

Oxford Law News



UNIVERSITY OF OXFORD

ISSUE 9, AUTUMN 2004

LETTER FROM THE CHAIR OF THE BOARD

This has been both a very exciting and a very sad year for the Law Faculty.

During this year the Faculty has conducted a review of every area of its activity. So too have the Social Sciences Division and our External Advisory Panel. The conclusion of these reviews is that, though inevitably there are proposals for

change, our core business in teaching and research is in a very healthy state. What has been exciting is that each of these reviews has encountered a real sense of common purpose in the Faculty. There is a new sense of the importance of working together as a law school, albeit operating across the colleges of the University. A part of this new

sense is that we have decided, for the first time, to make the chairmanship of the Law Board a full-time position.

The sadness of the academic year has, of course, been the deaths of Jim Harris and Peter Birks. Both are monumental figures whose loss is profoundly felt. Both had a gift for encouraging and developing the talents of younger colleagues that was treasured in the Faculty. The following pages contain tributes, not only to them as individuals, but also to their contribution as scholars. These losses have also brought the Faculty together and reminded us how fortunate we are to work with people of such unusual talent and humanity.

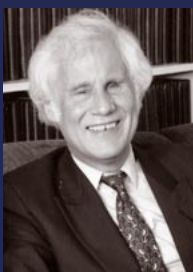
I am now away for a year's sabbatical. During that time Ewan McKendrick is serving as Chair of the Law Board. I am taking the time to write a book, give some guest lectures, finish a few research projects, sit the exams for the University's Graduate Diploma in Theology and play with our fifth child who is due in January. After this exciting and sad year, nothing could sound better!

Michael Spence
Chair of the Law Board



photography: Barry Roberts

In This Issue...



PROFESSOR JIM HARRIS
page 2



STAFF ARRIVALS
page 11



PROFESSOR PETER BIRKS
page 4



MANSION HOUSE RECEPTION
page 8

PROFESSOR JIM HARRIS

JIM HARRIS AS A COLLEAGUE AND TEACHER

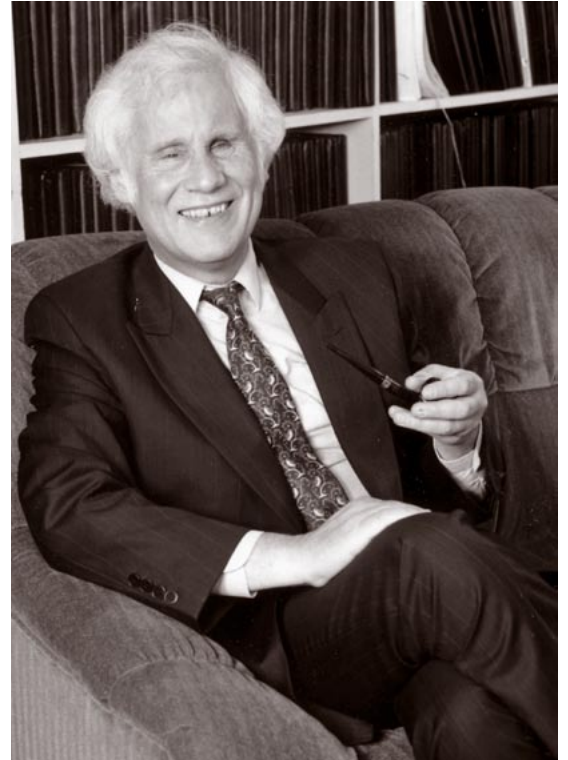
Ed Peel

From first to last, Jim Harris demonstrated the kindness, consideration and self-effacing good humour which made him the ideal teacher and colleague. My final memory of Jim, just two days before he died, is of him sitting comfortably, whisky and ginger in hand, recounting an anecdote; one of many in his repertoire, but one which he had not shared with me before. As a newly appointed Lecturer in the Oxford Faculty he had mistakenly turned up in first week at 10 a.m. to deliver a lecture which should have begun at 9 a.m. In second week he ensured that he arrived in very good time for a 9 a.m. start and was joined outside the lecture theatre by a student. When Jim explained that he had arrived at the wrong time in first week, the student replied: "don't worry, I am sure someone will have taken some notes for you."

We had first met when I attended for the interviews held in connection with the Fellowship to which I was fortunate to be elected. I chose to make the customary short presentation on an aspect of Criminal Law, a subject for which Jim was not particularly known, but which he

had taught for many years. His line of questioning was typically understated, precise and probing. Above all, however, it was clear to me then that it was conducted only so as to give me the opportunity to show of my best. For the ten years between that first meeting and our last, there was simply more of the same, for me and for all others who came into contact with Jim.

The relationship which Jim had with his students is also an abiding memory. The warmth and affection with which he was regarded by them was all too evident at a dinner in 1998 to mark the twenty-fifth anniversary of his Fellowship. If Jim had to attend on that occasion, I also cannot recall him ever missing a College Law Society Dinner, where he was often the life and soul of the party; without, it might be said, any signs of the usual after effects on the following day. It seemed appropriate therefore that his former students should have some say in this recollection. When asked to



photography: Gillman and Soame

sum up Jim in one word, the list they produced was: kind, gentle, inspiring, jovial, remarkable, legend. That says it all. It was a privilege to have known him.

JIM HARRIS ON LEGAL RULES AND LEGAL DUTIES

John Gardner

In *Law and Legal Science*, published in 1979, Jim Harris took what he called a "reductionist" view of legal rules. He argued that all legal rules are rules of duty. They either create legal duties or remove legal duties. In spite of appearances, there is no separate class of legal rules that confer legal powers. When it looks like the law is conferring powers, what it is really doing is setting conditions for the creation or removal of legal duties. These conditions, albeit often stated separately, do not constitute separate legal rules. They are merely fragments of the legal rules of duty, which are best understood as 'conditional imperatives'.

In thinking of legal rules of duty as conditional, Jim agreed with Hans Kelsen and disagreed with H.L.A. Hart.

In thinking of legal rules of duty as imperatives (or commands) he disagreed with both Hart and Kelsen. But, while he clearly found little common ground with Kelsen on this issue, the scope of the disagreement with Hart is unclear. Like Bentham, Jim was cautious about how he related legal duties to imperatives. He never said (so far as I am aware) that a legal rule takes its legal-duty-affecting character from its imperatival character. He left open that, on the contrary, a legal rule takes its imperatival character from its legal-duty-affecting character, so that some independent non-imperatival explanation of the nature of a legal duty is still possible and necessary. If the latter, then it was open to Jim to endorse Hart's non-imperatival explanation of the nature of a legal duty,

or to endorse any of a number of other non-imperatival explanations. On more than one occasion Jim spoke critically but sympathetically of Hart's attempt at explanation in terms of the rule-user's critical reflective attitude.

What we do know is that, in common with Kelsen and Bentham, and perhaps Hart, Jim thought of legal duties as duties only in some law-specific sense. He thought that one should not expect the same explanation of the nature of a duty to apply to legal duties and moral duties alike. On this point, Jim differed from his Oxford peers, Joseph Raz and John Finnis, and by the 1990s was swimming against a powerful philosophical tide. But he still swam with characteristic vigour. In a 1996 paper called 'Kelsen's Pallid Normativity' he insisted that my

having a legal duty to Q does not entail that legally I ought to Q, even though my having a moral duty to Q clearly does entail that morally I ought to Q. He chastised Kelsen for failing to have the courage of his convictions on this point, for wavering in his commitment to adhere to a law-specific explanation of the nature of a duty. True, Jim had never agreed with Kelsen's particular law-specific explanation of the nature of a duty (which emphasised coercion rather than command).

But he sympathised even less with Kelsen's competing instinct to abandon any kind law-specific explanation of the nature of a duty, the triumph of which, as Jim saw it, would render Kelsen's theory 'pallidly' moralistic rather than robustly legalistic, and much the worse for that.

In his work on property rights, however, Jim found it harder to maintain this key contrast. He found, not surprisingly, that it is difficult to ask the question of whether our legal rights over things are also moral rights over those things if legal rights and

moral rights are not rights in the same sense. Correspondingly, it is difficult to ask whether our legal duties not to trespass are also moral duties not to trespass if legal duties and moral duties are not duties in the same sense. In his 1996 book *Property and Justice*, perhaps his most important work of all, these issues of general jurisprudence are not directly confronted. But they do hover constantly in the background. As Jim weaves legal analysis into moral analysis, and subjects English land law to unaccustomed moral scrutiny, the reader cannot but conclude that he was feeling the same pressure that Kelsen felt, the pressure to resile from a law-specific explanation of the nature of a duty. He also seemed to be leaning in the Hartian direction of parsing the rules that go to make up property rights, morally as well as legally, into distinct power-conferring and duty-imposing types.

So perhaps Jim was in two minds, over the last few years, about some aspects of his earlier "reductionism". That would be no surprise. Jim's mind

was never closed to new possibilities. He enjoyed nothing better than something he had never thought of before. Nevertheless, his jurisprudential work always retained its robust and unfanciful flavour, endearing it to a wide readership of lawyers and law students as well as philosophers. His well-known textbook *Legal Philosophies* (1980, second edition 1997) has coaxed countless apprehensive law undergraduates along the path to philosophical enlightenment, using the same combination of enthusiasm, incisiveness and good humour that he famously brought to his role as a jurisprudence tutor. At the same time, Jim was a prominent and respected figure among professional philosophers of law around the world, a supervisor of much valuable advanced research in the field, and a lively participant in the collective life of the Oxford jurisprudence group. His work on the nature of legal rules and legal systems will continue to be widely read and discussed.

JIM HARRIS ON PROPERTY AND JUSTICE

Joshua Getzler

Jim Harris was the most distinguished theorist of property of our time. Jim's book on *Property and Justice* (Oxford University Press, 1996) was the *summa* of his work in this field, and may be counted his masterpiece. Jim's property insights opened windows on every branch of private and public law. He purposed to show how theories of justice could better be understood by grappling with the twin problems of describing and justifying property rights; and conversely he grappled with foundational issues concerning the nature of justice in order to build solid justifications for the existence of property itself. *Property and Justice* suggests how jurisprudence and political and legal theory can thrive through close engagement with the details of positive law. As well as a renowned legal theorist, Jim was an accomplished scholar of land law and trusts and of the nature of precedent at common law. His legal learning shaped his property jurisprudence and allowed him to be wholly original in technique; no one else could

have blended so many strands of learning so elegantly and so productively. His richly patterned work was thus rather different from the more abstract theoretical enquiry practised by masters such as Hart and Rawls.

Jim's answer to the first question posed, 'What is property?', consciously departed from Hohfeld's celebrated correlative rights scheme, which disintegrated property into a series of personal rights and duties; and also differed from Honoré's influential approach which was to isolate and list 'standard incidents' of property, being largely the interlocking indicia of control. These two approaches align with realist and civilian modes of analysis, modes that Jim appreciated but did not follow. Instead Jim identified two core qualities of property, being a spectrum of control powers over a resource (which could be a tangible thing or an intangible right); and trespassory rules or some level of right to exclude others from use and control. He did not argue that his

method of analysis falsified past theories, but he did suggest that his approach avoided some circularities, and though simple, still managed to capture most of what was interesting and unique about property rights as they appear in juristic and common practice. It is not fanciful to suggest that this was a theory emanating from a common-law mind, one that extracted what was most important but still left plenty of play within the guiding concepts.

How, then could property be justified? Jim's book provided a brilliant analysis of justificatory theories from Locke and Hegel through to modern day libertarian and utilitarian approaches, and after just appraisal he rejected monochromatic theories as either wrong, exaggerated or incomplete. His destruction of Lockean theories of property as based on labour, desert or creation without wrong to others was particularly powerful and convincing. Instead of postulating his own coercively deductive theory, he used a series of imagined

PROFESSOR JIM HARRIS

utopias – Forest Land, Red Land, Status Land, Contract Land, Wood Land, and Pink Land – to show how one might choose various internal or external perspectives on how to allocate resources. Ultimately Jim defended a liberal theory of justice that prized and protected freedom and individuality, and given what we know of human psychology, history and convention, he argued that robust property institutions served the goal of promoting a just society. His employment of social convention to ground theoretical claims was subtle and original. He concluded that one could demand as a requirement of justice that a society should afford and protect property rights, always remembering that such rights were no absolutes. As he wrote, ‘Property is just, to a degree, sometimes’. Jim was no property fundamentalist, being deeply aware of the capacity of property to cause injustice. The incisiveness of his thought on that age-old problem is well caught in this passage:

Private property is controversial for the same reason that it is commonly prized. It

emphasizes the individuality of the property-holder. A property institution at least confers some private domain over some scarce things, so that the separateness of persons is made evident in the face of collective decision-making. But that domain necessarily confers some power over others and hence is distributionally problematic.

[page 165]

The virtuosity of Jim’s study of property shines from every page of his book; to read him is to see ordered arguments move intricately on a lighted stage of thought. *Property and Justice* now evokes not only admiration but also a sense of wonder at the thought of what Jim was set to achieve in his next great project on human rights, which he was elaborating until the very end. We have been given a glimpse of that project in his final lecture on ‘Human Rights and Mythical Beasts’, published in the *Law Quarterly Review* this July.

I was lucky to have the opportunity to help Jim teach the graduate class in property theory in Oxford. All of us in that class soon learnt from Jim how valuable

property theory could be as a key to the most urgent questions of legal analysis and of moral and political theory. Beyond that Jim demonstrated in every discussion how enlivening, imaginative, serious and pleasurable all intellectual debate should be. He had finely tuned skills as a debater and expositor, always delivering his ideas with gentle humour and genuine respect for his audience. We often found ourselves smiling as we appreciated the sheer artistry of the man’s speech. Many graduate students told me that they had come to Oxford expressly to study property with Jim, and that they found the seminar to be the fulcrum and high point of each week in term. It was common to have the class doubled in size as students of politics and philosophy from all over Oxford came to hear him. For my part working with Jim was the best possible lesson in how to pursue the vocation of academic law. He offered intellectual inspiration and warm friendship to students and colleagues with unfailing grace, generosity and wisdom.

PROFESSOR PETER BIRKS

Andrew Burrows

Peter Birks, the Regius Professor of Civil Law in the University of Oxford, was one of the greatest English academic lawyers – many would argue the greatest – of our time. Best known for his work on the Law of Restitution, he was also a



distinguished Roman lawyer and legal historian. But his learning and scholarship tell only part of the story. For Peter Birks was a charismatic leader and a dynamic teacher, who inspired fellow-academics and generations of students with his passion for academic law. He was also a dedicated administrator, both within Oxford and in his work for the Society of Public Teachers of Law. There have been other brilliant legal scholars and teachers but few, if any, have had Peter Birks’ intensity of commitment to the study of law in the universities.

Peter Brian Herrenden Birks was the son of a GP. He attended Chislehurst and Sidcup County Grammar School in Kent where he was a talented rugby-player and cricketer and excelled in History and Latin. Although he contemplated a career as a Classics schoolmaster, he chose to read law at university and won a place at Trinity

College, Oxford. Here he was fortunate to have as his main tutor the Roman lawyer and Irish constitutional expert John Kelly, a remarkable multi-talented man who went on to a Chair at University College, Dublin and to grace Irish politics. He made a lasting impression on the young Birks and set him on the academic road.

After going down from Oxford he spent a year as a faculty teaching associate in the United States and the following year completed a Masters Degree in Law at University College London. It was here that he first encountered the Law of Restitution, which was then being taught by George Webber, whom Birks regarded as a wonderful man and inspiring teacher. His first academic job in 1966 was as a lecturer at UCL in the law department dominated by the distinguished Roman lawyer, Tony Thomas; and, while his first love was Oxford, his loyalty to UCL was

also to prove life-long as recognised by his being made a Fellow there in 1993.

In 1971 he was appointed Law Fellow and Tutor at Brasenose College, Oxford. The decade that followed was to be the happiest of his academic life. The role of an Oxford tutor suited him perfectly combining as it did the opportunity to carry out fundamental research while challenging and shaping the minds of gifted students through the tutorial system. He regarded it as a privilege to be at Brasenose with its long legal tradition and headed, during his time as a Tutorial Fellow, by Herbert Hart and subsequently Barry Nicholas, both internationally-renowned academic lawyers. As Birks wrote in the preface to one of his books, 'Brasenose was a wonderful place to be and to be a lawyer.' His excitable and intensive tutorial style – in which he demanded high-level answers to difficult questions - proved the perfect foil for the calm reasonableness of his senior law colleague, John Davies.

It was during these years that he started to teach Restitution on the Oxford post-graduate BCL course. His seminars in Restitution were to become legendary. Taught with a variety of colleagues over the years (including his former student and long-time friend, Jack Beatson, now a High Court judge) the seminars attracted some of the finest law students from across the Commonwealth. They became accustomed to Birks' brilliance in cutting through a mass of detail with crisp and decisive explanations and comments occasionally punctuated, at least in the early years, by silences while he wrestled with where the truth lay. Many came to Oxford simply for the experience of being taught by him. It was in these seminars that, with his characteristic passion and energy, he mapped out and tested – through discussion and argument with students and colleagues – his ideas on the law of Restitution. In 1985, having left Oxford to take up the Chair of Civil Law at the University of Edinburgh, Birks finished and published his seminal work *An Introduction to the Law of Restitution*.

This branch of the law had first been brought to the attention of English lawyers in 1966 by Robert Goff, later to be a Law Lord, and Gareth Jones, in their book, *The Law of Restitution*. They had shown that a mass of English legal decisions, both at common law and in equity, were

alike in being concerned with the reversal of unjust enrichments. If Goff and Jones could thereby be said to have 'created' the subject of Restitution in England, it was to be Peter Birks' book that triggered the huge modern academic interest in it. He argued, with the clarity and rigour and dramatic turn of phrase that were the hallmarks of his unique style of prose, that an elegant and illuminating conceptual structure underpinned the cases granting restitution of an unjust enrichment at the claimant's expense. The law was therefore revealed to have a transparent rationality with the judges being guided by coherent principles that ensured that like cases were treated alike. In the Birksian



world there was no place for labels and fictions that were misleading or obscure. They were replaced by modern language that was precise and clear and rendered the law and legal decision-making open and intelligible.

Birks followed the publication of his book in 1985 with a torrent of articles on various aspects of the law of restitution. By now his work was inspiring not only other academics but was also influencing practitioners and judges. He came to be held in great esteem by many of our senior judges who admired the power of his analysis in pointing the way to a principled decision. The respect afforded to his views reached the point where, in one case, even a mere footnote in a Birks article proved to be the subject of several

paragraphs of reasoning in the speeches of the Law Lords.

As a Roman lawyer, Birks' main interest was in the law of delict. Indeed his very first published article was on the early history of *iniuria* and, in line with his firm view that teaching and research complemented one another, he was still teaching an advanced course on the law of delict in Oxford until a few months before his death. He also produced fascinating work on Roman property law. During the tenure of his Chair at Edinburgh he joined with Grant McLeod in producing a new translation of Justinian's Institutes and this has become a standard text for all English students of Roman law. Throughout his career Birks was a passionate believer in the value of Roman law as a means of introducing students to refined legal concepts such as rights in rem and rights in personam. He was a great admirer of the work done by Gaius and Justinian in classifying Roman law in their Institutes and this was to be the underpinning of his approach to modern English law. It was the Roman law of quasi-contract that led Birks to the English law of Restitution.

While at Edinburgh, he turned his attention to the Scots law of unjust enrichment and, through his articles, contributed enormously to the way in which it subsequently developed. He drew inspiration there from talking law with his great friend Alan Rodger, who was then at the Scottish Bar and was later to rise through the Scottish judiciary to become a Law Lord. Birks would fortnightly catch the night coach from Edinburgh to Oxford not only to be with his wife Jackie but also to give week-end tutorials in Brasenose on Roman Law and Restitution. The strain of travelling – and his respect for the excellence of its law faculty - led to him accepting a Chair at the University of Southampton but a year later in 1989 he was appointed to the Regius Chair of Civil Law at Oxford and to a Fellowship at All Souls.

By now, he had become increasingly interested in the work of the Society of Public Teachers of Law (SPTL). For seven years he acted as its Honorary Secretary and, in that role, was the person primarily responsible for transforming it, through root and branch reform, into today's thriving learned society. Not least of his achievements was in successfully pushing for the society to be opened up to all

law degree teachers (so as to include those from the former polytechnics). During these years and subsequently, his decisive views and deep knowledge of the legal academic community made him a hugely influential figure in the law schools, not least in advising on appointments. Through his position in the SPTL, he also argued the case for entry to the legal profession to be restricted to those with law degrees. Although that mission failed, a welcome effect of Birks' high-profile views was to help break down some of the traditional barriers between the academic and practising branches of the profession. This was further helped by the SPTL seminars, which Birks organised on a regular basis in All Souls. These brought together academics, practitioners and judges to debate not only matters of legal education but also difficult areas of private law. Several books edited by Birks were the product of those seminars including *The Frontiers of Liability* (1994); *Reviewing Legal Education* (1994); *Laundering and Tracing* (1995); *Wrongs and Remedies in the Twenty-First Century* (1996); *What are Law Schools For?* (1996); *Privacy and Loyalty* (1997); and *The Classification of Obligations* (1997).

Birks was revered not only by those who took his taught courses but also by his doctoral students. He was a meticulous supervisor who treated a thesis as a joint project and spent long hours helping and working with his students. Several high quality books written by his most talented supervisees are a permanent testament to his devotion and skills as a supervisor.

In the early 1990s he devoted a huge amount of time and energy to the creation of his brainchild the Oxford Institute of Legal Practice (OILP), a joint venture between Oxford University and Oxford Brookes University. Founded in 1994 and operating from a modern building near the railway station, he saw OILP as largely fulfilling his dream that within Oxford the Law Society Finals course (now called the Legal Practice Course) should provide a rigorous academic link between the undergraduate law degree and practice.

In the last ten years he became particularly interested in the modern comparative law of unjust enrichment. His reliance on Roman law in his writings about English law was now supplemented by references to German law, which he

particularly admired for its detailed clarity. These civil law influences encouraged him to focus more widely on the classification of English private law. He argued that accurate taxonomy was as important in law as in the natural sciences. His views on classification continue to inspire heated academic debate across the common law world. Critics saw Birks as a rule-orientated formalist who failed to recognise the validity of overlapping categories and the wide choices faced by judges in decision-making. His supporters applauded the clarity and rigour and rationality of his approach.

Birks' concern with classification led him to believe that an important book for English practitioners and foreign lawyers would be one that, with a clear structure, gave an overview of the principles of English Private and Public Law. Gathering together a team of academic contributors under his general editorship, a two-volume work *English Private Law* was published in 2000. Its companion, *English Public Law* followed earlier this year.

By the mid 1990s Birks' reputation as an exciting and provocative lecturer had travelled far and wide and he regularly accepted speaking invitations from all over the world. A Birks lecture tended to be something of a show-piece: he usually lectured without notes and commonly with a missionary-like zeal. He was a visiting Professor at the Australian National University in 1989, at the University of Nijmegen between 1994 and 1996, at the University of Texas in 2001 and at the University of Leiden in 2003. The series of lectures that he gave at the University of Western Australia in 1992 on *Restitution-The Future* and at the Victoria University of Wellington in 1999 on *The Foundations of Unjust Enrichment* were published as books. Although he was offered lucrative permanent positions in the United States and elsewhere, he turned them all down knowing that he would be unhappy away from his beloved Oxford.

Despite the firm and decisive way in which he expressed his views, Birks was never afraid to change his mind in the search for an ever-more precise and stylish picture of the law. His most recent book, published in the Clarendon Law series of which he was general editor, confirmed his conversion to a more civilian way of thinking about the Law of Restitution. In *Unjust Enrichment*

(2003) he stressed his preference for the subject being called by its cause of action (rather than Restitution). More importantly, and radically, he favoured a generalised 'absence of basis' approach over his previously-articulated 'unjust factor' scheme. Up to a few weeks before his death and refusing to allow his ill-health to stop him working, he was preparing a revised version of that new book. All in all, he published over 120 law articles or case-notes and wrote, or edited, some 25 books.

He was made a Fellow of the British Academy in 1989, a Fellow of the Royal Society for the Encouragement of Arts, Management and Commerce in 1992, a member of the Academy of European Private Lawyers in 1994, an Honorary Fellow of Trinity College, Oxford in 1994, an Honorary QC in 1995 and a foreign member of the Royal Netherlands Academy in 2001. He was awarded the degree of DCL at Oxford (1991) and LLD at Edinburgh (1991) and honorary degrees by the universities of Regensburg and Nijmegen and De Montfort University. He was President of the Society of Legal Scholars (the renamed SPTL) for 2002-3.

Peter Birks was a warm, loyal and entertaining companion to his close friends with whom he loved to talk about law and legal personalities. For someone with such a powerful mind, he was modest about his own abilities and generous about those of others. While work totally dominated his life – he did not believe in holidays – he did enjoy gardening, music and watching cricket.

His first two marriages were dissolved before he found long-term stability and happiness with Jackie, whom he married in 1984. He remained close to his sister throughout his life. He is survived by his wife and a son and two stepchildren, a daughter from his first marriage and a son and a daughter from his second marriage.

Cherishing their traditions, Birks had a deep sense of obligation to his college and the Oxford law faculty and worked tirelessly for them. He was generous to a fault with his time for students and colleagues alike. With his death, English academic law has lost its most dedicated scholar and its leading ambassador.

Peter Birks who was born on October 3, 1941 died from cancer on July 6, 2004.

McGrigors Career Development Fellowship in Tax Law: Glen Loutzenhiser

Career Development Fellowships are being created throughout Oxford University as an exciting new concept to support young academics at the outset of their careers. CDFs are given opportunities to develop their expertise in both research and teaching, whilst assisting the Faculty to meet its teaching needs, especially in shortage subjects or areas where new initiatives are taking place.

Thanks to the generosity of *McGrigors*, solicitors, the Law Faculty has established a CDF in Tax Law at Christ Church and is delighted to have appointed Glen Loutzenhiser to this post from October 2004. Glen qualified as both a chartered accountant and a lawyer in Canada, where he studied first at the University of Saskatchewan and then at the Faculty of Law, University of Toronto. At Toronto he won many prizes, including the Stikeman Elliot/Carswell National Tax Award for achievement in taxation. After four years in the corporate tax department of *Osler Hoskin and Harcourt LLP* in Toronto, Glen's continuing interest in research led him to Cambridge, UK. Here he completed the LLM in 2004, specialising in tax law, and was awarded the Bevan Prize and Jennings Prizes for distinguished performances in his examinations. Glen's LLM thesis was a comparative analysis of the taxation of employee stock option schemes in the UK, USA and Canada, a topic on which he has also published.

Tax has been taught in Oxford for many years on the BCL, through the Personal Taxation option. In 2001, the establishment of the KPMG Tax Law Chair



facilitated the addition of an option on Corporate and Business Tax on the BCL/MJur programme and an undergraduate tax law option is commencing in October 2004. Demand for the new tax options has been strong and the creation of the CDF in Tax Law will assist the tax group in meeting the teaching needs arising, and in developing the academic teaching of tax law at Oxford, as envisaged when the KPMG Chair was first established.

McGrigors was formed in 2002 by a merger between McGrigors Donald, one of the oldest Scottish law firms, and KLegal, one of London's newest law firms and it now has a unique best friends relationship with KPMG, making this sponsorship of a tax post at Oxford by McGrigors, alongside the KPMG tax chair, particularly appropriate. McGrigors is one of the UK's top 40 law firms, with over 50 partners and 320 lawyers in London, Edinburgh, Glasgow and Belfast.

The Oxford University Centre for Competition Law and Policy

This year has seen the introduction of a new Centre for competition law and policy. The Centre, which is part of the Institute of European and Comparative Law, provides a centralised platform for the teaching and research of competition law and policy. Activities focus on EU and UK competition laws, US antitrust law, international aspects of competition law and antitrust economics.

Courses supported by the Centre include both a BCL/MJur and a Final Honours School option. There is also a competition law guest lecture programme in which leading practitioners and academics conduct seminars on recent issues of competition law and policy. Additional discussion groups hosted by the Centre provide venues for students and academics to discuss competition policies.

These activities are due to be supplemented by special lectures and events, details of which will be posted on the Centre's website www.competition-law.ox.ac.uk.

Research Student Honoured

Dwight Newman, one of our DPhil candidates, has recently been awarded the 2004 William E Taylor Fellowship for the "most outstanding SSHRC doctoral fellowship holder" by Canada's Social Sciences and Humanities Research Council. Dwight describes the award as a "testimony to the way in which the environment of Oxford's Faculty of Law has prepared me for and given me an opportunity to undertake doctoral research that can attain such recognition" and expresses his gratitude "to the Faculty, those who work in and for it, and my teachers and supervisor for their ongoing efforts to prepare me for and support my doctoral research."



Mansion House Reception



photography: Brian Garfield

One of the highlights of 2003 was the Alumni Reception held at the Mansion House in November. The Faculty is very grateful to Gavyn Arthur, last year's Lord Mayor, for making the Mansion House available for the evening. The Faculty is also very grateful to Shearman & Sterling, who contributed generously to the costs of the event.

All London-based Oxford lawyers for whom we had contact details were invited. We were delighted with the enthusiastic response to our invitation and were only sorry that space constraints meant that we had to disappoint some of the later applicants for tickets. As it was, the 500 or so guests and faculty members who were able to attend contributed to a lively evening, when the buzz of animated conversations filled even the lofty ceilings of the Mansion House. Speeches from the



photography: Brian Garfield



photography: Brian Garfield

Chancellor of the University, the Rt. Hon. Chris Patten, CH, and from the Chair of the Law Board brought guests up to date with the latest developments and challenges facing the Faculty and the University. The evening also provided a welcome opportunity for tutors to catch up with former students, for old friends to rediscover each other and for new connections to be made. Looking around the vast reception rooms, filled with former cabinet ministers, law lords, judges, solicitors, barristers and young trainees, we had a real sense of what Oxford and the Law Faculty have contributed to the legal profession and to the lives of former students.

The Mansion House Reception was the first in a series of events designed to strengthen the Faculty's ties with our broader community. We hope that through

events such as this, and through better communication, the Faculty will develop a stronger sense of identity and continuity, similar to that enjoyed by those who have worked or studied at other great law schools around the world. For alumni, this will offer opportunities for social contact, professional networking and a continuing connection with cutting edge academic law, whilst future generations of the Faculty's academics and students will undoubtedly benefit from the support and goodwill of alumni in a world which is sometimes hostile to Oxford and the standards of excellence which it seeks to maintain.

GRADUATE DINNER

On 13 July, the Faculty held its first Graduate Dinner, to celebrate the achievement of those who have completed a graduate law degree this year. The black-tie dinner, in the splendid setting of Keble College Dining Hall, was attended by over 130 graduate students and their guests, together with faculty members and donor representatives.

The evening began with a minute's silence to remember with gratitude the enormous contribution to graduate studies made by Jim Harris and Peter Birks. Paul Craig, the Faculty's Director of Graduate Studies for taught courses, then recalled his own experience as a BCL student in the 1970s and outlined developments in the BCL and MJur over recent years, as well as entertaining the audience with stories of his early academic career sharing the senior common room at Magdalen with the formidable John Morris. Ben Juratowitch of New College and Charles Meyer of St Peter's College, representing BCL/MJur and research students respectively, presented amusing and thoughtful reflections on their experiences at Oxford. The evening culminated with a characteristically entertaining talk from the guest speaker, Lord Hoffman, who explained the fascination of a career as a barrister and judge, where one has to maintain an intellectually rigorous understanding of the law whilst applying it to the complexities of 'real life'. He also spoke warmly of his time as a Rhodes Scholar at Queen's.

The evening prompted an enthusiastic response from students and faculty, and we hope to establish it as an annual event.



Dr Timothy Endicott, Paul Yorwell and Caroline Shackelford at the Graduate Dinner

Alumni lectures



Andy Burrows (above) and Ed Peel speaking at the Alumni Lectures



The first of the Faculty's 'Oxford Law Alumni Lectures' took place in London in May, generously hosted by Freshfields Bruckhaus Deringer. 76 people attended the event, which was open only to Oxford alumni and counted towards CPD credit.

The speakers, who are both members of the Oxford Law Faculty, examined recent developments in two central areas of the law of contract. Professor Andrew Burrows, the Norton Rose Professor of Financial and Commercial Law, spoke on "Damages for Breach of Contract", discussing current issues in relation to compensatory damages as well as at the controversial area of "restitutionary damages" following *Attorney-General v Blake* and the *Experience Hendrix* case. "Exemption Clauses and Unfair Terms", given by Edwin Peel, examined topics such as the meaning of "consequential loss" in exemption clauses, excluding liability for negligence and fraud, the vexed problem of (non-) severance and the meaning of unfairness under the 1999 Regulations as analysed in *DGFT v First National Bank*. Given the success of the evening, we are planning more alumni lectures in the next academic year.

MOOTING

Shearman & Sterling Moot

The first annual Shearman & Sterling LLP Oxford University Law Faculty Moot took place on Saturday 21 February 2004. The competition used an unusual format with all the moots taking place on a single day from 9.30 a.m. until 5 p.m. and all using the same contract problem which raised issues relating to *Panatown* and *Ruxley*. Twelve teams were selected to participate by assessment of submitted skeleton arguments, and each team then argued the problem twice in the morning (once as appellants and once as respondents) to reduce the field to four semi-finalists by lunchtime. The remaining contests then took place in the afternoon, with Lord Justice Longmore kindly agreeing to judge the Grand Final. Helen Pugh and David Walsh of Keble College emerged as victors, with Gerard Rothschild and Rachel Wilson of Magdalen College runners up. Shearman & Sterling LLP generously sponsored the entire event, provided the prizes and also supplied judges for the fourteen moots before the Grand Final. Feedback on the event was very positive and the same format will be used in 2005.

The support of Shearman & Sterling LLP is allowing the Oxford University Law Faculty to take mooting forward within the University. The new competition is intended to supplement rather than replace the moots which take place in most colleges and the knock-out competition which the University Law Society organizes each term. But one of its goals is to allow the Law Faculty to maintain a ranked list of mooters who can then be entered as Oxford University's representatives in national and international competitions.



Guantanamo Bay in Oxford

The Oxford Public Interest Law Programme of the Law Faculty ran an intensive training workshop for the military defence counsel appointed to represent the prisoners held by the US Government in what Lord Steyn recently called the "legal black hole" of Guantanamo Bay. In trying to prepare their defence, the military judge advocates concluded that they needed urgent tuition in the bewildering differences in the current varieties of Islamic practise, the enigma of Afghan politics, the mindset of the Islamic fighters, as well as help researching the laws of war and the

application of the Geneva Conventions to the predicament of combatants not in uniform, or non-combatants caught up at the wrong time in the wrong place. These and other issues were addressed in the training workshop which included perspectives from diverse as psychiatry, public international law and Islamic law and culture. The conference was reported extensively in the media and made it to the front page of the New York Times.

The Conference was made possible by the generous support of Don Glascoff Jr.

Varsity Moot

The varsity moot competition took place on Monday 26th April in London's Gray's Inn. The competition was held between the winners of the respective university competitions. Competing for Oxford were Tony Singla of Pembroke College and Jessica Barker of St Edmund Hall. The moot was presided over by three Court of Appeal judges, Lord Justice Mummery, Mr Justice Hunt and Mr Justice Richards. The teams were presenting legal arguments regarding a dispute between the pop group 'Spice' and their record company. Lord Justice Mummery commended Tony Singla on a particularly strong performance and the Oxford team won both the argument and the moot. The evening continued with dinner at the Inn and the Oxford team were presented with a Varsity Moot Winners Cup.



International Intellectual Property Moot 2004

Mona Lisa's smile keeps intriguing – so found the contestants in the second International Intellectual Property Moot, held at Worcester College in April. Hosted by the Intellectual Property Institute and the Oxford Intellectual Property Research Centre, the event brought together students from universities across the UK and the Republic of Ireland, who for one weekend had the opportunity to practise their advocacy skills in front of real life judges and Intellectual Property practitioners. Like the subject of Da Vinci's famous painting, around which the moot problem revolved, the case that the mooters had to argue evoked questions to which no clear-cut answers were available.

The standard of mooting was impressive. The ultimate showcase was the final, contested before a Supreme Court consisting of Lord Justice Mummery, Lord Justice Jacob and Mr Justice Pumfrey. In front of this "dream team" Intellectual Property bench, a keenly contested and entertaining final took place, which saw Stephen O'Halloran and Mary Townsend

of University College Dublin emerge as the overall winners of the Moot. Louise Aspinwall and Natsuko Sugihara of the University of Cambridge were declared runners-up and also won the prize for best written submission. The prize for best individual mooter went to Natsuko Sugihara of the Cambridge team.



Mary Townsend, Dublin Team, winner of Moot

Law Open Days

Eight hundred sixth form students from all over the United Kingdom arrived in March to take part in the Faculty's annual Law Open Days. The Open Days, organized by undergraduate members of the Law Joint Consultative Committee, introduce bright sixth formers to the study of law at Oxford. The 2004 Open Days were generously sponsored by Lovells and Slaughter & May.

Students on the Open Days had a chance to sample taster lectures on Introduction to Law, Constitutional Law, Criminal Law, and Contract Law. They also heard presentations on the structure

and teaching methods of the Oxford course, and were briefed on application and admissions procedures, including witnessing a mock admissions interview. Participants also had an opportunity to hear talks on career avenues for solicitors and barristers, which were presented by representatives from the professions.

In contrast to prior years, participation on the Open Days was free to all who came. This policy was meant to widen access to this event by encouraging students from all backgrounds to take part. Head teachers in 4,000 secondary schools around the UK were asked to nominate deserving students for a place on the Open Days. This

resulted in a doubling of the number of participants as well as in a more balanced intake between the maintained and independent sectors. Those who came from more than 50 kilometres away from Oxford were entitled to a room in college, and all students enjoyed college lunches with their undergraduate hosts during their stay.

The Faculty looks forward to working with undergraduates and donors again this year to make the 2005 Open Days another great success.



photography: Barry Roberts

Pavlos Eleftheriadis

Pavlos Eleftheriadis arrived at Oxford from the London School of Economics in October 2003. He was educated in Athens and Cambridge, where he completed a PhD at Corpus Christi College in 1995. His areas of expertise are European Union Law, Jurisprudence and Constitutional Law. He started teaching at Queen Mary and Westfield College in 1995 and moved to the LSE in 1998. In 2001 he was visiting Professor in European Law at Columbia Law School. He has also held visiting fellowships at Princeton and Berkeley. He is a qualified lawyer in Athens, where he occasionally works on human rights cases. He also writes for the Greek liberal Sunday newspaper 'To Vima'.

Pavlos says that the transition to Oxford was unexpectedly easy, despite the fact that he was educated at the other place and had no formal association with the University before. He found that despite its

fragmentation into Colleges, the Faculty is a true community, where scholars of the highest calibre work in close contact with one another and with junior faculty like himself. He says that BCL seminars in particular, are unique places for testing new ideas before the unrelenting yet generous criticism of colleagues and students, while the wider university as a whole offers rich opportunities for learning from other areas in the humanities. Pavlos spent the summer vacation working on a book on the analysis of legal rights. His next project, he says, will be a new book on the European Constitution agreed last June, where he hopes to explore some Kantian themes on 'cosmopolitan law' which he first related to the European Union in a paper in the 2001 issue of Columbia Journal of European Law and in a sequel in the 2003 issue of the European Law Journal.

Justine Pila

Justine Pila joins the Faculty as the new University Lecturer in Intellectual Property. She has also been elected to a Fellowship at St Catherine's College, and is a Senior Research Associate at the OIPRC at St Peter's.

Justine holds a combined BA/LLB (Hons) degree and a PhD from the University of Melbourne, and is a Barrister and Solicitor of the High Court of Australia and Supreme Court of Victoria. As an undergraduate she was co-Editor of the Melbourne University Law Review.

After taking her first degree Justine practised as a solicitor in the intellectual property section of a large commercial firm before working as an associate to the Chief Justice of the Federal Court of Australia. She returned to Melbourne University in 2000 to

commence a PhD, which she completed from the States in 2003 while caring for her young daughter. She has published widely on copyright and patent law in a range of fora and jurisdictions, and has been awarded University prizes for four of her published papers. Her interest has been in using intellectual property as a site from which to view the intersection of a variety of critical discourses, including law, politics, ethics and critical theory.

At Oxford Justine will teach the undergraduate programme in intellectual property, which she is hoping to expand with the other members of the Intellectual Property Subject Group in the coming years. She will also tutor in contract law, and act as the Senior Law Tutor at St Catherine's.



photography: Barry Roberts

Dapo Akande

University Lecturer in Public International Law Dapo Akande (LLB, (Ife), LLM (LSE)), is a Fellow at St. Peter's College. Prior to his appointment in Oxford, he held Lecturerships in Law at the Universities of Durham and Nottingham. He has recently been a Visiting Professor at the University of Miami School of Law and a Visiting Lecturer at the University of Edinburgh Law School. He has also taught at the London School of Economics and Christ's and Wolfson Colleges, Cambridge.

He specialises in the law and procedure of international tribunals, international organizations, international criminal law and international economic law. He has published articles in leading journals such as the *American Journal of International Law*, the *British Yearbook of International Law* and the *European Journal of International Law*. His article in the *Journal of International Criminal Justice* was awarded the 2003 Prize for the Best Paper published in the Journal by a Younger Scholar. He was a member of the International Law Association's Committee on Accountability of International Organizations. In addition, he has advised and assisted counsel in several cases before international tribunals such as the International Court of Justice, the International Tribunal for the Law of the Sea, as well as WTO and NAFTA dispute settlement panels. He has also provided advice on international law issues arising in proceedings in England, the United States and other countries.

Ruth Bird

In March this year the Faculty was delighted to welcome Ruth Bird as Bodleian Law Librarian, following the retirement of Barbara Tearle. Ruth previously worked as Law Librarian at the University of Melbourne and, most recently, as Legal Information Manager at Phillips Fox, where her responsibilities included library services and legal research training for their eight offices in Australia and New Zealand.

Ruth combines energy and enthusiasm with a highly professional approach to the challenges presented by running the largest law library in the UK, with an estimated 160,000 users per year. Her priority over the next couple of years is to review the library's holdings, and establish an appropriate balance between the paper and the online database collections. Against a background of increasing costs of materials and a decline in university funding, Ruth foresees the



photography: Barry Roberts

need for careful planning to ensure that the right decisions are made for the future. Ruth intends to work closely with donors to maintain, and where possible, extend the services funded through donations, as the library increasingly relies on such funding to support core services such as IT facilities, extended weekend opening and nearly half its text book purchases. Ruth's plans also include improvements to the Library's entrance area and creation of a graduate students' workspace within the Library.

Maureen O'Neill

This year the Faculty established its own development office with the appointment of Maureen O'Neill, the new Director of Development. Maureen returns to development work and fundraising after seven years of consultancy, management training and electronic documentation management, most recently with GlaxoSmithKline. These seven years coincided with the birth and raising of her

son, Timothy. Married to a Wadham alum, Martin McGovern, Maureen is familiar with the Oxford environment. Born in America, she came to Oxford to help establish the Earthwatch Europe in 1990. Maureen moved to London's Royal Institution of Great Britain until parenthood presented a higher priority. Maureen has been working successfully with the University Development Office and with the colleges to coordinate and improve the fund-raising for Oxford Law.

Paula Giliker

Paula Giliker joins the Faculty as a new CUF Lecturer. She has also been elected to a Fellowship at St Hilda's College, where she will act as Senior Law Fellow.

Paula graduated from St Hilda's with a BA in Jurisprudence and BCL in 1990. In 1993, she completed her PhD at Trinity College, Cambridge in the Comparative law of Obligations. Her thesis focused on pre-contractual liability in English and French law, and involved study both at Cambridge and at the Université de Paris II. She then qualified for the Bar and later as a solicitor, working in the field of Property Litigation. Having returned to academia, she has worked as a Lecturer and then Senior Lecturer at Queen Mary, University of London where she taught Contract, Tort, founded a course in the Comparative Law of Obligations and was instrumental in establishing the London LLM course in European Contract Law. She has published widely in the field of Contract, Tort, Comparative Law and Restitution, and her work includes a monograph, a textbook, chapters in books and numerous articles. Most recently, she has been working on a number of Comparative law projects, with a particular focus on current European proposals for core principles of Contract and Tort law. She is also an active committee member of the British Association for Canadian Studies Legal Group, was a committee member of the UKNCCL and recently gave a paper at the 2004 SECOLA conference.

At Oxford, Paula is currently lecturing in Tort law and will tutor in Contract, Tort and Introduction to Law.



photography: Barry Roberts

DEPARTURES

Diamond Ashiagbor

Diamond Ashiagbor has been appointed to a lectureship at University College, London, after completion of her two year Career Development Fellowship in European Community Law at Oxford. The Fellowship, which Diamond held in conjunction with a Junior Research Fellowship at Worcester College, was the first such post in the Faculty, and was

created under an innovative university-wide scheme to encourage talented young people to take up an academic career. Diamond was based in the Institute of European and Comparative Law and made a valuable contribution to teaching and research in employment and equality law. We wish her every success in the next stage of her academic career.

Barbara Tearle

Barbara Tearle was Bodleian Law Librarian from September 1988 until she retired, at the end of August 2003. Barbara graduated in Law from Birmingham in 1965 and attended library school at North-Western Polytechnic. Before coming to Oxford she worked in the Board of Trade Solicitor's Library (1969-73) and at University College London as Law Librarian (1973-86) followed by promotion to Sub-Librarian (1986-88). For fifteen years she worked tirelessly to improve the services and raise the profile of the Law Library. This was no easy task during a period when the Law Faculty's research

interests were expanding as law book prices soared and funds for acquisitions fell in real terms. Working with the Faculty, she had success as a fund raiser, and much of the activity in the library is underpinned by donations, mostly from large law firms, which she assisted in securing.

Amongst many other professional activities Barbara was a regular contributor to law library journals and books, edited *Index to Legal Essays* (1983), and was a prominent member of the steering committee behind the RSLP project FLAG (Foreign Law

Simonne Samuelson

Simonne Samuelson left after two years as our Faculty Administrator. Simonne came to us with experience of working both as a solicitor and as an administrator in the central University offices. This wealth of experience, her deep understanding of our core mission, her intelligence and good humour brought a new level of professionalism to the administration of the Faculty's activities. Simonne has long been involved in fair trade work on a volunteer basis and has gone to Oxford Brookes University for a degree in global development studies with a view, perhaps to work in the development sector. Our loss is the third world's gain and, while we can hardly resent them for it, we will miss her very much.

Guide) which established a collaborative Internet gateway to the holdings of foreign, international and comparative law in UK university and national libraries.

Barbara remains active in the British and Irish Association of Law Librarians (BIALL) and a familiar figure on the international law library conference circuit.

Her well-earned retirement should afford her more time to pursue her research into family and local history and to maintain contacts with her many friends worldwide within law librarianship.

AWARDS

Alberico Gentili and the Oxford-San Ginesio Connection

Alberico Gentili (1552–1608) belonged to a family of scholars in San Ginesio, then a sizeable town, near Macerata in the Italian Marché. As suspected protestants in the Papal States they decided to leave in good time. Gentili reached England in 1580, was taken up by the Earl of Leicester, and in 1584 advised the government that the Spanish ambassador Mendoza could not be tried for plotting to assassinate Queen Elizabeth I – an emphatic assertion

of the principle of diplomatic immunity. Appointed 7th Regius

Professor of Civil Law at Oxford in 1587, he held the Chair until 1608. He was also Fellow of St John's. He learned Romanist and one of the main architects of modern international law, his *De Jure Belli* (1598) strongly influenced Grotius (1583–1645) a generation later. Gentili systematically developed what came to be called international law on the basis

of nature, state practice and historical precedent. He disdained the views of theologians and argued that a difference of religion does not justify recourse to war.

Gentili's fame was for long eclipsed by that of Grotius. In 1874, however, Thomas Erskine Holland (1835–1926), the Professor of International Law (1874–1910) and a Fellow of All Souls, gave a series of inaugural lectures that revived

interest in his work. This Oxford-San Ginesio connection has been maintained. Professor Ian Brownlie gave an address at the VIIIth Giornata Gentiliana in September 2000. On that occasion a wreath was solemnly placed below Gentili's statue. Finally, in September 2004 Professor Vaughan Lowe spoke at the XIth Giornata and on that occasion Tony Honoré was, like Holland, made an honorary citizen of San Ginesio. Tony Honoré, the 26th holder of Gentili's Chair, gave an address in San Ginesio at the IIIrd Giornata Gentiliana in 1988. On that occasion a small piazza was dedicated to Holland's memory, with a plaque recording the Oxford connection.

The connection between Oxford and San Ginesio is not merely historical. Their shared concern with secular international law and its Romanist roots bears on several problems now facing the international community, including that of the justification for making war.



Procession in September 2000 before depositing the wreaths beneath the statue of Gentili

Hart Socio-Legal Prize for Early Career Academics & Socio-Legal Article Prize

Bronwen Morgan won double honours recently when her 2003 book *Social Citizenship in the Shadow of Competition* was awarded the 2004 Hart Socio-Legal Prize for Early Career Academics (awarded annually for the best published book emerging from a previously awarded PhD, MPhil, LLB or MA), and her *Social and Legal Studies* article, "The Economisation of Politics: Meta-Regulation as a Form of Nonjudicial Legality" was jointly awarded the 2004 Socio-Legal Article Prize (awarded annually for the most outstanding piece of socio-legal scholarship published in the 12 preceding months). Bronwen's book explores how economic concepts and tools are reshaping regulatory law. In presenting new qualitative findings from an ambitious Australian regulatory reform programme targeting over 1700 pieces of legislation, it charts lawmakers' attempts to justify social welfare regulation in the language imposed by economic theory. The main argument advanced is that while the interplay between economic discourse

and law-making does preserve scope for a variety of policies that advance social citizenship, it also causes bureaucrats to 'translate' aspects of social welfare that previously may have been expressed in the language of need, vulnerability or harm into the language of market failures or market distortion. The subsequent regulatory conversations frequently silence or weaken the claims of vulnerable groups, particularly in respect of redistributive goals or unquantifiable facets of social cohesion and community.

The article, which is based on the book, explores similar territory but provides a new theoretical context for framing the argument. The article argues that the social and institutional logic of the recent developments in regulatory reform strategies instance a wider phenomenon of *nonjudicial legality*, which is situated at the intersection of two trends – and increasing legalisation of politics and a growing reliance on nonjudicial mechanisms of accountability.

LEVERHULME TRUST MAJOR RESEARCH FELLOWSHIP

Sandy Fredman has been awarded a Major Research Fellowship by the Leverhulme Trust for three years beginning in October 2004. This was one of only 19 such fellowships awarded out of a field of over 170 applications from across the social sciences and humanities. Sandy's research will focus on the evolution of human rights law beyond the traditional aim of restraining the State from interfering with individual liberty, towards imposing a duty to promote social welfare and equality. These developments raise complex questions about the appropriate theory of State; the nature of the duty; the role of the courts; and non-judicial alternatives. Focusing on these questions, the project aims to develop a conceptual framework to enhance the understanding and rational development of positive duties. It combines comparative jurisprudence with theory from a number of disciplines.

ECONOMIC AND SOCIAL RESEARCH COUNCIL PROFESSORIAL FELLOWSHIP

Doreen McBarnet has been awarded one of only nine Professorial Fellowships in a national ESRC competition across the social sciences.

This prestigious new award has been designed to allow some of the UK's best social scientists to develop their own innovative and groundbreaking research agendas unconstrained by administration and teaching. Chief Executive of the Economic and Social Research Council, Professor Ian Diamond, said, 'The best

researchers are always under pressure to do more teaching and administration. We have set up this scheme in response to demand to free some of the UK's top social scientists to produce excellent research. The quality of the applicants, and of the people we have appointed, shows that this scheme fills a real need in British social science.' The award will cover Doreen's salary costs as well as research assistance and research expenses for three years. Doreen's research project

over the period of the professorial fellowship will build on her previous work on 'creative compliance', focusing on law and corporate responsibility after Enron. Although in the case of Enron there have been instances of clear breach of rules, the company's performance figures would still have been distorted and huge liabilities hidden by means of creative techniques which are apparently 'perfectly legal'.

SOME PUBLICATIONS

Perspectives on Labour Law (Cambridge University Press 2004)

Anne Davies

Perspectives on Labour Law is an accessible but thought-provoking introduction to labour law. The academic literature on labour law makes considerable use of human rights arguments and of economic analysis. Both of these approaches provide valuable insights into the underlying policy of the law. But they can be rather off-putting for students who do not know the international human rights instruments, or who have no background in economics. The book introduces these wider perspectives on labour law and then applies them to a selection of topics, including anti-discrimination law, dismissal, working time, pay, consultation and collective bargaining, trade union membership and industrial action.

Securing Compliance (Hart Publishing 2004)

Karen Yeung

Karen Yeung's latest book explores the use of bargaining, negotiation and civil penalty sanctions as tools for regulatory policy implementation. In so doing, she constructs a normative framework of principles, drawn from public law norms, against which regulatory enforcement and implementation processes may be evaluated. Although there is a rich and fertile body of scholarship documenting the findings of a number of ethnographic studies seeking to understand the behaviour of regulatory enforcement officials in seeking to secure compliance, and a well-developed literature exploring rather abstract notions of regulatory legitimacy,

this book seeks to make progress towards filling the gaps between these two bodies of literature. By adopting a public law approach, regulatory techniques are shown to be explicitly value-laden, pointing to a series of 'constitutional values', values rooted in foundational principles of public law and drawing from both administrative law and criminal law norms. The book demonstrates that an evaluation of regulatory instruments and techniques cannot be wholly divorced from normative values, seeking to stimulate further debate and reflection about the kinds of values that ought to underpin and infuse regulatory processes.

Criminal Justice (Oxford University Press 2004)

Lucia Zedner

In the tradition of the Clarendon Law Series, *Criminal Justice* is an extended essay on the core concepts, structures, and processes of the criminal justice system. Keeping abreast of the relentless changes in criminal justice is a serious impediment to quiet reflection. Standing back from the clamour of the latest Home Office Press Release, this book offers its readers a sense of fresh perspective and discovery. It asks some deceptively simple questions to which arise surprisingly complex answers. What do we mean by criminal justice and by crime? What is the role of punishment in our society and how do we justify it? What are the roles of the police and prosecutor, trial and sentence? What purposes do our institutions of punishment fulfil and why do they persist? And where is criminal justice heading and why? The answers reveal criminal justice to be more diverse and its purposes more contested than conventional accounts allow.

SOME PUBLICATIONS

Contrasting Prisoners' Rights (Oxford University Press 2004)

Liora Lazarus

This volume provokes reflection on the English conception and treatment of prisoners' rights, through juxtaposition with the conception of prisoners' rights in Germany. First, the German and English understandings of prisoners' legal

status are examined; secondly these understandings are placed against the background of broader social, political, and legal factors; and thirdly, the methodological problems of comparative law are addressed.

Criminal Law: Text, Cases and Materials (Oxford University Press 2004)

Jonathan Herring

This book provides students with a broader view of the criminal law than is often offered in textbooks. Each chapter is in two parts. The first sets out the law, with extracts from the leading cases and statutes. The second provides an examination of the theoretical issues surrounding the topic. This can range from a consideration of statistical information to the musings of philosophers, sociologists or criminologists. Hence we find extracts looking at whether graffiti can be classed as criminal damage; deep philosophical analysis of the nature of an "act"; feminist critique of the construction of the reasonable man; and even the strange tale of a church warden who used poisoned sherry to punish the man who rejected her advances.

Family Law (Longman 2004)

Jonathan Herring

Family lawyers open their newspapers with a slight tremble. Barely a day goes by without some story impacting on family law: be it Batman striding across Buckingham Palace; another horrific child abuse scandal; or a same-sex marriage. This textbook seeks to provide students with a firm grounding in family law, as set in its social context. It discusses family law not only by looking at the case reports and the statutes but at what happens on the ground. Because, to the constant frustration of many politicians and lawyers, people do not live their family and love lives after carefully consulting the appropriate legal texts. The resulting melees are left for the 'chaos of family law' to resolve. All of this makes family law one of the most intellectually stimulating of legal subjects, something this book tries to help readers find out for themselves.

CENTRES

NEWS FROM THE CENTRE FOR CRIMINOLOGICAL RESEARCH

Richard Young

This has been an important year in the life of the Centre. Its beginning marked the retirement of Professor Roger Hood, who for 30 years directed the Centre's activities with boundless energy and intellectual rigour. Its end will be marked by a move from our cramped Victorian premises at 12 Bevington Road (and satellite offices in the St Cross Building) to the brand new Centre for Advanced Studies in the Social Sciences located in Manor Road. Here, criminologists will work cheek by jowl with economists, sociologists, political theorists, socio-legal scholars and other social scientists. During the course of the year the Centre's staff has continued to engage in high-level teaching and

research, of which only a few examples can be given here.

The Centre launched a postgraduate taught course, the MSc in Criminology and Criminal Justice, in October 2001. This course has set and maintained high standards and attracted some exceptionally talented students, some of whom have gone on to doctoral work at Oxford and elsewhere. A gradual increase in the number of students admitted to the course is planned for the next few years. Members of the Centre have also continued to teach on the Law Faculty's undergraduate degree programme as well as on the BCL/MJur. In recognition of the substantial teaching now undertaken

by the Centre's staff, the move to Manor Road will be accompanied by a change of name to the Centre for Criminology.

While the supervision of postgraduate research has always been a feature of the Centre's activities, a most welcome recent development has seen many of the Centre's own research officers (including Aidan Wilcox, Martina Feilzer, Kerry Baker, Catherine Appleton and Grainne McMahon) undertake doctoral work as an integrated part of their externally funded research activities. This provides an important means of academic career progression and it is good to be able to report that excellent progress is being achieved on this front.

Research on race and the youth justice system conducted by Roger Hood (now Emeritus Professor of Criminology) and Martina Feilzer has recently been concluded. The final report of this study entitled 'Differences or Discrimination? Minority ethnic young people in the youth justice system' was published by the Youth Justice Board on their website in June. In February 2004, Martina began working on a study of cultural perceptions of crime and criminals with funding of £68,000 from the Nuffield Foundation.

The Probation Studies Unit, led by Colin Roberts, has brought several projects to a successful conclusion this year, with a number of follow-up studies planned or funded.

The largest such project, with funding of over one million pounds, is the evaluation of the 'Intensive Supervision and Surveillance Program', a scheme designed to manage the most serious, persistent young offenders in the community. A major report on this evaluation was published by the Youth Justice Board in July. A twenty four month reconviction study following on from this work is now underway.

A prominent feature of the Centre's work in recent years has been action-

research in which a deliberate attempt is made to influence policy and practice on an ongoing basis.

One such project currently underway concerns a scheme for managing persistent offenders overseen by the Thames Valley Criminal Justice Board. Emma Disley (Research Officer) has been working closely with the Board since July 2003. Interim findings were presented to an audience including the Courts Minister and contributed to important policy changes at both the local and national level. Another intriguing action-research project, led by Dr Ros Burnett (co-directed by Shadd Maruna from Cambridge) concerns the use of prisoners as volunteer advisers operating under the auspices of the Citizens Advice Bureaux. The final report, *Prisoners as Citizens' Advisers*, was published in September by the funding body, the Esmée Fairbairn Foundation, and launched at a conference in October 2004.

Members of the Centre have continued to engage with issues of general policy lying outside their immediate research concerns. For example, Senior Research Associate, David Faulkner, has made major contributions to high-profile debates

on policy and legislation through key-note presentations, lectures around the country, and journal articles. In November 2003 he was appointed to the Advisory Group for the Home Office Active Citizenship Centre.

The fruits of the Centre's diverse research programmes have been published in journals, research reports, monographs and elsewhere, with the web becoming an increasingly used mode of publication. Recently published books include *Joined-up Youth Justice: Tackling Youth Crime in Partnership* (2004) by Dr Ros Burnett and Catherine Appleton and a collection of essays entitled *What Works in Probation and Youth Justice: Developing Evidence-Based Practice* (edited by Dr Burnett and Colin Roberts). The collection of essays, *New Visions of Crime Victims* (2002), edited by Dr Carolyn Hoyle and Dr Richard Young has been widely reviewed and is shortly to be published in a paperback edition, while a Dutch translation of Dr Federico Varese's book, *The Russian Mafia* was greeted with acclaim both in academic circles and more broadly.

News from The Institute of European and Comparative Law

Professor Mark Freedland

The invitation to submit a piece to Law News about the recent work of the IECL comes at the end of my three years as Director and gives me the opportunity to report the flourishing condition of the Institute, and to appreciate the endeavours of all those individuals and institutions who have supported us during that period. It is necessarily invidious to single out particular associations, but it is nevertheless appropriate to refer to the major contributions from the firm of Clifford Chance, the French Ministry of Education and the German Academic Exchange Service.

Over the last year, the Institute has continued to play a significant role in facilitating contact between lawyers from all over Europe, through colloquia,

seminars and arrangements for individual academic visitors. These face-to-face encounters, which permit an immediate exchange of ideas and perspectives, foster a creative, stimulating research environment and are particularly vital in the multi-disciplinary and multi-national field of European and Comparative Law.

The possibilities for fruitful interaction between the academic world and the legal profession were clearly demonstrated in December at our conference on the EU and tax law, organised jointly with the BIICL and Clifford Chance. The conference addressed some of the major questions raised by recent ECJ tax cases on the domestic tax systems of Member States and the international tax regime, and brought together leading academics,

barristers and solicitors specialising in taxation, European law and company law.

A brief mention of some of the other events of the past year will serve to indicate the breadth of study in which the Institute is engaged, and the geographical extent of its contacts. In March, the Institute hosted a reception for Professor Rozakis, Vice-President of the European Court of Human Rights, who spoke on the jurisdictional limits of the ECHR in the context of the NATO bombing of Serbia, whilst in May we welcomed a delegation from Perm University to a presentation on British and European labour law. An important European and comparative law conference was held at the end of September, in association with Clifford

Chance, on Constitutionalism and the Role of Parliaments, which was arranged by Katja Ziegler, Denis Baranger and Tony Bradley.

Numerous prominent speakers from across Europe also contributed to the Seminar Series in European Law and to the Comparative Law Discussion Group, whilst longer term visitors have included academics from the universities of Osnabrück, Foggia, Regensburg and Siena.

2004 also saw the creation of the Centre for Competition Law, under the aegis of the Institute. The centre is led

by Dr Ariel Ezrachi, who was appointed to the new Slaughter and May University Lecturership in Competition Law last September. The Centre will provide a platform for the teaching and research of competition law and policy, with a focus on EU and UK competition laws, US antitrust law, international aspects of competition law and antitrust economics.

I hope that through this account there emerges some sense of the interest and excitement which attach to the activity of contributing to and co-ordinating the work of the Law Faculty in the intersecting fields of European and Comparative Law. One

of the great satisfactions of the last year has been Stefan Vogenauer's arrival as the Professor of Comparative Law, and I conclude by welcoming his succession to me as Director of the Institute and wishing him as rewarding and fulfilling a tenure of that office as I have enjoyed.

More information about the Institute's activities can be found on its new website (www.iecl.ox.ac.uk). Of special note are the Institute's electronic publications - the Comparative Law Journal and a series of Working Papers, which begin with a set of papers in honour of Sally Ball.

DEVELOPMENT AND ALUMNI RELATIONS

ALUMNI RELATIONS

After the success of the Mansion House reception last November, it became clear that the law alumni want to meet both formally and informally.

Since last November, there have been several opportunities for law alumni to gather. In April the North American Reunion held at the Waldorf Astoria Hotel in New York City was an ideal venue to catch up. Thanks to the generosity of Genevieve and Nick Segal, a law alumni brunch was held on Sunday morning at Oscar's American Brasserie. Fifteen of us sat around the table, from New York, Washington, Toronto, Sydney, and London, to talk about life at and after Oxford.

In May, the inaugural Alumni Lectures at Freshfields were an instant success and will be offered again, hopefully two to three times a year. In May, too, a unique and spectacular garden was on display at this year's Chelsea Flower Show to celebrate the 175th anniversary of the Oxford-Cambridge boat race. As a thank you to many of our alumni who have, through their firms donated to the Law Faculty, and to the benefactors who have supported the efforts through the Law Foundation, we invited benefactors for a Business Breakfast to celebrate this

historic occasion. Guests had a special opportunity to view The Stonemarket Boat Race Anniversary Garden and indeed all of the displays at the Show prior to the Royal Horticultural Society members and public admission. Many arrived at 6:30 am to take advantage of the quiet to wander the magnificent gardens then have breakfast in The Rock Restaurant.

In September, the first Manchester Law Alumni Reception was held at URBIS with Judges, QC's Vice Chancellors, partners in law firms, students reading law at Oxford and members of the Law Faculty all buzzing with conversation. This rejuvenated area of Manchester offered a splendid venue to renew contact and enjoy updates on the Faculty. The



DEVELOPMENT AND ALUMNI RELATIONS

Faculty's links with the Manchester area are very strong. In 2004 more Freshers will be arriving in Oxford to read Law from greater Manchester than from greater London and the Faculty is keen to develop its important relationship with the Northwest.

On the electronic front and as part of our growing Alumni services, the Law Faculty is investigating free email forwarding for all law alumni. Email forwarding would give alumni a permanent Oxford Law

email address – when using this address they will be immediately recognized as an Oxford law graduate. This still requires that the alumnus has a personal email account with a service provider of their choice so that the Oxford email forwarding service can forward the mail.

One noteworthy Alumni news item is that the Faculty congratulates Surya P. Subedi, who obtained a DPhil in Law at Exeter College in 1993, and has recently been made an honorary OBE by her

Majesty the Queen for his services to UK-Nepalese relations.

We would always welcome the thoughts of Oxford alumni on how best to be involved in these types of events. Also, if you have friends who are not receiving invitations to events but would like to attend, feel free to contact us by contacting Maureen O'Neill at the Law Faculty or by emailing her on maureen.oneill@law.oxford.ac.uk.

THE COMMERCIAL BAR POST GRADUATE STUDENTSHIPS IN LAW

Thanks to a lead gift from Michael Crystal and the generous donations of fourteen other silks, the law foundation has established the Commercial Bar Studentships in Law. The fund currently valued at over £40,000 will allow the award of two studentships of £7,500 each academic year for the next few years. These studentships are primarily

intended for M.Phil students (the M.Phil being the normal first year of a D.Phil for those Oxford students who have already completed the BCL or M.Jur). But those intending to take the M.St or embarking on the final year of a D.Phil are also eligible to apply. No student will be able to hold such an award concurrently with any other award that would give that

student, overall, more than £10,000 in one year. In deciding on the awards, the Law Board will take into account all the circumstances of the applicant, in particular his or her academic record and need and the importance of the proposed research.

Benefactors of the Commercial Bar Studentships

Anthony Boswood, QC	Fountain Court Chambers
Michael Brindle, QC	Fountain Court Chambers
Michael Crystal, QC	3-4 South Square
Steven Gee, QC	Stone Chambers
Ian Glick, QC	One Essex Court Temple
The Honourable Mr Justice Gross	Formerly of 20 Essex Street
Michael Lerego, QC	Fountain Court Chambers
Sir Jeremy Lever, QC	Monckton Chambers
Hodge Malek, QC	4-5 Gray's Inn Square
Gabriel Moss, QC	3-4 South Square
Terence Mowschenson, QC	Wilberforce Chambers
Edward Nugee, QC	Wilberforce Chambers
Robin Potts, QC	Erskine Chambers
Vivian Ramsay, QC	Keating Chambers
Richard Salter, QC	3 Verulam Buildings

FORTHCOMING EVENTS

Inaugural Lecture: A European Legal Method: Should We, Could We, Would We?

Organised by:
the Faculty of Law and Institute of European and Comparative Law

Friday 21st January 2005

Speaker: Professor Stefan Vogenauer

Current Issues in Financial Regulation

Organised by:
Financial Law Discussion Group
in conjunction with Faculty of Law and Allen & Overy LLP

Thursday 27 January 2005 at 12:30hrs

Speaker: Andrew Whittaker

Corporate Governance Conference

Organised by:
Said Business School
in conjunction with EU Research and Training Network and the Oxford Review of Economic Policy

Friday 28 January 2005

Book Launch Reception for 'Sustainable Development Law: Principles, Practices and Prospects'

Organised by:
Globalisation & Sustainable Development Law Group

Friday 28 January 2005

Inheritance Tax and Pre-owned Assets Tax

Organised by:
Taxation Law

Tuesday 8 February 2005 at 17.00

Speaker: Emily Campbell, barrister

The Role of Law in Markets

Organised by:
Financial Law Discussion Group
in conjunction with Faculty of Law and Allen & Overy LLP

Thursday 10 February 2005 at 12:30hrs

Speaker: Professor Marcel Fafchamps

IP rights & Competition law

Organised by:
Centre for Competition Law & Policy

Friday 18 February 2005 at 13h00

Speaker: Robert O'Donoghue (CGSH)

The abuse of market power

Organised by:
Centre for Competition Law & Policy

Friday 25 February 2005 at 13h00

Speaker: John Vickers (Chairman, OFT)

The EC Merger Regulation

Organised by:
Centre for Competition Law & Policy

Friday 4 March 2005 at 13h00

Speaker: Philippe Chappatte (Slaughter and May)

Globalisation & competition law

Organised by:
Centre for Competition Law & Policy

Friday 11 March 2005 at 13h00

Speaker: Simon Evenett (SBS)

Harmonization of European Contract Law: Implications for European Private Laws, Business, and Legal Practice

Organised by:
Institute of European and Comparative Law

Friday 18 March 2005

International Inter-University Intellectual Property (IP) Mooting Competition

Organised by:
Oxford Intellectual Property Research Centre

Friday 8 April 2005 - Sunday 10 April 2005

US Antitrust Law

Organised by:
Centre for Competition Law & Policy

Friday 29 April 2005 at 13h00

Speaker: Alden Abbott (US FTC)

US Antitrust Law

Organised by:
Centre for Competition Law & Policy

Monday 2 May 2005 at 16h00

Speaker: Alden Abbott (US FTC)

The events can be found on the following web site: <http://denning.law.ox.ac.uk/news/events.php>

STOP PRESS

Congratulations to Professor Mark Freedland on the award of a Leverhulme Major Research Fellowship. Mark will commence his three year Fellowship on 1 October 2005. He will be working towards a re-framing of the Law of Personal Work Contracts in the context of European Law and the contemporary labour market

Oxford Law News Autumn 2004

Editors: Michael Spence, Joyce Ebling

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

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