

EDITORIAL

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The 2024 issue of the Denning Law Journal includes:

- Articles addressing aspects of the legal system that are timely and incorporate foresight of future possibilities or reforms;
- Articles addressing climate change, urban renewal, and the potential for legal action to promote nation state responsibility;
- Commentaries including case notes and shorter articles addressing national and international issues and developments;
- Book reviews considering climate change, the Ghislaine Maxwell trial, and a three-volume reflection on Denning jurisprudence, a tribute to Lord Denning, former Master of the Rolls, whose name the University of Buckingham and in particular the Law School proudly advances as the title of our Law Journal.

ARTICLES – THE LEGAL SYSTEM

The Coroners and Justice Act 2009 sets down the duty of senior coroners to ‘investigate certain deaths’ – those where the coroner reasonably suspects that the deceased ‘died a violent or unnatural death’, or the ‘cause of death is unknown’ or the death occurred whilst the deceased ‘was in custody or otherwise in state detention’.¹ Professor of Coronial Law and Assistant Coroner Andrew Harris with Dr Anton van Dellen (Assistant Coroner and Barrister specialising in coronial inquest practice) write of coronial inquests into suicide or deaths considered to be suicide. Considering the need to pinpoint causes of or triggers for suicide, in ‘Suicide: The Scope of the Investigation in the Coroner’s Court’ they propose ‘a framework for judicial decision-making’. Dr. David Sykes’ article addressing student suicide and the responsibility of universities and other educational institutions follows, with a comprehensive review of student suicides over the past several years. Referencing also the US, Canada and Australia, in ‘The Legal Relationship between Universities and their Students’ Dr. Sykes analyses liability under a comprehensive series of legal heads.

The theme of reform or change is carried through by Maximilian Taylor who considers the US method of appointment of Supreme Court Justices via Senate hearings, and whether there is room in the United Kingdom for greater

¹ Part 1, Chapter 1, Section 1, Coroners and Justice Act 2009 (accessed 20 October 2024).

transparency and democratic principle in appointments to the United Kingdom Supreme Court. Is there ‘A Role for Parliament in Independent Judicial Appointments’, he asks, referencing the process of appointment of the Comptroller and Auditor General. Moving into another area yet maintaining the ‘scope of the law’ theme, John Mayberry covers ‘Alternative Dispute Resolution (ADR)’ in relation to ‘Islamic Marriage, Divorce and Child Custody in England and Wales’. This is a controversial field evidenced by the parliamentary inquiries² paralleling the acceptance in the United Kingdom of sharia councils under the Arbitration Act 1996.³ Proposals for regulation⁴ run alongside advocacy and concern for the undercutting of women’s rights in law and the ‘One Law for All’ proposition,⁵ whilst in Australia both sides of politics express an absolute rejection of any place for sharia law within the legal system:⁶ then Attorney-General Nicola Roxon⁷ and then Treasurer Peter Costello (‘there is one law we are all expected to abide by’).⁸ Whatever position one adopts, a review of the authorities is a significant contribution to the law and the debate.

ARTICLES–CLIMATE CHANGE

Has the human destruction of the Earth gone too far to save the world – or perhaps it’s humanity that’s beyond saving (the world may well survive human depredations

² For example Sharia councils inquiry - Committees - UK Parliament (accessed 1 October 2024); Sharia councils inquiry - Oral evidence transcripts - Committees - UK Parliament (accessed 1 October 2024); Report into Sharia Law in the UK (accessed 1 October 2024).

³ Arbitration Act 1996 (accessed 1 October 2024).

⁴ Report into Sharia Law (n2).

⁵ Maryam Namazie/Sharia law: neither equal nor free (accessed 1 October 2024); Maryam Namazie/Sharia Law in Britain: A Threat to One Law for All and Equal Rights (accessed 1 October 2024); One Law for All/Boycott the Sharia law inquiry (accessed 1 October 2024).

⁶ For a considered view of the obligation under Islam of persons of the Muslim faith to abide by the legal system of the country within which they reside see: Islamic Australia? What place is there for sacred law in a secular land? - ABC Religion and Ethics (accessed 1 October 2024); see also Mohamad Abdalla, ‘Islamic Australia? What place is there for sacred law in a secular country’ (2014) Griffith Law Review vol 21 no 3.

⁷ ICJS Research (accessed 1 October 2024); Rowan Dean Blog: NICOLA ROXON AND SHARIA (Spectator leader March 23) (accessed 1 October 2024).

⁸ Costello defends Muslim citizenship comments - ABC News (accessed 1 October 2024); Legal recognition of Sharia law: Is this the right direction for Australian family matters? in Family Matters No 84, 2010 (accessed 1 October 2024); Legal recognition of Sharia law | Australian Institute of Family Studies (accessed 1 October 2024).

... after all, it's lived well for billions of years ...).⁹ Rarely a week goes by without warnings of 'tipping points' reached or almost reached, 'underestimations' of catastrophic risks, and the realities of global warming evidenced by flash fires in California,¹⁰ hurricanes with damage estimated at \$34b and verging on beyond the capacity of the United States economy to recover,¹¹ bushfires followed by floods followed by bushfires followed by floods, then flooding after fires raging down the east coast of Australia and taking lives by water and flames,¹² loss of life by flash flooding in Spain,¹³ Poland,¹⁴ and other parts of Central and Eastern Europe,¹⁵ tsunamis combined with earthquakes threatening Indonesia and south east Asia (in 2004 estimated as killing some 230,000 people 'across 24 countries'),¹⁶ then Japan suffering a 'nuclear crisis' when a 2011 tsunami hits the Onagawa nuclear power plant's No 2 unit in Miyagi Prefecture.¹⁷ In the final week of October 2024 it's AMOC (the Atlantic Meridional Overturning Circulation, ocean currents circulating so as to regulate global temperatures), the Intergovernmental Panel on Climate Change (IPCC) charged with having erred in its estimations, and 44 scientists joining in an urgent call for action recognising that the 'collapse of the ecosystem' of the Earth through 'irreversible heating' is looming.¹⁸

⁹ Scientific estimate 4.5 billion years: How Old Is the Earth? How Do We Know? (accessed 1 October 2024).

¹⁰ California Department of Forestry and Fire Protection (accessed 1 October 2024).

¹¹ Helene Hurricane Recovery Will Cost Billions, Biden Says After Tour - Bloomberg (accessed 24 October 2024); Hurricane Helene recovery could cost \$34 billion. Here's who might pay (accessed 24 October 2024); Biden says Hurricane Milton caused estimated \$50B of damage (accessed 24 October 2024).

¹² Australia: After the bushfires came the floods (accessed 1 October 2024); Australian towns battle fire and flood back-to-back - BBC News (accessed 1 October 2024).

¹³ Flash floods in Spain leave at least 62 people dead | World News | Sky News (accessed 30 October 2024); Flash floods in Spain leave at least 62 dead and disrupt rail and road services | Euronews (accessed 30 October 2024).

¹⁴ Poland: Floods - DREF Operation (MDRPL003) - Poland | ReliefWeb (accessed 10 October 2024); (accessed 9 October 2024); In wake of devastating floods, Poland debates how to withstand the next deluge | Notes From Poland (accessed 24 October 2024).

¹⁵ 2024 Central and Eastern Europe Floods - Center for Disaster Philanthropy (accessed 9 October 2024).

¹⁶ Indian Ocean tsunami of 2004 | Facts & Death Toll | Britannica (accessed 1 October 2024); Boxing Day tsunami: How the disaster unfolded 10 years ago - ABC News (accessed 1 October 2024).

¹⁷ Japan's 2011 disaster-hit region sees reactor restart for 1st time (accessed 1 October 2024).

¹⁸ Climate Scientists Call For Urgent Action Before "Catastrophic" Collapse Of The AMOC (accessed 24 October 2024); Warning of a forthcoming collapse of the Atlantic meridional overturning circulation | Nature Communications (accessed 24 October 2024).

In 2023 the University of Buckingham under the Law School leadership of Drs. Cynthia Umezulike and Obinna Edeji hosted the first International Conference on Sustainability and Human Rights, contributing several of the articles appearing in this issue of the Denning, including Dr. Stefania Toraldo’s ‘Towards a Universal Climate Justice ...’ and Dr. Jocelyne A Scutt’s ‘Exporting Environmental and Human Rights Abuses ...’ each drawing the links between global warming, the environmental and biodiversity emergencies, and the dimensions of human rights (and wrongs) impacted and advanced or denied through policy, legislation and caselaw.

Dr. Helen Pringle returns to the 1972 *Sierra Club case* in the United States Supreme Court,¹⁹ considering the philosophical dimensions encapsulated in ‘do trees have standing’ and reminding readers of the environmental activism of the 1970s that advanced Earth rights into the political and legal arenas.²⁰ Dr. Lupwana Kandala and Dr. Monica Maghami consider, respectively, in ‘Contemporary International Environmental Law ...’ and ‘New Global Governance ... Reimagining the Rule of Law ...’ the precautionary principle in environmental litigation, and the impact of AI (artificial intelligence) and ESG (Environmental Social and Governance)²¹ on the rule of law in legal analysis and practice instituted around the issues of global warming and climate change. Drs. Philip Odiase and Opeymi Omotuyi in ‘Sustainable Development and Eradication of Poverty ...’, Luella Figueira in ‘A Case for the Human Rights Approach to Climate Change ...’, and Drs. Luwana Kandala and Odimegwu Azibuike in ‘Tourism at the Crossroads in the Age of Climate Change ...’ address the environmental question in the context of particular countries—respectively Nigeria, India, and South Africa—looking variously at the combined effects of poverty and climate change; at real or potential human rights violations inherent in the environmental and biodiversity emergencies; and at environmental consequences arising out of the tourist industry. Finally, in ‘Regenerative Urbanism ...’, Dr. Nan Ellin, architectural planner and Professor of Urban Design, considers the SDGs (Sustainable Development Goals)²²

¹⁹ *Sierra Club v. Morton* | 405 U.S. 727 (1972) | Justia U.S. Supreme Court Center (accessed 1 October 2024); Environmental Law, Standing, and the History of the Sierra Club v. Morton: Professor Angela Fernandez | University of Toronto Faculty of Law (accessed 1 October 2024).

²⁰ *Sierra Club v Morton* (n20); Environmental Law (n20).

²¹ Sustainability and ESG courses for professionals | Sustainability Unlocked (accessed 1 October 2024); What is Environmental, Social, and Governance (ESG)? | IBM (accessed 1 October 2024).

²² THE 17 GOALS | Sustainable Development (accessed 1 October 2024); 21252030 Agenda for Sustainable Development web.pdf (accessed 1 October 2024).

highlighting their relevance to urban planning and thereby alerting lawyers engaging in environmental litigation to possible avenues of expert evidence. The burgeoning field of climate change litigation covered here in various perspectives provides a rich field for human rights counsel, academics and activists.

COMMENTARIES – CASE NOTES AND SHORTER ARTICLES

Case notes come from the United Kingdom, Australia, and the United States, providing insights into legal developments in criminal law, human rights (potentially involving constitutional law), and freedom of religion in constitutional law. Professor Dennis J Baker’s review of ‘dishonesty’ in theft covers the passing of the Ghosh test (*R v Ghosh*)²³ by the adoption in criminal law of the structuring of the law of dishonesty via the civil law test in *Ivey v Genting Casinos*²⁴ and how this has been addressed in *R v Barton*.²⁵ Legal practitioner Anna Kerr ponders ‘what is a woman’ as deemed by the Federal Court of Australia in *Tickle v Giggle*,²⁶ a case revolving around whether or not a transgender person is entitled to access an App designed for women. This case is now on appeal and likely to exercise, ultimately, the minds judges of the Australian High Court. What consequences it will have for jurisprudence there and, perhaps, elsewhere, awaits events. Adjunct Professor Stephen Pitt-Walker, Fellow of the Governance Institute of Australia, explores the separation of church and state through the *American Legion, et al v American Humanist Association, et al*²⁷ (‘the Cross case’), considering the ‘neutrality test’ and the *Lemon* principle²⁸ developed to determine whether government action or a law breaches the establishment clause of the First Amendment to the US Constitution. Addressing philosophical and jurisprudential arguments, Pitt-Walker concludes that the adoption of a tenuous ‘contextual historical justification’ to support a movement away from the neutrality principle is ill-founded.

The shorter articles in this Commentaries and Case Notes section of the Denning include pieces by Dr. Grace Atsegwasi, Reem N Alhassan, and Noora K

²³ *R v Ghosh (Deb Baran)* [1982] EWCA Crim 2; [1982] QB 1053; [1982] 3 WLR 110.

²⁴ *Ivey v Genting Casinos (UK) Ltd (t/a Crockfords Club)* [2017] UKSC 67.

²⁵ *R v Barton* [2020] 2 CrAppR 7.

²⁶ *Tickle v Giggle for Girls Pty Ltd (No 2)* [2024] FCA 960 (23 August 2024) (austlii.edu.au) (accessed 1 October 2024).

²⁷ *American Legion, et al v American Humanist Association, et al* No. 17–1717, 588 US (2019).

²⁸ *Lemon v Kurtzman* 403 U.S. 602 (1971); *Lemon v. Kurtzman I* (1971) | The First Amendment Encyclopedia (accessed 1 October 2024).

Alshaibani. Dr. Atsegwasi, reflecting on the situation in Nigeria, in ‘The Economic Perspective of the Law of International Institutions’ draws attention to the way in which international institutions may play an unintended role in the ‘widening [of] the gap between the rich and the poor nations’. As she observes, nations seek ‘socio-economic and political benefits’ through belonging to international institutions, looking toward ‘a harmonised system of mutual independence’. Yet does this truly advantage ‘developing’ nations? Alhassan and Alshaibani, Dedicated Police Officers in the Ministry of the Interior, Bahrain and PhD Research Students at the University of Huddersfield, presented ‘Incarcerated Women’s Right to Health ...’ and ‘Implementing Alternative Sentencing in the Criminal Justice System ...’ in the human rights section of the University of Buckingham International Conference on Sustainability and Human Rights. Alhassan contemplates the gap in provision of health services in women’s prisons, arising out of but not excused by the lesser numbers of women incarcerated. This fits well with Alshaibani’s article in its focus on alternatives to imprisonment: that women are more likely to be imprisoned for less serious crimes²⁹ than their male counterparts should lead, inevitably, to a focus for women on alternatives. As Alhassan concludes, the disjunction between policy and reality requires focused attention with focused outcomes. Is the issue better provision of health services for women in prison—undoubtedly essential; or more attention paid to community service, weekend detention, probation or suspended sentences as explored by Alshaibani? The latter approach might be essential in current times in the United Kingdom and elsewhere, where prison figures are rising,³⁰ and particularly when the newly elected United Kingdom government, upon taking office in July 2024,

²⁹ Women and the Criminal Justice System 2021 - GOV.UK (accessed 1 October 2024); Ministry of Justice, *Statistics on Women and the Criminal Justice System 2021 – A Ministry of Justice publication under section 95 of the Criminal Justice Act 1995*, National Statistics, published 24 November 2022, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1119965/statistics-on-women-and-the-criminal-justice-system-2021.pdf (accessed 1 October 2024); Women in prison | Prison Reform Trust (accessed 1 October 2024); Women in Prison - Justice Committee (accessed 1 October 2024).

³⁰ Prison_Population_Projections_2023_to_2028.pdf (accessed 1 October 2024); Prison population growth: drivers, implications and policy considerations - POST (accessed 1 October 2024); prison_the_facts_2023.pdf (accessed 1 October 2024); Prison populations continue to rise in many parts of the world, with 11.5 million held in prisons worldwide — Birkbeck, University of London (accessed 1 October 2024).

immediately announced that prison overcrowding required early release for droves of prisoners.³¹

BOOK REVIEWS

The climate change theme of earlier articles is reflected in the first of three book reviews. Industrial waste is a continuing feature of community concern, as in the Love Canal scandal: a canal originally intended to generate cheap fuel for a new township on the banks of Niagara Falls turned into a ‘municipal and industrial chemical dump site’ for ‘hazardous waste disposal’ covered over and ‘sold to the city for one dollar’, with homes and a school built on land generating ‘puddles of noxious substances’, a ‘small sea of chemicals’, air with a ‘faint, choking smell’, birth defects, ‘a disturbingly high rate of miscarriages’, children ‘returning from play with burns on their faces and hands’ and, eventually, in August 1978 President Carter announcing emergency aid and New York Governor Carey proposing a plan to purchase the entire neighbourhood.³² Yet it doesn’t end there. Despite the passage of ‘the Clean Air and Water Acts, the Safe Drinking Water Act, the Pesticide Act, the Resource Conservation and Recovery Act, the Toxic Substances Control Act ...’³³ some 40 years later, the Flint River scandal erupts, toxicity in drinking water coming from industrial waste, ‘foul-smelling, discoloured, and off-tasting water piped into Flint homes for 18 months ... causing skin rashes, hair loss, and itchy skin ...’³⁴ The provocative title *Superman’s Not Coming Our National Water Crisis* ... heads the book written by Erin Brockovich (of environmental advocacy and film fame where she was played by Julia Roberts)³⁵ and Suzanne Boothby, and reviewed by Dr. Robin R Joyce. In her review, Joyce canvasses the book and its authors’ (particularly Brockovich) activism generating federal government action to mitigate the ravages being wrought by industry overreach and failure to comply with environmental law and policy. Joyce incorporates Biden-Harris initiatives that may ameliorate the damage done and anticipated by

³¹ Government plans to ease prison capacity pressure and manage the needs of vulnerable prisoners - House of Lords Library (accessed 1 October 2024); The crisis in prisons | Institute for Government (accessed 7 July 2024); More prisoners freed early to ease overcrowding - BBC News (accessed 1 October 2024); New change to some offenders’ automatic release dates - GOV.UK (accessed 1 October 2024).

³² The Love Canal Tragedy | About EPA | US EPA (accessed 1 October 2024).

³³ The Love Canal Tragedy (n32).

³⁴ Melissa Denchak, ‘Guide – Flint Water Crisis ...’, *NRDC*, 8 October 2024, Flint Water Crisis: Everything You Need to Know (accessed 8 October 2024).

³⁵ Erin Brockovich (2000) - IMDb (accessed 1 October 2024).

Superman's Not Coming ..., ending on a more positive note of hope than that conveyed in Brockovich and Boothby's conclusion. It is instructive that 'water crisis' lies at the heart of the book, for it is this that is exercising the newly elected UK government in its launching a review of the water sector and establishing an independent commission to undertake the review and establish sector regulation.³⁶

The review article contributed by Dr. Jocelyne A Scutt, studying two slight volumes: *Women and Crime ...*, and Nigel Cawthorne's *Virginia Giuffre ...*, and a third rather more substantial work (by journalist and lawyer Lucia Osborne-Crowley) addressing in substantive terms Ghislaine Maxwell's trial, *The Lasting Harm*, considers the devastating force of the power and control exercised over the young women – girls, really – who were caught in the web woven by the Maxwell-Epstein double act. Osborne-Crowley illuminates through reportage on every day of the Maxwell trial, conversations with the victim/survivors now grown women who were called as principal witnesses and some who were not, and an interview with the juror who brought Osborne-Crowley the scoop that led to a 'trial' post the trial – he had not disclosed that he had suffered sexual exploitation and abuse in his childhood or youth. The title is apt: the harm inflicted on all the young women and girls sexually used and abused by Epstein and Maxwell is forever. As Osborne-Crowley says, it is 'lasting'. Though young women survive, making something of their lives, some more so than others, the inexcusable harm remains tangible, solid, real. They, like all of us, have one life and one life only. They do what they can, some more resilient in rising from the dark, yet the unforgivable remains, waiting for a release that refuses to come. So it is that all three books give insights into women in the criminal justice system as victim/survivors and as offenders – beginning with Cesare Lombroso's work with his co-author and researcher W Ferrero considered in *Women and Crime*, a regressive stereotyping of women as offenders, then moving to victim/survivors in *Virginia Giuffre* and combining the two in *The Lasting Harm* in considering Ghislaine Maxwell on trial and the principal witnesses who suffered exploitative sexual abuse at her and Jeffrey Epstein's hands. The latter conveys not only 'lasting harm' but a lasting impression of wrongs done that must be righted and, as Osborne-Crowley says, not finished, not over, yet. Responsibility lies in higher repositories of power.

This issue of the Denning appropriately concludes with the review by Elizabeth Robson Taylor and Phillip Taylor, MBE of the book by Charles Stephens recounting and appraising *The Jurisprudence of Lord Denning ...* The review of Vols 1 ('Fiat Justitia' and the common law), II ('Lord Denning's Englishry and the Law')

³⁶ Governments launch largest review of sector since privatisation - GOV.UK (accessed 24 October 2024).

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and III ('Freedom under the Law ...') ends appropriately on Lord Denning's sitting as Master of the Rolls from 1962–1982, for this is the post in which he is most well-remembered by lawyers and law students like.

As Senior Teaching Fellow of the University of Buckingham Law School from 2014 to 2024 I am pleased to end my teaching in law at Buckingham as Editor of the Denning Law Journal, so now returning to the Bar to practice in England and Wales and resume practice in all Australian jurisdictions. Academe provides lawyers with great opportunities for engagement with aspiring lawyers, whom one hopes will go forth into the legal world combining excellent legal training with the creativity of a good legal imagination. This is, of course, the best combination, providing the profession with the best lawyers, the best legal minds. I hope to have inspired students to strive for excellence in law and in their careers in the legal world or associated spheres of aspiration and endeavour. Thank you to the University of Buckingham, the Law School, and in particular Professor Susan SM Edwards, now Emerita, who was Dean when I first joined, and to Professor Adolfo Paolini, Dean, for their support and appreciation of my contribution. I appreciate them and all my colleagues, academic and administrative, for 10 years spent well.

Dr. Jocelynne A. Scutt
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