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Foreword

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The seventeenth issue of *The University of Notre Dame Australia Law Review* contains an interesting collection of seven articles and a case note on diverse areas of the law.

In the first article, 'Stemming the Tide of Aboriginal Incarceration', Miriam Kelly and Hilde Tubex point out that Western Australia's prison population has the highest rate of Aboriginal over-representation in Australia. They note that research on the criminogenic effect of imprisonment suggests that the use of imprisonment as a deterrent to future offending is not empirically supported and that imprisonment may in fact contribute to further offending. The article explores theoretical debates surrounding penality as a way to inform alternative crime control strategies to imprisonment. The authors assert that any strategy to reduce Aboriginal imprisonment rates could benefit from a perspective that views Aboriginal imprisonment as a manifestation of Aboriginal resistance to settler colonial dominance.

The second article by James Mansfield, 'Extraterritorial Application and Customary Norm Assessment of Non-Refoulement: The Legality of Australia's "Turn Back" Policy', considers whether the Commonwealth Government's border protection policy of turning back asylum seeker boats breaches its international obligation not to *refoule* refugees imposed under art 33(1) of the *Refugee Convention*. In addressing this issue, Mansfield examines whether art 33(1) applies extraterritorially and whether a similar obligation has become embedded in customary international law.

In the next article, 'Internal Policing of the Enduring Issue of Racism in Professional Team Sports', Chris Davies and Neil Dunbar consider the issue of racism in professional team sports. They discuss cases from Australian, English and European sport which indicate that internal regulations appear to be effective in dealing with racism issues in those sports. They suggest that while banning spectators who have been identified as having made racist comments is important, it is the education of culprits (whether it be a player, manager, spectator or official) that is essential.

In the next article, 'Judicial Activism and Arbitrary Control: A Critical Analysis of Obergefell v Hodges 566 US (2015) – The US Supreme Court Same Sex Marriage Case', Augusto Zimmermann discusses the issue of same-sex marriage through a critical analysis of the recent US Supreme Court decision in *Obergefell v Hodges*. In his view the court in *Obergefell* put a stop to the democratic process by removing an important issue from the realm of democratic deliberation. He asserts that the judges have imposed their worldview on the people at the expense of federalism and the democratic process. He argues that such an exercise of raw judicial power usurps the constitutional right of the people to decide whether to keep or alter the traditional understanding of marriage, adding that it evinces the deep and perhaps irremediable corruption of the American legal culture's conception of constitutional interpretation.

In Mariette Brennan's article, 'Is the Health Star Rating System a Thin Response to a Fat Problem? An Examination of the Constitutionality of a Mandatory Front Package Labelling System', the author discusses Australia's implementation of a new front package labelling system for packaged food products. In discussing Australia's obesity epidemic that has given

rise to a need for front package labelling, she examines the constitutionality of mandatory front package labelling requirements. She argues that as the Commonwealth Government has the requisite jurisdiction to make the system mandatory, it should forego voluntary implementation in favour of a mandatory system.

In his article, Keith Thompson raises the following question, 'Should 'Public Reason' developed under US Establishment Clause Jurisprudence Apply to Australia?' The article reviews Rawls' idea of public reason against its US legal context and suggests it was a response to US Supreme Court decisions concerning the First Amendment. Thompson argues that although our framers copied most of that clause into the *Australian Constitution*, the High Court has interpreted it completely differently. He therefore concludes that Rawls' idea of public reason does not fit in a Westminster democracy tied to parliamentary sovereignty rather than judicial review.

Zamaris Saxon and Lara Pratt examine in their article, 'From Cause to Responsibility: R2P as a Modern Just War', the relationship between just war theory and the modern principle of responsibility to protect (R2P). Their core message in the article is that the debates about R2P suggest that rather than view R2P as a new principle of international law, it should be viewed as a modern incarnation of the historic principles of just war.

Brittany Cherry's case note discusses the High Court case of *Brookfield Multiplex Ltd v Owners Corporation Strata Plan 61288* (2014) 313 ALR 408, which examined the builder's concurrent liability for breach of contract as well as for negligence in tort for pure economic loss for latent defects in the common property of a serviced apartment.

I trust our readers will enjoy the interesting mix of contributions in this issue of *The University of Notre Dame Australia Law Review*.

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