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Editorial

It is our first issue as Editors of *The National Legal Eagle* and we are very excited to share it with you. Although we did not plan it this way, it seems that most of the articles in this issue share a common theme. They discuss, in one form or another, the strands of principle and policy that make up the legal web. Our laws are based on either principle or policy considerations, or a combination of both. The government looks to these considerations in drafting legislation and in *Tofilau v The Queen* (2007) 231 *CLR* 396 (at 440) Kirby J discussed the role of these considerations in judicial decision-making:

> As in other cases where there is no precisely applicable provision of the Constitution nor legislation governing the point in controversy, and where no holding of this Court affords a clear and binding rule that can be applied to resolve the differences in argument, the solution to the contentions of the parties in the present appeals must be found in the usual sources. What is required is a close examination of relevant legal authority, principle and policy.

Sometimes these principles and policies are congruent, while at other times they conflict. It is an age-old struggle, one that has been greatly debated by eminent legal philosophers, such as Herbert Hart and Ronald Dworkin.

In the first article, *Legal Theory in Practice*, Teaching Fellow Ian Stevens examines the legal propositions proposed by Ronald Dworkin. After scrutinizing the hierarchical relationship between principles, policies and rules, Ian takes us on a rollicking journey of police and their powers in Queensland, with an analysis of the principles and policies underlying the *Police Powers and Responsibilities Act* (Qld). In particular he focuses on the police powers of detention and investigation, those provisions that infringe the right to silence, move-on powers, search powers and other powers that offend the right to privacy. Finally, Ian considers the provisions that legalise particular unlawful police conduct.

The second article, written jointly by Assistant Professor Robyn Lincoln and postgraduate scholars Wava Doyle and Krystle Richardson, *The Second Sentence: Australians Imprisoned Abroad*, traverses the issues raised by the incarceration of offenders in foreign prisons. The article ably examines the additional problems faced by Australians imprisoned overseas. These problems may be said to exacerbate the punishment of such prisoners and infringe against human rights. These rights (enshrined in various United Nations' documents) reflect a dimension of morality and amount to principles that the Australian government should take into account when dealing with countries detaining Australians. The authors go on to discuss Australia's involvement in the International Transfer of Prisoners scheme and conclude with a discussion of the policy reasons for Australia (and indeed other countries) to engage fully in this scheme.

As promised in the Spring edition of *The National Legal Eagle* last year, the article written by Assistant Professor Jodie O'Leary provides the second part to *Understanding the Dennis Ferguson Debate*. This article builds upon the earlier dialogue about the conflicting principles and policies evident in the way the law deals with those alleged to have committed sexual offences against children. In particular it highlights the precarious path the law must walk, juggling principles (such as equality before the law, the right to a fair trial and the need for proportionality) with the valid policy concern of keeping the community safe. Jodie explains the available Queensland measures that attempt to strike a balance.

Associate Professor David Field, with his usual wit and humour, provides a wrap up of the high school mooting season in *Make No Mistake – it could have Legal Consequences*. As David explains, this year's problem required a careful analysis of whether the accused had committed a mistake of fact or one of law. In convincing the judges of the merits of their argument, the students relied on various principles and policies. We would like to take this opportunity to congratulate once again all involved; the students who compete never cease to amaze us.

The *First Asia-Australia Mock Trial* article outlines an innovative opportunity as part of the New South Wales Law Society Mock Trial Competition.

Lastly, at the suggestion of Senior Teaching Fellow Joel Butler, we are pleased to present the first of what will be an ongoing series of articles on two discrete topics:

1. The 'What is' series; and
2. 'Who's Who in the Legal Zoo?'

What is 'Property Law' provides an absorbing account of the first of our area of law series. As Joel promises, the article does not give a boring summary but rather outlines various principles of property rights, offering some examples to which we can all relate (particularly those of us who drink Coke and want to be a rock star). Stay tuned for different areas of law in the future.

In his second contribution, for the inaugural offering to the 'Who's Who' series, Joel writes about one of our most acclaimed members of the judiciary in *Sir Samuel Griffith – the First Chief Justice of the High Court of Australia – and more*…We are sure that you will find the biographical details both unexpected and inspirational, as we did. Now that we have whetted your appetite, look out for the future exploits from the exhibits in the legal zoo.

Assistant Professor Jodie O'Leary and
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Investigate and discuss:

Dworkin, as part of his legal theory, talks about judicial activism and Justice Hercules. Following the link below, investigate who Justice Hercules is, what judicial activism is and how it impacts on judges when they make decisions.

http://www.absoluteastronomy.com/topics/Judicial_activism

Can you think of any High Court judges in the last 10 years that have been accused of judicial activism?

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