

## SYMPOSIUM

### THE CONSTITUTION AND MILITARY JUSTICE

In February 1989, the High Court of Australia handed down its decision in *Re Tracey; Ex parte Ryan*<sup>1</sup> in which several provisions of the Commonwealth Defence Force Discipline Act 1982 were held to be invalid. In so doing, the High Court addressed a number of significant issues of constitutional law. These included the nature of military-courts martial established pursuant to section 51(vi) of the Australian Constitution, whether such bodies exercised the judicial power of the Commonwealth, and whether the Commonwealth could exclude state courts from exercising criminal jurisdiction over defence personnel where similar matters were the subject of court-martial proceedings. These issues were analysed against an historical background of the development of fundamental constitutional principles by which the sometimes troublesome relationship in the United Kingdom between the defence force and the civil courts and civil authority came to be regulated.

Regrettably, such was the diversity of opinion displayed in the various judgments that no clear ratio can be distilled from the case. It must rank as one of the least satisfactory of recent High Court decisions.

Nevertheless, given the importance of the issues presented for decision, and because the case dealt with a rarely explored (in present times) but important area of law, namely military justice, the Law School of the University of Western Australia took occasion to hold a seminar, in conjunction with Western Australian members of the Defence Force legal panels, to discuss the issues.

1. (1989) 166 CLR 518.

Since some members of the High Court had regard to the way in which the United States Supreme Court has dealt with similar problems arising in a comparable constitutional setting, the seminar commenced with a paper discussing the United States' military justice system and the guidance it provided for Australia. This was given by a commentator on United States military law, Professor Donald Zillman of Utah University. Other papers and comments were delivered by Australian commentators.

Those papers and comments given by Mr David Fine, Dr James Thomson and Mr Peter Johnston (all associated with this Law School), and Mr Stephen Gageler of the Sydney Bar are published in this issue together with Professor Zillman's paper.