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Book Launch

Let me start by thanking Professor Michael Coper for the opportunity to come here tonight for the purposes of the ANU College of Law Biennial Book Launch. I need to make an immediate confession. When I first agreed to speak I envisaged that I would need to read two or three books. You can imagine my mild dismay when I realised the scale of the launch. However, that scale of the launch reaffirms a well-known fact which is that this College of Law has always been deeply encouraging to scholars. It goes without saying that the proper practice of a discipline like the law depends on accurate scholarship. Often a legal problem is first considered by opening a textbook.

Then, when the flier came around and I was described as the "launcher" I gave some thought to what would be required of me, bearing in mind that noun conjured up for me things like a device for sending rockets into space. I turned to Sir James Murray's Oxford Dictionary to discover a delightful entry from the London Daily News of May 1899. It said:

"All hands turned out at once to launch the lifeboat ... four of the most useful launchers ... being women."

A precedent is always a comforting thing. Of course, a most famous example of a woman launcher (though her launching may not

necessarily be called useful) comes from Andrew Marvell's Dr Faustus. Of Helen of Troy he asked:

"Was this the face that launched a thousand ships,
And burnt the topless towers of Ilium?"

If only a book launch could launch a 1000 sales. That brings me to my second confession. To rationalise my tasks tonight and to avoid taking up too much of your precious time, I proceed on the assumption that the authors of the 2nd editions have all easily achieved 1000 sales and need no further launching by me to ensure their continued success. However, I congratulate each of them.

Turning then to the first editions, Donald Anton, Penelope Mathew and Wayne Morgan have produced a hefty new book of cases and materials *International Law*. The currency of this subject cannot be doubted. The authors essay the view that a phenomenon referred to as "globalization" has undermined the sovereignty of States as envisaged in the Treaty of Westphalia, but that at the same time, globalization has revitalised interest in both international systems of adjudication and questions of responsibility for breaches of international law, for example in respect of terrorist activity. Whilst the book is a conventional teaching tool, it strikes out on a novel path inasmuch as it reveals at many points a debt to postmodernism.

Let me make three brief remarks about that. First, since we have now entered, I suppose, a "post post-modern" phase, post-modern theory can be assessed with a greater sense of long term perspective. There is, I think, something in the view that the anarchic

outer reaches of post-modernism are part of a recognizable philosophical style which in Anglo-American philosophy is called scepticism, a method of thinking about human problems which is characterised by profound doubt about accepted values. In saying that, I do not mean to ignore the differing tradition and emphases of Continental philosophy.

Secondly, practising lawyers, with no connections with the academy, will not necessarily have a good or even working understanding of the congeries of theories or disparate thinkers under the post-modernist umbrella or the specialist language or jargon which goes with it.

The third point is that, speaking generally, post-modernism has both a positive and a negative relationship with the law. If I take Michel Foucault as an example, his ideas that power, hegemonies, theories and practices of punishment, and sexual norms and prohibitions all deserve fresh examination is, I accept, rather like throwing open a window and letting in some fresh air. Less homely however, and far less constructive, is the sustained post-modern attack by him and others on Enlightenment values. Enlightenment values permeate the law.

Lawyers believe in the power of reason to resolve disputes. The authority of the law in a civil society derives from a consensus about that belief. Judges give reasons for their decisions. Forensic rules have a rational basis. Pederasty, which Foucault depicts in his *History of Sexuality* as a bucolic pastime, is a crime because legislatures

reflect a rational consensus that such conduct should attract penal sanction. And so on. This is not to give stasis an artificial value or to oppose developments in new directions but merely to raise food for thought whilst in the company of scholars.

Let me return to the text. One of the strengths of this case book is the comprehensive way in which it throws open windows. The authors frankly acknowledge the synergy between international law and politics. They deal comprehensively with the Charter of the United Nations and the major Conventions and Treaties and the relationship between international law and municipal law. There is a section on the sovereignty of nation states and many examples are given of new or relatively recent tensions between orthodox assumptions about sovereignty and the increasing recognition of human rights. The Pinochet case is on point. The immunity from prosecution of a head of state is subject to new considerations and instruments such as the Convention against Torture. Other topics covered include the use of force in disputes and correlative peace-keeping systems, international trade law, the protection of human rights and environmental law. The authors have elucidated, with considerable panache, not only the current state of international law but they have also signposted possible future directions. That is a lot to ask of a casebook but they have done it, and done it in a way which is full of thoughtful detail.

Next, I turn to Stephen Bottomley's *The Constitutional Corporation: Rethinking Corporate Governance*. This is a highly reflective and creative book, rather than a tool of teaching. The author explains that the genesis of the work lay in the *Gambotto*¹ decision in the High Court. His observation of critics of the decision led him to ponder whether familiar frameworks of law and economics are the only conceptual tools for thinking about corporations. He has developed a different framework which he describes as "corporate constitutionalism", which exploits, analogically, our familiar understandings of political organisation. That leads the author in two directions. First, it is necessary for him to concede those points at which the analogy will not work. Secondly, and this I think is the most engrossing aspect of the work - the author redefines "good corporate governance" by reference to the notions of accountability, deliberation and contestability and envisages greater shareholder participation. This book is a most impressive example of creative deconstruction of a conceptual framework for the purposes of allowing consideration of an alternative framework, possibly more attuned to the temper of the times.

Back to another casebook. Robin Creyke and John McMillan have produced *Control of Government Action*. Many of us in this room have witnessed the remarkable growth in public law during the course of our working lives. As the authors remark, "administrative review

¹ *Gambotto v WCP Limited* (1995) 182 CLR 432.

owes its place in a modern democracy to the vast expansion of the administrative decisions-making process" (p16). There is now a tremendous field of cases to be covered and they cover most important legal doctrines, such as natural justice. Natural justice or procedural fairness is central to our sense of living in a community where the individual whose rights are affected by an administrative decision can turn to the law, as a bulwark between the individual and the Executive. The most remarkable aspect of this casebook, I thought, was the way in which extracts were often very short but always well chosen. As well the extracts are accompanied by helpful succinct introductions. This is a tremendous service to students who might otherwise struggle to see the wood from the trees in the vast forest of public law.

Thomas Faunce's *Pilgrims in Medicine: Conscience, Legalism and Human Rights* has a tantalising title. Because he is familiar with the disciplines of both law and medicine, the author occupies a wonderful vantage point for thinking deeply about morality, ethics, including bioethics, the law as it touches upon health, and the intersections between human rights and difficult medical decisions.

The conceits of the morality play have been adopted. Genome, Human Rights, Legalism, Virtue Ethics and Professional Conscience are anthropomorphised as five medical students with differing viewpoints. Their professional life journeys are traced through the doctor-patient relationship in order to show how difficult medical decisions affecting life, or its continuation, are overlaid with the personal and individual feelings or views of patients. That narrative

structure of medieval simplicity is a way of elucidating human problems of great complexity. It works. For that to happen requires perspicacity about human nature, in all its plenitude, and human frailties, in all their variety. When those perspicacities are wedded to an easy understanding of Western art, music and literature, the result is an exceptional read particularly for those who enjoy the kind of philosophical *tristesse* found in some works of music or literature.

Judith Jones, together with Elizabeth Fisher and René von Schomberg are collaborating editors of *Implementing the Precautionary Principle Perspectives and Prospects*.

The editors have taken up the challenge posed by the Rio declaration which first launched the precautionary principle onto the sea of world debate, on environmental and public health issues.

The editors are especially interested in the possible application of the principle in areas where technological change or enhanced scientific understandings compel public administrators and regulators to heed the principle or at least the considerations which inform the principle.

Judith Jones convened a conference on the Precautionary Principle in Environmental Law in 2003, the supporters of which included the ANU Faculty of Law. Of great interest in this book is the demonstration and explanation of common developments in environmental and public health areas as they arise in different legal settings.

The debates about the precautionary principle are part of a wider debate where civil lawyers and common lawyers seek to understand each other better to benefit from whatever is best in their respective systems, if that is possible. There is an urgency in some of these debates about greater uniformity in respect of matters such as intellectual property where a delicate balance is ever being recalibrated. That is the balance between encouraging initiative yet sharing scientific and inventive benefits with the Third World. This book illustrates delicate balances of a similar kind, the management of which can only be improved if we appreciate the commonality of the challenges and the diversity of possible solutions.

Ann Kent has produced a book within a series entitled *Studies in Asian Security* sponsored by the East-West Center. The East-West Center is an education and research organization established by the US Congress in 1960 to strengthen relations and understanding among the peoples and nations of Asia, the Pacific and the United States.

Her contribution is entitled *Beyond Compliance: China, International Organizations, and Global Security*. She examines the changing relationship of China with key international organizations over three decades. Then, for the purposes of comparison, she analyses China's behaviour before it entered those organizations, particularly the United Nations. This is a compelling exercise for three reasons. As the author points out China did not perceive itself as particularly amenable to constraints from international society.

Secondly, China lacks a tradition of a rule of law and thirdly, China is large, and powerful enough to ignore international obligations should it choose to do so.

In some respects the study is highly specialized because of its empirical methodology testing China's compliance with a range of United Nation's human rights bodies and treaties. During her studies the author realised that while compliance was an important indication of the integration of a nation state into the international system, cooperation (to the extent it can be measured) offered a better test of whether international norms were truly internalized. The work is detailed, thoughtful and sophisticated. It is a most useful and timely publication for at least two reasons. First, at this moment in its history China is evincing some interest in comparing the constitutions of other nation states in order to consider the political arrangements of a civil society for China, something unimaginable in Mao's era. Secondly, the background to China's current interest in future political and social arrangements is something we could call the 21st century's Industrial Revolution, centred in China.

Last but not least, I come to Don Greig's occasional paper *Invalidity and the Law of Treaties* which concentrates on the Vienna Convention on the Law of Treaties, Articles 46 to 52. Those Articles deal with issues of separability and invalidity of treaties, a specialist subject matter. However, the provisions are placed by the author in their general historical setting and then illustrated by specific problems and cases which I think gives a general reader immediate access to such a specialist topic. The criticisms of certain Articles, and there are

quite a few, are grounded in practicality. This leads on naturally to a consideration of whether there is a potential role for the Security Council in this area.

All the books forming part of this biennial launch are testament to the engagement of the ANU's College of Law with the wider world. Scholars of the depth and range of those involved tonight, remind us all of individual and collective responsibilities for our system of justice, and most of all our individual responsibility for the values which inhere in our legal system even as it is continuously reshaped by the human intellect.

Once again, thank you for tonight's invitation.

BOOKS LAUNCHED:

First editions

Bottomley, S (2007) *The Constitutional Corporation: Rethinking Corporate Governance*, 1st edition, Ashgate

Creyke, R; McMillan, J (2005) *Control of Government Action: Text, Cases & Commentary*, 1st edition, LexisNexis Butterworths, Sydney

Faunce, T (2005) *Pilgrims in Medicine: Conscience, Legalism and Human Rights*, 1st edition, Brill Academic Publishers, Leiden, The Netherlands

Greig, D (2006) *Invalidity and the Law of Treaties*, 1st edition, British Institute of International and Comparative Law, London, England

Jones, J; Fisher, E; von Schomberg, R (2006) *Implementing the Precautionary Principle: Perspectives and Prospects*, 1st edition, Edward Elgar Publishing

Kent, A (2007) *Beyond Compliance: China, International Organizations, and Global Security*, 1st edition, Stanford University Press

Anton, D; Mathew, P; Morgan, W (2005) *International Law: Cases and Materials*, 4th edition, Oxford University Press, USA

Second editions

Bottomley, S; Bronitt, S (2006) *Law in Context*, 3rd edition, The Federation Press, Leichhardt

Bronitt, S; McSherry, B (2005) *Principles of Criminal Law*, 2nd edition, Thomson, Sydney

Creyke, R; Cook, C; Geddes, R; Hamer, D (2005) *Laying Down the Law*, 6th edition, LexisNexis Butterworths, Sydney

Pearce, D; Argument, S (2005) *Delegated Legislation in Australia*, 3rd edition, LexisNexis Butterworths, Sydney

Pearce, D; Geddes, R (2006) *Statutory Interpretation in Australia*, 6th edition, LexisNexis Butterworths, Sydney

Spender, P; Colbran, S; Reinhardt, G; Jackson, S; Douglas, R (2005) *Civil Procedure Commentary and Materials*, 3rd edition, LexisNexis Butterworths, Sydney

Books that have already been launched

Charlesworth, H; Chiam, M; Hovell, D; Williams, G (2006) *No Country is an Island: Australia and International Law* 1st edition, UNSW Press

Corcoran, S; Bottomley, S (2005) *Interpreting Statutes*, 1st edition, The Federation Press, Sydney

Williams, J (2005) *The Australian Constitution: A Documentary History*, 1st edition, Melbourne University Press, Melbourne