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Dear friend,

The Gilbert & Tobin Centre of Public Law has recently been established as a focal point for research into and discussion of important questions of public law for the academic, professional and wider community. The Centre aims to play a prominent and independent role in public debate on contemporary issues of great political and legal significance, including Bills of Rights, the reconciliation process, reform of the Australian Constitution and the question of an Australian republic.

The Centre's activities involve public law understood very broadly. They deal not only with administrative and constitutional law, but also related areas of intersection and structural legal reform, such as human rights, Indigenous legal issues and electoral law. It acts as a change agent through the excellence of its research, the highly visible platform it provides for key participants and its influential and constructive community leadership in debate and opinion formation.

The Centre is located at the Faculty of Law at the University of New South Wales. Principal funding for the Centre is provided by the law firm Gilbert & Tobin.

George Williams
Director

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Constitutional Law Teachers Workshop

14 February 2002

The Constitutional Law Teachers Workshop will provide an opportunity for constitutional law teachers and postgraduate students to meet and discuss teaching and research matters. The workshop will examine issues such as new research directions, publications, postgraduate research, course content and the use of comparative and contextual material in teaching.

The workshop will be followed by a dinner at the Coogee Bay Hotel, at which Sir Anthony Mason will speak on 'The Academic Contribution to Constitutional Law'.

Places are limited, so **register now**. To do so, contact

Belinda McDonald, Centre Administrator
Telephone: (02) 9385 2257
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Constitutional Law Conference

15 February 2002

This major conference will enable participants to be updated on recent important developments in constitutional law, and to gain an understanding of the issues that will emerge in 2002 and beyond.

The conference will be addressed by a range of speakers, including Sir Anthony Mason, Chief Justice of the High Court 1987-1995. The speakers include leading practitioners, government lawyers and academics.

The conference will be followed by a dinner at the Botanic Gardens Restaurant to celebrate the release of the groundbreaking *The Oxford Companion to the High Court of Australia*. The dinner will be addressed by Justice Michael McHugh of the High Court of Australia, who will be followed by a High Court trivia quiz.

Seating is limited, so **register now**. To do so, contact

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Inside...

Anti-Poverty Week

ARC Grant Success

Social Justice Interns

Page 2

Page 3

Page 3

Kep Enderby and Bill Crews speak at Anti-Poverty Week Seminar

On Monday 15 October, the Centre hosted a seminar entitled "Human Rights and Poverty" as part of International Anti-Poverty Week. Organised in conjunction with the UNSW Council for Civil Liberties, the seminar featured former Federal Attorney-General Kep Enderby, Rev. Bill Crews and Dr Anne O'Brien of the UNSW School of History.

Bill Crews spoke of how the use of labels like "the poor" or "refugees" has dehumanised disadvantaged groups in society, and made it easier for the wider public to be dismissive of their problems. He said that the telling of stories can be very effective in "re-humanising" people, and in helping our preconceptions to fall away.

Kep Enderby argued that most of the things that cause poverty can be overcome by government action – for example, through the provision of services. He spoke of the need for a "world government" with a federal structure to eradicate poverty.

The speeches were followed by about thirty minutes of audience questions, with Anne O'Brien bringing an historical and theoretical perspective to the forum. Issues discussed included the possible models of a world government, the role of a Bill of Rights in alleviating poverty, and the question of whether wealth would eventually "trickle down" to eradicate poverty.



From left: Dom Velcic, Professor George Williams, Rev. Bill Crews, Kep Enderby, Paul Kildea

Centre welcomes new PhD student

The Centre is pleased to announce the arrival of a second PhD student. Andrew Lynch will use the Centre as the base for his research into the topic "Dissent in the High Court of Australia in Constitutional Cases". Andrew joins Peter Gerangelos, whose research area is "The Separation of Powers and Legislative Interference with the Judicial Process".

Bill of Rights Forum

On 19 November 2001, Gilbert & Tobin and Australian Lawyers for Human Rights co-hosted a forum entitled "The New South Bill of Rights Inquiry: Where to from here?". The forum was chaired by Centre Director George Williams, and provided its audience with a number of insights into both the Inquiry itself and the future of the Bill of Rights issue in Australia.

Among the speakers was the Hon Peter Breen MLC, a member of the Standing Committee on Law and Justice who dissented from the Committee's recommendation that NSW not adopt a Bill of Rights. Janet McLean of the University of Auckland commented on New Zealand's experience with a Bill of Rights, and Naomi Sharp and Robin Banks spoke in the light of having drafted ALHR's submission to the NSW Inquiry.

Centre welcomes Bills of Rights Project Director

In October Megan Davis joined the Centre's staff, taking up the position of Director of the Bills of Rights Project.

Prior to joining the Centre Megan worked as a lawyer at the Aboriginal and Torres Strait Islander Commission. In 1999 she was awarded a certificate in United Nations Human Rights training, following completion of an Indigenous Fellowship for the United Nations Office of the High Commissioner for Human Rights. Megan has participated in several international conferences on intellectual property and international law, including those devoted to the Draft Declaration on the Rights of Indigenous Peoples.

The aim of the Bill of Rights Project is to examine the scope for Bills of Rights to remedy structural problems within the Australian legal system, including the lack of entrenched legal protection for basic human rights. The Centre is currently working on developing a Bill of Rights model for use at the Federal, State and Territory levels that incorporate the experiences of other nations, such as Canada, New Zealand, South Africa, the United Kingdom and the United States.

Constitutional Law Teacher's Clearing House

www.gtcentre.unsw.edu.au/teachers-Clearing-house.html

This Clearing House provides a resource point for teaching relating information on constitutional law by including information on core courses (in constitutional law and introductory public law) as well as electives and postgraduate subjects. The page serves as a reference point for students wishing to study in the area as well as for teachers thinking about new or revitalised courses and assessment.

If you have course outlines, exams or other teaching related material that could be hosted on the site or linked to from it, please email the Centre at gtcentre@unsw.edu.au.

Centre Receives Three ARC Grants

The Centre has been successful in its applications for Australian Research Council grants for three of its main projects. All up, the Centre and its partners were awarded more than \$700,000 in research funding over the next four years.

Public Law Implications of Treaty Between Indigenous and Non-Indigenous Australians

Australia is the only Commonwealth country that has never signed an official treaty with its Indigenous peoples. It is not surprising then that a treaty between Indigenous and non-Indigenous Australians has been cited as a goal of the reconciliation process by bodies including the Council for Aboriginal Reconciliation. Unfortunately, there has been little academic examination of the merits or content of a treaty, or of how a treaty might be accommodated within Australia's constitutional structure. With the benefit of comparative analysis, this project will provide a scholarly investigation of the role that a treaty could play under Australian law.

The ARC has awarded the Centre and its partners \$304,083 in research funding for the period 2002-2004.

Partners

Professor Larissa Behrendt: Jumbunna Indigenous House of Learning, University of Technology, Sydney

Dr Lisa Strelein: Australian Institute of Aboriginal and Torres Strait Islander Studies

International challenges to the Australian legal system: trade and human rights

The traditional notion of the Australian legal system as self-contained can no longer be sustained. Australia's legal structure operates within an international framework in which norms permeate national boundaries and influence local debates. This project will examine how Australian law and parliamentary and judicial institutions have reacted to this challenge, using the areas of trade and human rights as case studies. It will contribute to a new theoretical understanding of the Australian legal system as well as providing practical guidance for policy makers.

The ARC has awarded the Centre and its partner \$365,520 in research funding for the period 2002-2005.

Partner

Professor Hilary Charlesworth: Centre for International and Public Law, ANU

Australian Electoral Law: Building a System for the 21st Century

An effective regime of electoral law and regulation is vital to the integrity of any democratic system. The litigation arising from the recent US Presidential election clearly demonstrates this. But electoral law is a neglected discipline in Australia. This impedes best practice electoral

administration and the orderly development and modernisation of electoral law norms and rules. With the involvement and backing of Electoral Council of Australia (representing all Australian electoral authorities), this project will produce leading scholarship that will assist the ongoing development of an appropriate regime of electoral law for Australia in the 21st century.

The ARC has awarded the Centre and its partners \$110,067 in research funding for the period 2002-2003. The Electoral Council of Australia will contribute a further \$60,000.

Partners

Electoral Council of Australia

Mr Graeme Orr: Law Faculty, Griffith University

Positions will soon be advertised to work on each of these projects. Please contact the Centre for further information.

New Social Justice Internship

Along with three other Centres at UNSW, the Gilbert & Tobin Centre of Public Law has taken part in the Social Justice Intern Program, a new undergraduate elective. The subject is designed to give later year undergraduate students experience in various aspects of social justice advocacy. Over a semester, the students work on a research project, public interest litigation and other social justice activities. The subject is co-ordinated by Professor Julian Disney, who is the Director of the Faculty's Social Justice Project.

Over Semester 2 of 2001, the Centre had two social justice interns: Paul Kildea and Melissa Lewis.

Paul Kildea

BA (History)/LLB, 5th year

Paul looked at the question of whether an Australian Bill of Rights should include special rights for Indigenous peoples. His paper examines the status of Indigenous rights under various national Constitutions and Bills of Rights, and questions whether a



Melissa Lewis and Paul Kildea

Bill of Rights is the appropriate vehicle for achieving greater recognition of Indigenous rights in Australia.

Melissa Lewis

BA (Political Science)/LLB, 5th year

Melissa wrote a paper on the scope for an equality clause within an Australian Bill of Rights. This involved an examination of the approaches taken in other jurisdictions, such as the United States, Britain, New Zealand, South Africa and Canada, and an assessment of possibilities in the Australian context.

Centre Publications

Centre Brochure and Poster

The Centre recently produced its first brochure and poster. Both can be viewed at the Centre's website: www.gtcentre.unsw.edu.au.

George Williams

'The Case that stopped a Coup? The Rule of Law and Constitutionalism in Fiji' (2001) 1 *Oxford University Commonwealth Law Journal* 73.

'Republic of Fiji v Prasad: Introduction' (2001) 2 *Melbourne Journal of International Law* 144.

'Republic of Fiji v Prasad: Respondent's Brief' (2001) 2 *Melbourne Journal of International Law* 151 (with Geoffrey Robertson QC, Anu Patel and Neel Shivam).

'Electoral Challenges: Judicial Review of Parliamentary Elections in Australia' (2001) 23 *Sydney Law Review* 53 (with Graeme Orr).

'Race and the Australian Constitution: From Federation to Reconciliation' (2000) 38 *Osgoode Hall Law Journal* 643.

Presentations

George Williams

'The Australian Constitution and Human Rights: A Centenary View' delivered at Constitutions and Human Rights in a Global Age: An Asia Pacific Perspective, Australian National University, Canberra, 1 December 2001.

'The Public Interest in the High Court: The Role of the Amicus Curiae and Intervener' delivered at UNSW Law Faculty Seminar Program, 16 October 2001.

'Co-Operative Federalism Is the Narrow Gauge Still with Us?' delivered at Australian Legal Convention, Law

Council of Australia, Canberra, 12 October 2001.

'Bills of Rights and Other Projects: The Gilbert & Tobin Centre of Public Law' delivered at Gilbert & Tobin, Sydney, 26 September 2001.

'Nineteenth Century Constitutions and the Challenges of Globalism and Diversity' delivered at Forum on Challenges to Federal Constitutions, New South Wales Parliament, 25 September 2001.

'The Constitution and the People: Past and Future' delivered at Randwick Historical Society, Sydney, 15 September 2001.

'The Revival of the Corporations Law: Wakim and Beyond' delivered at Gilbert & Tobin, Sydney, 6 September 2001.

'Bills of Rights, the Republic and a Treaty: Strategies and Lessons for Reform' delivered at Australian Institute of Aboriginal and Torres Strait Islander Studies Treaty Seminar Series, 3 September 2001.

'The Case that Stopped a Coup? The Rule of Law and Constitutionalism in Fiji' delivered at Faculty Seminar, University of Tasmania Law Faculty, 13 August 2001.

'The Rule of Law and Constitutionalism in Fiji' delivered at Australasian Law Teachers Association Conference, University of the South Pacific, Port Vila, Vanuatu, 4 July 2001.

'Five Reasons to Rewrite the Constitution' to be delivered at Marking the Constitutional Centenary: An Agenda for Reform, Australian Fabian Society, Melbourne, 15 June 2001.

'Constitutional Issues in Regulation of Cyberspace Content' delivered at Cyberspace Regulation: E-commerce and Content, UNSW, 25 May 2001.

Centre Personnel

Director

George Williams, *Anthony Mason Professor*, BEc LLB Macq, LLM UNSW, PhD ANU

Administrator

Belinda McDonald

Project Director

Megan Davis, BA LLB UQ, Bills of Rights Project

Centre Associates

Tony Blackshield, *Adjunct Professor*, LLM Syd

Adam Czarnota, *Senior Lecturer*, LLM PhD N. Copernicus

Julian Disney, *Professor*, AO LLB Adel, Hon LLD UNSW

Jeremy Gans, *Lecturer*, BSc LLB ANU, MA (Criminology) Toronto, PhD UNSW

Peter Gerangelos, *part-time Lecturer*, UNSW, BA (Hons) LLB Syd, LLM UNSW

Arthur Glass, *Associate Professor*, BA LLB PhD Syd

Jill Hunter, *Associate Professor*, BA LLB UNSW, PhD Lond.

Martin Krygier, *Professor*, BA LLB Syd, PhD ANU

Naomi Sharp, *Solicitor and Part-time Lecturer*, UNSW and Sydney, BA (Hons) LLB UNSW, LLM McGill.

Garth Nettheim, *Emeritus Professor*, LLB Syd, AM Tufts

Robert Shelly, *Lecturer*, BA LLB Syd

George Winterton, *Professor*, LLM W.Aust, JSD Columbia

Social Justice Interns

Melissa Lewis (semester II, 2001)

Paul Kildea (semester II, 2001)

Research Assistant

Pat Knowles