

A day in the life of a research-intensive Law School

Graeme W. Austin, Associate Dean (Research) and Chair of Private Law provides a snapshot of a day in the life of the Victoria Law Faculty, focusing on the research activities of his colleagues. This article is adapted from Graeme's Introduction to the 60th Anniversary edition of the *Victoria University of Wellington Law Review*.



"What's legal scholarship?" For almost every legal academic, this will be a familiar question. It was most recently asked of me by a senior solicitor during a Wellington social event. This question, which often follows customary icebreaking pleasantries, was prompted by my characterisation of law faculty positions as requiring around 40% of time to be devoted to teaching, 40% to legal scholarship, and 20% to institutional and public service. Only the reference to "legal scholarship" provoked further inquiry.

I have tried to answer this question by asking my Faculty colleagues what they were doing on a particular day – 17 October 2013. The choice of day was partly arbitrary, but I deliberately chose a day that was still within the teaching period.

On 17 October, 21 law classes were taught at the Law School, including large compulsory or quasi-compulsory classes, such as Torts, Criminal Law, Property, and Evidence as well as a number of more specialist offerings. In addition, 43 tutorials ran that day, mostly taught by student tutors who work closely under the supervision of the permanent Faculty (who are also responsible for crafting the tutorial problems, integrating the tutorial programme with the large classroom instruction, and drafting detailed teaching notes).

As will be seen below, a significant amount of research activity was also occurring that day, a reality of Law School life that underscores the deep links between scholarship and teaching. To have interesting things to say in the law classroom demands the same kind of intellectual engagement and expertise that characterizes the best legal scholarship. So what exactly was happening in the Law School buildings on 17 October 2013? Here is a snapshot.



That morning, **Tony Angelo** was meeting with research assistants assisting him with the second edition of the *Seychelles Digest*, the only scholarly work that focuses on the Seychelles. He also worked on the new edition of the *Mauritius Private International Law*. Later in the day, he worked on a chapter about Mauritius for a new book on endangered legal systems, scheduled for publication in early 2014.

Tony Angelo's work on 17 October was also directed toward another important aspect of VUW's contribution to legal research: the work of our growing cohort of doctoral and research-based masters students. Tony directs our PhD programme. At any one time, the Law Faculty is home to 16-20 PhD candidates, from New Zealand and across the globe, who are attracted to Victoria for the expert supervision provided by our Faculty on a diverse range of topics, including "Copyright and the Rights of the Visually Impaired", "Conflict of Laws and Private Ordering", "Land Tenure in Taiwan", and "Alternatives to Prison for Adult Sex Offenders".



Meanwhile, **Gordon Anderson** was working on a draft chapter of his new book, *Employment Law in New Zealand*. This text will provide a comprehensive analysis of employment law while also serving as a teaching tool. To that end, Gordon initiated a meeting with his Employment Law class representative (students are elected by their peers to serve in this role) to solicit students' view as to how the course might be adapted in the light of this new text. Gordon is also director of our growing LLM programme, which includes a number of candidates who are completing their degrees through independent research programmes, or a combination of

independent research and an increasing array of taught courses.



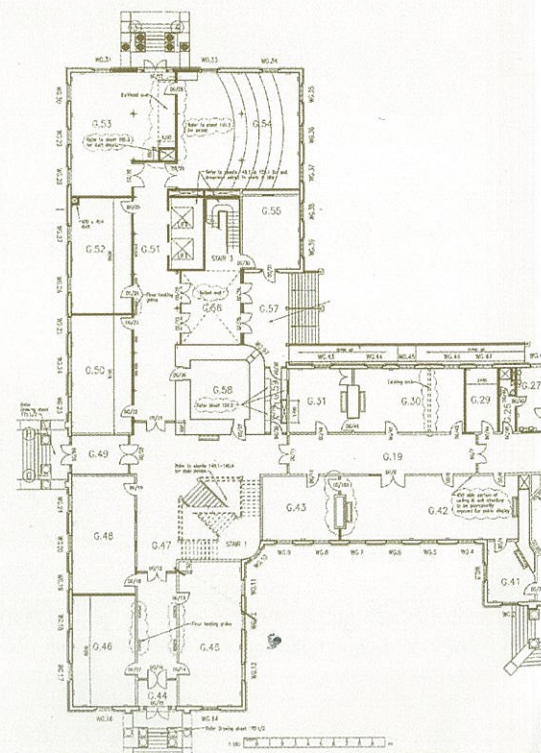
Bill Atkin spent part of the day examining an LLM thesis from Canterbury University. He was also preparing for a meeting of the Human Ethics Committee, which he chairs for the Pipitea

Campus. Ethics approval is an integral part of much empirically-based research, including work of the kind described below by Yvette Tinsley and Nicole Moreham on media intrusion and the role of privacy law. Bill was also continuing with research on changes to the Domestic Violence Act 1995 for the LexisNexis Family Law Service, a leading New Zealand practitioner treatise on family law. Bill has been a member of the authorship team on this publication since its inception in 1981.

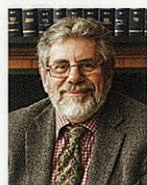


Mark Bennett was preparing for a presentation in the Victoria Law Faculty Academic Enrichment Programme, a series of seminars in which Faculty present works-in-

progress and receive collegial feedback from other VUW legal scholars and our PhD students. The Academic Enrichment Programme is one of the vehicles for enhancing the quality of the research that is produced by the Faculty of Law. The seminar series contributes more generally



to the Faculty's intellectual environment. Mark was also preparing for a seminar presentation he had been invited to give at the Julius Stone Institute at the University of Sydney Law School in early November. Mark's talks were on "Fuller's challenge and the self-understanding of legal positivism." This topic is also part of a book project Mark is developing from his doctorate in law, which he was awarded from the University of Toronto in 2013.



At the same time, **Richard Boast** was in his office proofreading his latest book, *The Native Land Court 1882-1887: A Historical Study, Cases and Commentary*. Writing this

book involved transcribing and editing over 150 early judgments of the Native Land Court, many of which only exist in manuscript. Later in the day, he could be found at the National Archives checking and transcribing early decisions of the Native Land Court for the second volume covering the period from 1887-1909. Other parts of the day were spent setting up meetings with his research team associated with his Marsden Research Grant. Richard was awarded the Marsden Grant in 2012 for a three-year period to carry out research on comparative tenurial change on the Pacific Rim in the 19th century which will involve comparative studies of a number of countries, including Taiwan, Mexico, Costa Rica, and Hawai'i, as well as New Zealand.



Alberto Costi was busy that morning working on his current research project on the authority to detain in international law. He also finalised the travel details of a conference trip to Canada to attend the annual meeting of the Canadian Council on International Law where he will be jointly delivering a paper on the binding nature of international financial regulations in November 2013. Later that day, he prepared some guidelines for the student who will hold a Summer Scholarship to assist him with a project that addresses the implications of climate change on human rights and state sovereignty. The Summer Scholarship programme enables students to work closely with Faculty members on research projects. The scheme assists with the research produced by the Faculty, while providing students the opportunity to develop their research, analytical and writing skills under close supervision of a permanent Faculty member.



In his capacity as co-ordinator of our flagship LLB(Hons) programme, **Joel Colón-Ríos** spent the morning reading Honours students' research essays. He also replied to an email sent from the Constitutional Court of Colombia, in which he was informed that a book containing a public lecture he gave in Bogotá on the occasion of the 20th Anniversary of the Colombian Constitution, had just been published. Later this year, Joel's second book, *La Constitución de la Democracia*, will also be published in Colombia. The book examines the implications of the theory of constituent power for contemporary constitutional states, a topic he has been researching for the past few years. As part of this research, he just completed a paper that looks at the English origins of the concept of constituent power, and which will be published in *The Law Quarterly Review* in 2014.



Catherine Iorns was busy in her office preparing for a trip to Copenhagen, Denmark, and Lund, Sweden, where she had been invited to speak on her work on the intersection of environment and human rights, as well as

preparing for her participation in a workshop on Sustainable Development and a UN Consultation on Human Rights and the Environment.



Claudia Geiringer was finalising the edits on the latest edition of the *New Zealand Journal of Public and International Law*, one of scholarly law journals

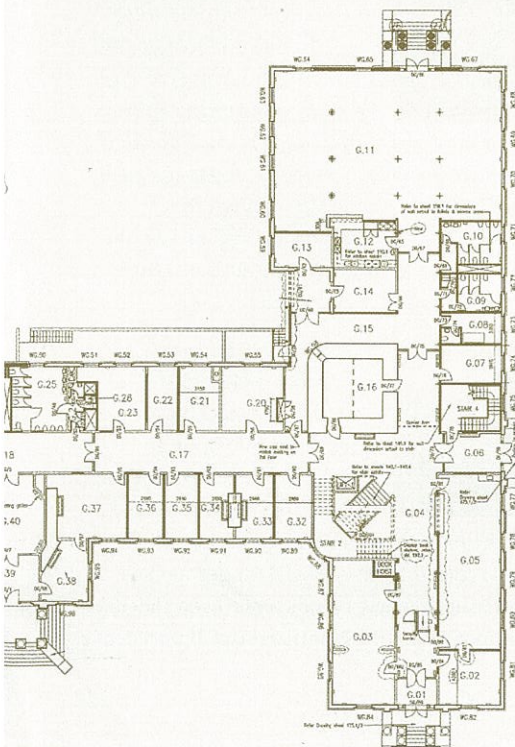
published by Victoria's Law Faculty. Claudia jointly edits this journal with Petra Butler. The particular issue focuses on the New Zealand Bill of Rights Act 1990, the same topic for which Claudia has recently been awarded a major Marsden Fund Research Grant to study the Act's record of performance during its first quarter century.

Later in the day she could be found in her office writing references for former students to undertake LLM study in the US and working on a blind peer review report on an article for a leading Australian law school. Blind refereeing of articles is part of the quality control mechanisms for scholarly journals which seek out leading academics to comment on the quality of the articles submitted to these journals. Victoria Law School faculty are frequently called on to participate in this process—testimony to their standing in their specialist fields.



Carwyn Jones spent part of the morning shortlisting student editors for the *Māori Law Review*, which was relaunched at the Law School in 2012. Carwyn, who edits the

Review, sees student involvement with these kind of scholarly endeavours as critically important. Carwyn commented: "For any area of law to be strong and vibrant it is really important that new voices are engaged and fresh perspectives are brought to bear on the central issues in the field". He was also doing more planning work for his "Legal Traditions of Wairoa" project. This is a pilot project which has involved Carwyn and his research assistants working with a small group of kaumatua from the Wairoa area to test and develop ways of identifying legal rules and principles from within traditional Māori stories.





Nessa Lynch could be found that morning in the central university Library, continuing her research on the Vulnerable Children Bill. One of a number of Victoria's Law Faculty to adopt interdisciplinary perspectives on their work, Nessa also met with a colleague from the Institute of Criminology with whom she is collaborating on plans for a conference in 2014. Later in the day, Nessa met with her student research assistant who will assist her with writing an article on the legal framework underpinning the collection and retention of DNA in New Zealand. Nessa's interest in the use of DNA in the legal process will also be reflected in research she is conducting on the collection of DNA in the pre-trial process.



After finalising written feedback for her students on the oral assessment component of her Evidence course, **Elisabeth McDonald** was in her office reading cases in preparation for writing the third edition of *Evidence Act 2006: Act and Analysis*, whose authorship team also includes Yvette Tinsley. That same day, Elisabeth received news that the Court of Appeal in *Smith v R* [2013] NZCA 362, had favourably mentioned her co-authored text *Principles of the Law of Criminal Evidence*. In the afternoon, she was on the telephone discussing the timing of her appearance to speak to the Social Services Select Committee about her submission to the "Inquiry into the Funding of Specialist Sexual Violence Social Services".



Campbell McLachlan presented a paper "The interaction of international law and municipal law: the case for an allocative approach in foreign relations cases" (a chapter from his forthcoming book *Foreign Relations Law* – to be published in 2014 by Cambridge University Press) for discussion at a lunchtime Faculty enrichment seminar. Campbell has been greatly assisted in this project by the award of the International Research Fellowship from the New Zealand Law Foundation.



Having just completed the first draft of a major article on the law of implied terms in contract and given it to his student research assistant for editing and cite checking,

David McLauchlan was busy preparing two separate seminar papers on aspects of the law of contract interpretation for presentation to the Perth and Brisbane legal professions in the new year.



On a day when he was teaching two different classes – Maritime Law and Property – **Bevan Marten** was also corresponding with colleagues in Utrecht and Oslo regarding his recent monograph *Port State Jurisdiction and the Regulation of International Merchant Shipping*, published by Springer, Heidelberg in 2013.



Nicole Moreham was continuing with revisions of an article on non-informational breaches of privacy. The legal regulation of privacy is the focus of Nicole's work for which she has been awarded a major Rutherford research grant. The working title of the article is *Beyond Information: The Protection of Physical Privacy in English Law*. Later in the day Nicole met with Yvette Tinsley to discuss the appointment of a student research assistant for their project on privacy and media intrusion. For this project, Yvette and Nicole have interviewed 18 relatives and friends of the victims of the Pike River mine disaster about the impact media attention has had on their lives. They will shortly be writing up their results in a series of articles.



Grant Morris was engaged in research on New Zealand Court of Appeal judgments from 1865 to 1875 which include James Prendergast as Attorney-General representing the Crown. This was further background work to his biography of Justice Prendergast, New Zealand's third Chief Justice, which will be published by Victoria University Press in 2014. Grant was also busy with correspondence promoting the most recent edition of the *Victoria University of Wellington Law Review*, for which he was special editor. This edition is entitled "Recovering the Common Good" and is based on a conference which Grant helped organise at Parliament in 2012.



Joanna Mossop was in her office checking the contract she has just received from Oxford University Press for her new book *The Law of the Extended Continental Shelf*. With research supported by the New Zealand Law Foundation and by the Law Faculty research fund, Joanna's book is a study of the legal regime that applies to activities taking place on the continental shelf beyond 200 nautical miles.



During the morning, **John Prebble** attended a meeting with the publishers to commission several authors for books in the Thomson Reuters Tax Library, which he edits with Judge Paul Barber. He then met with one of our LLB(Hons) students, who had just been selected to hold a Summer Scholarship to abstract academic papers by the Dean of Law, Professor ATH Smith, and to post them on the Social Science Research Network (SSRN)—a major on-line repository of scholarly research where the Victoria Law Faculty has an increasingly important profile. John also settled the appointments of two other Summer Scholars, who will work on one of John's books in the Tax Library. He then turned to a report on a doctoral thesis that he is examining and to checking a draft of the second edition of Prebble and Griffiths, *The Taxation of Property Transactions*, due for publication by Lexis Nexis in 2014.



Caroline Sawyer spent the day working on a variety of research projects, including her article in this volume, and preparing the ground to work on a case note on the 2013 UK Supreme Court case of *Secretary of State for the Home Department v Al-Jedda*, and to update her sections of the Oxford University Press textbook on immigration and asylum law. She was also working on a jointly-authored paper on cultural rights in New Zealand.



Like many of Victoria's legal academics, **Māmari Stephen's** research and teaching are deeply integrated. On 17 October, Māmari was working on research toward her forthcoming book on social security law. The same research will be useful for her summer Law School course on this topic. Later that day, she met with other Māori and Pasifika academic

staff about improving the Māori and Pacific Island tutorial support programme. That day she also completed a submission on the Credit Contracts and Financial Services Law Reform Bill.



In the morning, **Yvette Tinsley** reviewed coding manual edits for the New Zealand Crime and Safety Survey for which she has been appointed as a specialist consultant. At lunchtime, she gave a seminar in the Institute of Criminology “What’s law got to do with it?” which drew from her ongoing empirical research project on juries. This project, the co-researchers of which are based in New Zealand and Australia, has received funding both from Australia and from the New Zealand Law Foundation. Later in the day, she arranged a meeting with her Australian counterparts on the project before meeting with Nicole about their Pike River work. And, like Elisabeth McDonald, Yvette was also busy that day preparing for the third edition of *The Evidence Act 2006: Act and Analysis*.



Not all of the Faculty’s important research work being conducted on 17 October was occurring in the Law School buildings.



On the other side of the world, **Petra Butler** was discussing the advantages of the United Nations Convention on the International Sales of Goods (1980) with colleagues at the Universidad de Navarra, where Petra has been visiting during her research leave. During her time away, Petra has delivered guest lectures at Universidad Carlos III de Madrid and Baker & McKenzie (Madrid) on international contract law and the importance of human rights in the business context. In addition, she presented seminar papers at leading institutions, including the European University Institute in Florence.



Meanwhile, **Susy Frankel**, the recent recipient of a Fulbright Fellowship, is currently based at New York University Law School, where she is conducting research for her new text, *Supporting Intellectual Property’s Innovation and Creativity Goals through Dynamic Interpretation of International Agreements: A Hermeneutic of International Intellectual Property*.



Paul Scott, a recipient of a Hauser Fellowship, is also at NYU Law School, where he was continuing his research on the influence of US antitrust law on New Zealand competition law, and was preparing a paper for a major NYU conference.



Dean Knight, meanwhile, was en route to London where he is a PhD candidate at the London School of Economics and Political Science. His thesis, *Variable Intensity in Anglo-Commonwealth Administrative Law*, examines the different ways the courts calibrate the depth of their supervisory lens and builds on his other work exploring the legal method in judicial review cases.



IF THIS SNAPSHOT offers a picture of the present research endeavours of my Faculty colleagues, what of the future?

Today’s Law Faculty members are, as is the case with any fine institution, only its temporary stewards. Our work is informed by the deepest respect for those who came before us, and is animated more by a sense of responsibility than proprietorship.

That which characterises fine legal scholarship in the second decade of the 21st century is an accretion of traditions and innovations developed by the many earlier generations of scholars. In the legal academy, legal scholarship is also informed by an acute awareness of and dialogue with the work of legal scholars and jurists in other jurisdictions.

We can only guess at how legal scholarship and teaching will respond to the profound changes that are currently occurring in the marketplace for legal services, including the increasing internationalisation of the practice of law, and, perhaps most significantly, the possible decline of the “Cravathesque” law firm.

The education we provide and the scholarship we produce will inevitably respond to these kinds of developments. More immediate effects may come from the “Performance-Based Research Funding” (PBRF) scheme, under which all New Zealand academics must currently labour, notwithstanding questions as to its degree of “fit” with distinct academic and professional disciplines, including Law. As its economic

incentives continue to be internalized, the PBRF will inevitably influence the future of New Zealand legal scholarship, for better or worse. The Law School is justifiably proud of its success in the latest PBRF round, but we hope that the PBRF affects detrimentally neither the vibrancy of the dialogue that currently exists between New Zealand academics, the legal profession and the courts nor the survival of New Zealand-based law reviews.

Legal scholarship is, amongst other things, an iterative process. In the common law world scholarship tends to reflect the common law method. Seldom welcome or useful are efforts animated by an aspiration to “shift paradigms”: our work is stronger for the incrementalism that typically characterises it.

Legal research is a subtle choreography between creativity and discipline. Scholarly traditions of course adapt and evolve, but it is to be hoped that the catalysts of change derive principally from the discipline of Law itself, and its relationship with the communities we serve and the other academic disciplines to which we respond, rather than financial exigencies.

If past and present augur the future, Victoria’s Law Faculty will continue to make exceptional contributions to the development of legal science, contribute meaningfully to law reform, reflect on the traditions and cultural contexts that inform the present, and lead and participate in dialogues – both domestic and international – on law’s role in shaping the commercial marketplace and civil society, contributing to the functioning of government, and enhancing the dignity of individuals and peoples.

So, next time I am asked, “What’s legal scholarship?” I might respond simply, “It’s what legal scholars do”. If further detail is required, this snapshot of what was happening in the Law Faculty on 17 October 2013 should be answer enough.

As Associate Dean (Research) for the Law Faculty I have the privilege of working with and for a diverse group of dedicated, expert, and creative legal academics. The kinds of scholarly endeavours described above happen here day in, day out. Both humbling and inspiring, the work of my Faculty colleagues honours the traditions that have made the Victoria Law Faculty what it is today while promising a future that is very bright indeed.

