delegates the feeling is mutual.

## CATHERINE REDGWELL

Catherine Redgwell leaves Oxford at the end of this year to take up the Chair in International Law at University College, London. Catherine joined us from Nottingham University in 1999, taking up post as the first University Lecturer in Public International Law and Yamani Fellow of St. Peter's College. Catherine, who was named Reader in Public International Law in 2001, will be greatly missed. She pioneered the teaching of

International Environmental Law as a BCL/MJur option, and appropriately strengthened Oxford's transnational ties by linking closely with Professor Francesco Francioni and Patrizia Vigni of the Università di Siena. Catherine was also an exceptionally active and successful organizer for the International Law Association, regularly bringing to Oxford many renowned and impressive speakers. We wish her all the very best in her new post.

## ROY STUART

Roy Stuart will retire as a Fellow and Tutor in Law at Hertford College at the end of September 2003 after more than 30 years of dedicated commitment to teaching law. During his time he has transformed legal studies at the college, not only increasing its quota of law students from 7 to 45, but also dramatically improving the quality of teaching and exam results. If proof were needed, no fewer than seven current and former members of the Law Faculty were mentored and tutored by Roy at Hertford. Roy first began teaching Criminal law whilst a Fellow of All Souls College, after reading the BCL at Wadham College. He was appointed to a Fellowship at Hertford College in 1969.

Roy's contribution to the study of law is incalculable. Having dedicated himself to the tutorial method, he has

taught Criminal law, Roman law, Contract, Criminology and Penology and Jurisprudence to generations of students. His standards have always been high, pushing students to their limits both in terms of the material to be read and the level of detailed discussion required. It is no understatement to say that Roy is the very embodiment of law at Hertford. A simple list of his achievements cannot encapsulate his particular mix of genius and humility, which means that much of his contribution to law lives on in the hearts and minds of his students.



## NICK JOHNSON

The Oxford Institute of Legal Practice (OXILP) is ten years old and, during the whole of that period, has been under the leadership as Director of Professor Nick Johnson, who retires in July.

A joint venture between Oxford University and Oxford Brookes University, the OXILP came into being to provide teaching for the then new Legal Practice Course for solicitors, with the aim of setting a high standard for the new course and of generating research in areas of law and procedure which had hitherto been neglected. Without Nick Johnson's knowledge, experience and drive, the OXILP would

never have got further than the wish list.

Within five years he had built up a very talented and enthusiastic staff and the course achieved the accolade of 'excellent' from The Law Society. Three years ago the OXILP was chosen by a consortium of City firms to develop a specialist City LPC, and over 50% per cent of the students are now on that course. Finance has always been very tight, yet he has managed to develop new courses, expand student numbers from under 100 to 353 and set up new initiatives for the future. It is a very remarkable achievement and we wish him every success in the future.

## OTHER DEPARTURES

The Law Faculty must also record the departure of five others who have made significant contributions in a range of areas.

**Suzanne Shale** became Fellow and Tutor in Law at New College in 1990. She taught a number of subjects, including Criminal Law, Introduction to Law, Land Law and Jurisprudence, and developed a research profile in feminist legal studies, law and the public media, and student learning. This last field was one that she gained particular prominence in, particularly after she became the inaugural Director of the Oxford University Institute for the Advancement of University Learning. She has left Oxford to become Assistant Director (Leadership) at the PPP Foundation.

**Paul Blaikley** was the Faculty's first administrator. He joined the Faculty in 1997. Paul came to an office in which much of the administrative work of the Faculty was done by academics in the interstices of their day, and left an office in which professional systems are in place for the organisation of the its work. The establishment of these systems is a testimony to Paul's careful and creative administrative work and to his ability to quickly win the confidence of the Faculty officers and academic staff. His experience of working in a range of educational institutions and his committed attitude to his work has constituted an enormous contribution to the life of the Faculty.

**Dr Gerhard Dannemann** came to Oxford in 1995 to be Deputy Director of (what was then known as) the Centre for the Advanced Study of European





and Comparative Law and a Fellow of Worcester College. He was appointed as the Erich Brost University Lecturer in German Civil and Commercial Law in 1997 and became Reader in Comparative Law in 2002. He was the founder of the innovative Oxford University Comparative Law Forum (<http://ouclf.iuscomp.org/>) and remains its general editor. He was also the founder of the invaluable German Law Archive (<http://www.iuscomp.org/gla/>) which he is continuing to maintain. He has left to become Professor of British Legal, Economic and Social Structures at Humboldt University, Berlin, but also remains attached to Oxford as a Fellow of (what is now known as) the Institute of European and Comparative Law.

**Dr Stefan Enchelmaier** was Deputy Director of the Institute of European and Comparative Law from 1997 until 2002, and a Senior Research Fellow at the Institute from 2002. He held a Fellowship at Lady Margaret Hall, then became Fellow and Tutor in Law at Wadham College from May 2000. He played an important part in teaching across the full range of the Faculty's EC Law options as well as preparing undergraduates on the Law with Law Studies in Europe course for their exchange years in Germany. He has left Oxford to become Head of Unit at the Max Planck Institute for Intellectual Property, Competition and Tax Law in Munich.

**Adam Tomkins** became Fellow and Tutor in Law at St Catherine's in 2000 and his stimulating lectures on Constitutional Law swiftly became very popular with students across the University. He has left Oxford to become the John Millar Professor of Public Law in the University of Glasgow. A week before his departure his new book, *Public Law*, was published by OUP in the Clarendon Law Series.



## DEVELOPMENT NEWS

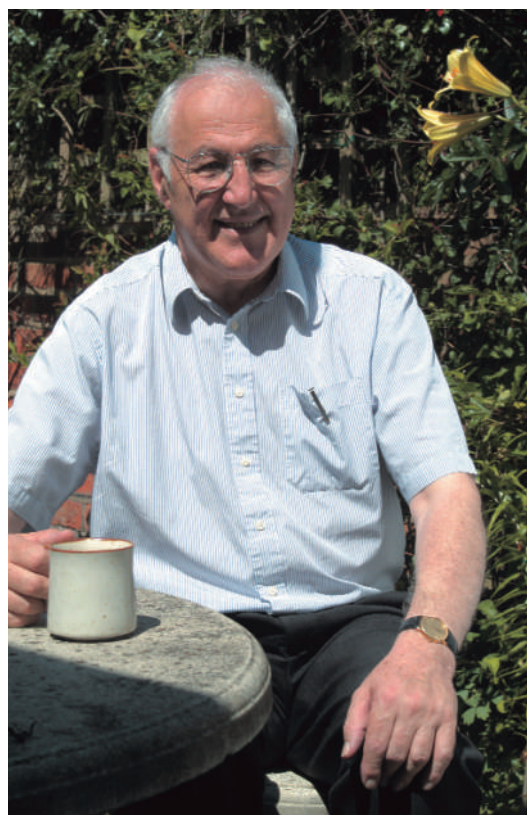
With the cut-backs (in real terms) in government funding for the University in recent years, the development work of the Law Faculty has become increasingly important. If the Law Faculty is to maintain its position as a leading centre for legal teaching and research in the United Kingdom and Europe, it will need to draw upon the strengths of its alumni and supporters in many different ways.

Under the guidance of Professor Sir Roy Goode, the law faculty has secured approximately £10 million in gifts over the last decade. This has enabled appointments to be made to Chairs and University posts in thirteen different subject areas that would not otherwise have been possible. In consequence, new subjects have been added to the undergraduate and postgraduate programmes and teaching and research in existing subjects have been strengthened. Other money raised has been used, for example, to support the Bodleian Law Library, which provides for the needs of all law students in Oxford. Not only has this enabled the purchase of books, periodicals, law reports and CD-Roms but it has also allowed the library to stay open at the weekends. A further exciting feature has been the provision of a specially designed IT Training Room in the Law Library.

With a view to building on this success, the Law Faculty commissioned (in November 2002) a review of its development work by Judy Niner Development Partners. The final report was completed in January 2003 and will form the strategic plan for the Faculty's development work for the next five years. In line with a

recommendation of this report, the Law Faculty is setting up its own development office. The office will work with the University Development Office but will have its own dedicated Development director and staff.

An important event of the year was the concert at the Holywell Music Rooms and the reception in Wadham held on 17 January 2003 to mark the retirement of Professor



*Sir Roy Goode*

Sir Roy Goode as Honorary Director of the Oxford University Law Foundation. Sir Roy has spearheaded the development work of the Faculty for a decade and has been Honorary Director of the Foundation during its first five years. His enlightened vision of what the Faculty should be doing in terms of fund-raising has given the Faculty a head-start over some of its rivals. He has worked tirelessly and without reward on behalf of the Faculty. The Law Faculty would like to thank him for all he has done. Fortunately, he has agreed to

remain as a trustee of the Oxford University Law Foundation (and as a member of the Oxford University Law Development Council, which supports and promotes the Faculty's development work).

The Law Faculty welcomes gifts of any size. All gifts should be made payable to the Oxford University Law Foundation and sent to Oxford University Law Foundation, St Cross Building, St Cross Rd, Oxford, OX1 3UL. The Oxford University Law Foundation is a special-purpose exempt charitable trust of the University which has been established to receive funds for the Law Faculty. The trustees of the Law Foundation are chaired by Lord Browne-Wilkinson. For further information on how your support can help the Law Faculty, please contact Dr Michael Spence or Professor Andrew Burrows at the St Cross Building or by e-mail on michael.spence@law.ox.ac.uk or andrew.burrows@law.ox.ac.uk.

## STOP PRESS

Oxford Law is a young faculty and getting younger all the time! Congratulations to those of the Faculty



*Imogen Young*

who have had babies in an unusually productive year. Jenny Payne at Merton started the trend with Emily, now 11 months. Since then we have greeted the arrival of babies to Edwin Peel at Keble, Grant Lamond at Balliol, Alison Young at Hertford, Liz Fisher and Roderick Bagshaw at Corpus and Magdalen respectively and Robert Stevens at Lady Margaret Hall.

## NEW FOUNDATION BENEFACTORS

Over the last year, the Law Faculty has received new major gifts from three law firms:

**Baker & McKenzie** have made a substantial and continuing gift to the Bodleian Law Library and have also provided funds for the refurbishment of one of the Law Faculty teaching rooms which has been named the Baker & McKenzie Seminar and Discussion Room. As a consequence of these gifts, Baker & McKenzie have been recognised as Foundation Benefactors of the Law Faculty.

**Herbert Smith** have funded a University Lecturership in International Economic Law (attached to Queen's College) and have also donated funds to the Bodleian Law Library for materials on international economic law. As a consequence of this gift, Herbert Smith have been recognised as Foundation Benefactors of the Law Faculty.

**Shearman & Sterling** have made a substantial and continuing gift to the general work of the Law Faculty, with some of the money being allocated to the setting up of a Law Faculty Mooting competition called the Shearman & Sterling Mooting Competition. As a consequence of this gift, Shearman & Sterling have been recognised as Foundation Benefactors of the Law Faculty.

*The Law Faculty would like to take this opportunity to thank all its major benefactors.*

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The Law Faculty has also recently received a generous gift from Ronald DeKoven.

The Faculty would also like to thank the trustees of the Oxford University Law Foundation and the external members of the Oxford University Law Development Council for the time and effort that they devote to its work.

## OXFORD LAW NEWS SUMMER 2003

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