

**ADDRESS TO THE  
UNIVERSITY OF NEW SOUTH WALES  
LAW SCHOOL BOOK CELEBRATION  
BY THE HONOURABLE T F BATHURST  
CHIEF JUSTICE OF NEW SOUTH WALES**

**27 October 2011**

It is a privilege to be invited to address you this evening. I am delighted to be a part of this celebration of books and articles that have been written and published by yourselves and your colleagues. This is a celebration of significant achievements that have made a positive contribution to both our understanding of the law as it is, as well as our understanding of what the law should be. It is a pleasure to celebrate such worthy accomplishments.

Pulitzer Prize winning poet Edna St Vincent Millay once said: 'A person who publishes a book appears wilfully in the public eye with his pants down.' I am glad that none of the authors here tonight have taken that sentiment literally.

While publishing a book on law may not be considered quite as soul-bearing as writing a novel or a poem, it is an equally challenging

task. The writing of any text on law involves an author personally investing in subject-matter, forming judgments about how that subject matter should be presented to an audience and attempting to synthesise, summarise and synergise a variety of sources into a comprehensible account of the law. It also involves subjecting oneself to scrutiny and criticism. I promise that there will be none of that tonight.

Since the Middle Ages, universities have served as a crucible for new ideas and theories. Law schools in particular have evolved to encompass people who study an immensely wide range of subjects attaining to law. One of the most valuable aspects of working in a law school is the opportunity to be exposed to new ideas and legal developments by virtue of the diversity of your colleagues and their interests.

The diversity of thinkers housed in the UNSW Law School is exemplified in the diversity of the books that we are celebrating this evening. I would like to make some short remarks about each of these books, but before doing so I must apologise to the authors for not being able to do justice to the publications in this short address. Consider this a taster – you will have to read the books if you want more.

UNSW boasts two 2011 publications in the area of intellectual property. Alexandra George's book, *Constructing Intellectual Property*, analyses the ways in which the legal system defines intellectual property into existence and regulates its contents and use. Kathy Bowrey, Michael Handler and Dianne Nicol have compiled a book focussed on twelve controversial areas – and emerging challenges – in intellectual property law. Both of these intellectual property texts make a significant contribution to a field that continues to develop at a frenetic pace. These texts not only analyse the developments that have occurred over recent years, but they also anticipate the issues that we will confront in the future.

Unsurprisingly, given the events of recent years, financial regulation features heavily in the array of books published by UNSW academics this year. Douglas Arner and Ross Buckley published a book titled: *From Crisis to Crisis: The Global Financial System and Regulatory Failure*. This book is helpful to our understanding of the interaction between law and economics, allowing policymakers and regulators to better understand the causes of the Global Financial Crisis. Ross Buckley and Douglas Arner also collaborated with Richard Hu to write about three key aspects of East Asian integration: trade, investment and international finance. Anticipating how changes such as regional

integration might affect the economy in the future is crucial to policymakers' ability to respond to financial challenges and threats as well as harness economic opportunities.

The UNSW Law Faculty places a strong emphasis on social justice. That emphasis is imbued in your students, fostered by your teachers and reflected in your academia. Many of the texts published over the course of 2011 embody a concern for delivering justice to those in need. For example, Beth Goldblatt and Kirsty McLean's compelling article on women's social and economic rights recognises that women are disproportionately affected by poverty and by social and cultural marginalisation. Identifying the ways in which women's poverty can constrain their ability to enjoy the gamut of rights ordinarily extended to human beings, the authors propose a new framework for the extension of engendered rights to all women of the world.

Jeremy Gans, Terese Henning, Jill Hunter and Kate Warner have written about criminal process and human rights. Their book identifies how human rights law across Australia has affected the way in which criminal investigations and trials are conducted. There is no doubt that the ACT Human Rights Act and the Victorian Charter of Human Rights and Responsibilities have had a significant impact on this field, as

demonstrated by the recent High Court decision in the *Momcilovic* case. I am sure that the work of these four authors will provide a useful overview for anyone practising in this area, as well as enlightening policymakers as to how these two areas of the law – human rights law and criminal law – interact with one another.

Jane McAdam turned her attention to one of the most topical issues for international law: climate change and forced migration. Her text confronts one of the crucial legal questions of our era: whether international law protects people who are forced to move because of changes in climate or whether new legal solutions are required to deal with the effects of climate change. The author complements her comprehensive legal analysis with empirical research from Bangladesh, India and the Pacific States. By giving a real-world setting to the legal complexities she untangles throughout her book, Jane McAdam is able to engage the reader on both intellectual and emotional levels.

Focussing on a similar field, Adam McBeth, Justine Nolan and Simon Rice's book on the law of international human rights provides a comprehensive overview of both the theoretical basis for international human rights law as well as the practical mechanisms for implementing human rights through international law. Their use of primary as well as

secondary material exposes the reader to a variety of materials, broadening the reader's perspective and engaging the reader's curiosity. This book will no doubt become compulsory reading for students across the country who are seeking to understand how the international system can be used to better the lives of those in need.

Continuing the social justice theme, in his third publication of the evening – I am not sure whether that classifies as a hat trick but perhaps it should – Ross Buckley has focussed on development in his compilation of chapters on the history and new applications of debt-for-development. As debt-for-development plays an increasingly prominent role in the international development arena the nuanced understanding provided by this book represents an important contribution to the field.

The publications produced this year reflect both old and new subject matters. Carolyn Sappideen and Prue Vines have produced the latest edition of *Fleming's The Law of Torts*. It is interesting to reflect on the fact that the first edition of *Fleming's* was released in 1957. Since that time, it has been the quintessential text for anyone who needs to know anything about the law of torts in this country and abroad. This text has found its way into judgments of every jurisdictions and almost every court in Australia. It has also been cited frequently in New

Zealand, Canada and the United Kingdom. To publish a new edition of this book is a remarkable achievement and a public statement about the quality of the academics entrusted with the responsibility of ensuring its accuracy and currency.

I should say that the text did not always have the iconic status it now has. I was lectured in law, sadly not at this university, by the late Professor Morrison, one of the finest tort lawyers this country has produced. However, Professor Morrison had two obsessions. First, that his method of teaching law was preferable to any alternative, particularly that adopted by Professor Julius Stone. Second, that the opinions expressed in the prescribed text on torts, the then current edition of *Fleming's*, were generally wrong. At least half of his lectures were devoted to pointing out and explaining these errors, much to the bemusement of first year law students, over half of who failed the course. Watching the development of the law of torts in subsequent years I think Fleming was right just about half of the time. It shows why new editions are so important.

Seven of your colleagues have collaborated to produce the 5<sup>th</sup> edition of another stalwart in law schools in this state: *Criminal Laws: Materials and Commentary on Criminal Law and Process in NSW*. As

one reviewer stated, this book is simultaneously a textbook, casebook, handbook and reference work. This new edition ensures that the publication remains at the cutting edge of criminal law, encompassing all recent changes.

In a less traditional area of law, but one that is equally important for all practitioners, Nick O'Neill and Carmell Peisah have dealt with an emerging school of thought on legal capacity in their book *Capacity and the Law*. The legislative changes to this area that were enacted in 2009 can be better understood as a result of the research presented in this book. Capacity is a subject that imbues all areas of the law, from contract law to medical law to criminal law. The law regarding capacity also has a significant impact on how those without capacity, and their guardians, conduct their daily affairs. Assisting legal practitioners to better understand the state of the law and how it applies to individuals is invaluable to the ability of practitioners to achieve justice for their clients.

Finally, a number of publications relate directly to my day-to-day work, and for that I am very grateful. Michael Legg's publications on case management and complex litigation as well as the book he edited on regulation, litigation and enforcement will no doubt assist litigation practitioners and judges in Australia and abroad.



The authors and editors of each of these publications are entitled to be extremely proud. UNSW is entitled to be proud of them. Each publication represents the culmination of a long period of hard work. These authors and editors have braved the odds: the chance (or sod's law certainty) that an interfering judge or Parliament will alter the state of the law at the last minute, just before the book goes to publication, or worse, after it hits the press. More importantly, each of you have identified gaps in our understanding of law and sought to fill those gaps with well-researched, well-considered, valuable analysis. Without you, the job of policymakers, legal practitioners and the judiciary would be far more difficult and far less effectively performed. Our critical analysis of the law would be poorer and, resultantly, our laws would be worse. Thank you for the commitment you have made to your respective fields and congratulations on your publications. Thank you again for inviting me to share in your celebration; UNSW certainly has a lot to celebrate.