

Dear Friend,

Welcome to the newsletter of the Gilbert + Tobin Centre of Public Law at the conclusion of a particularly successful and active six months.

The Centre won major competitive funding from the Australian Research Council in November to support two of its research projects. At the beginning of the month, the second phase of the Federalism Project was awarded \$215,000 over the next three years in a Discovery grant obtained by me and Professor George Williams. This will enable further study of the public law dimensions of Australia's co-operative intergovernmental institutions, including comparative work with respect to the Canadian system.

Just days later, the ARC announced the names of Future Fellows for 2011-14. Of the six recipients of this highly prestigious award of both position and project funding in the research field of Law, it is worth noting that three have strong links to the Centre. Professor Jane McAdam, the Director of our International Refugee and Migration Project, obtained \$815,000 to support her ongoing work on climate-change induced displacement in the Pacific region. Regular readers of these newsletters will have noted earlier milestones in Jane's rapid development of an international reputation in this area. Her success in being awarded the Fellowship was yet further confirmation of the quality of her contributions to both scholarly and high-level policy debates about this significant problem.

Additionally, two former UNSW colleagues, Professor Ben Saul, a Centre Associate and previously Director of the Charter of Rights Project, and Professor Katharine Gelber, a visitor to the Centre for all of 2008 and friend to us since establishment, were both awarded Fellowship funding. We congratulate them also on this recognition of their research leadership.

Over the second half of 2012, the Centre has held a diverse range of interesting events all of which are described in greater detail within. The major event was undoubtedly the two day 'Climate Change and Migration in the Asia-Pacific: Legal and Policy Responses' Conference at New South Wales Parliament House. As conference convenor, Jane McAdam brought together a great number of international speakers and participants for a truly interdisciplinary gathering. A full webcast of this event is available on the Centre website.

Greg Weeks was the driving organisational force behind September's 'Administrative Law and Human Rights' half-day seminar on campus. The large audience enjoyed a focused series of papers, led off by Centre Visitor, Associate Professor Matthew Groves from Monash University, and followed by leading practitioners, all of whom were able to incorporate discussion of the High Court's recent decision in the important case of *Momcilovic v R*. Additionally, in December the Centre co-hosted both a workshop for postgraduate students at Oxford University and a round-

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2012 Constitutional Law Conference and Dinner

Our next Constitutional Law Conference and Dinner will be held on 17 February 2012. Our special guest speaker for the Conference Dinner is the Hon James Spigelman AC QC



Sean Brennan and Professor Andrew Lynch celebrate the Faculty’s 40th anniversary with colleagues in the Australian Human Rights Centre, Justine Nolan and Associate Professor Andrea Durbach



up of recent developments in constitutional courts featuring speakers from three overseas jurisdictions at the Federal Court of Australia in Sydney.

In the midst of all this activity, or perhaps as a result of it, the Centre continues to grow. In the last issue, George Williams reported the appointment of Drs Jessie Blackbourn and Svetlana Tyulkina as postdoctoral researchers under the Anti-Terror Laws and the Democratic Challenge Project. Both scholars have now arrived and have quickly settled in to academic life in the Centre. Coming from the United Kingdom and Russia respectively, they are taking a little longer to adjust to the idea of Christmas in an Australian summer! You can read more about them in their own words inside.

Congratulations are due to Dr Paul Kildea, Director of the Centre’s Federalism Project and Co-director of the Referendums Project, and Leon Terrill, a PhD candidate in the Centre, on their recent appointment to full-time positions in the Faculty of Law. Paul and Leon will continue their involvement in the work of the Centre in their new capacity as Faculty colleagues. Paul is also thanked for his excellent management of the Federalism Project over the last three years, which has been incredibly productive and made a clear impact on contemporary debates in this area.

Congratulations also to Wenwen Lu, whose Master of Laws dissertation was supervised by me and Professor Andrew Byrnes and was passed by examiners in September. But as one postgraduate student of the Centre moves on, others arrive. Jackie Hartley has begun doctoral research with Sean Brennan and Professor Megan Davis on indigenous rights to land and resources, and we also welcomed Tamara Wood whose topic of refugee definition under the 1969 African Convention is being supervised by Jane McAdam.

The Centre has greatly enjoyed having Assistant Professor Rosalind Dixon working with us over the last six months. Rosalind, who last visited the Centre in 2006 and is a UNSW alumnus, holds a position at the esteemed Law School at the University of Chicago. In her time with us, Rosalind has been an enthusiastic and generous contributor to the Centre’s intellectual life. She has been acting as the Director of our Charter of Rights Project as well as organising the comparative constitutional law seminar mentioned earlier. We look forward to continuing to work with her into the first half of 2012.

Lastly, 2011 marked the 10th anniversary of the Centre’s establishment. We thank Gilbert + Tobin, and particularly Mr Danny Gilbert, for their ongoing support of the work that the Centre carries out. This milestone coincided with the celebrations for the Faculty’s 40th anniversary. At the Conference dinner back in February, I remarked that the Centre is very much an embodiment of the UNSW Law School ethos – and that it was a mistake to think it might exist in essentially the same form at any other institution. In that sense, the Centre owes much of its success to our colleagues in the Law School generally, from whom we draw stimulation, encouragement and support. At the start of our second decade (and the Faculty’s fifth) it is worth acknowledging that fact with much appreciation.

Andrew Lynch
Director

CENTRE ACTIVITIES

Administrative Law and Human Rights Seminar



Peter Garrison, Solicitor-General for the ACT, Dr Melissa Perry QC and Centre Member Greg Weeks at the Administrative Law and Human Rights Seminar

...while the balance between security and justice is currently the subject of serious government attention, on the heels of several years of judicial development, in the United Kingdom, in Australia these questions appear more settled – or perhaps, simply more dormant.

Andrew Lynch, Tamara Tulich and Rebecca Welsh, 'Secrecy and Control Orders: The Role and Vulnerability of Constitutional Values', *Secrecy, National Security and the Vindication of Constitutional Law*, 2 December 2011



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On the unseasonably warm afternoon of 16 September 2011, the Centre hosted a half-day seminar on Administrative Law and Human Rights. The audience was treated to three extremely interesting papers. The first was given by Associate Professor Matthew Groves of Monash University, who had spent the previous fortnight as a visitor to the UNSW Law School. Matthew gave a paper called 'Statutory Judicial Review and Human Rights' which considered the difficulties which would ensue if the *Administrative Decisions (Judicial Review) Act 1977* (Cth) were to require decision-makers to take account of specific human rights instruments in the course of exercising their statutory functions.

The second paper was given jointly by Dr Melissa Perry QC and Dr Kristina Stern (now SC, we are delighted to report!). Melissa and Kristina had appeared as counsel before the High Court in *Momcilovic v R* and they gave a detailed but thoroughly accessible account of the issues at stake in that complex litigation and commented on the High Court's findings in relation to the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

The final paper was given by Peter Garrison, the Solicitor-General of the ACT, and Nathan Hancock of the ACT Government Solicitor. It was set against the background of the ACT Government's inquiry into whether explicit protection of economic, social and cultural rights should be included in the *Human Rights Act 2004* (ACT) but considered at length the more practical aspects of a government's respect for human rights and made the argument that best practice government decision-making already takes account of a wide range of human rights regardless of a compulsion to do so.

The day was a thorough success and those in attendance reported that they greatly enjoyed it. The only disappointment was the enforced absence of the Solicitor-General of the Commonwealth, Stephen Gageler SC, over whose time the government exercised its prior claim. Mr Gageler had kindly agreed to chair the event and was replaced in that role by the Centre's Greg Weeks.

Our thanks to all involved for taking part in an entertaining, thought-provoking and (above all things, as it transpired) timely seminar.

Climate Change and Migration in the Asia-Pacific Conference

A presentation entitled 'Premature evacuation' is sure to attract attention. Professor Jon Barnett's paper, which examined issues of time, choice and power in decisions by Pacific communities to relocate from the impacts of climate change, was one of over 20 rich and engaging presentations which captured the minds of attendees at the conference 'Climate Change



Climate Change Conference Speakers:
Ms Anita Jowitt, University of the South Pacific, Associate Professor John Campbell, University of Waikato; Professor Brian Opeskin, Macquarie University; Professor Jon Barnett, University of Melbourne; Mr Gil Tabucanon, Macquarie University

and Migration in the Asia-Pacific: Legal and Policy Responses', held at NSW Parliament House on 10–11 November.

The conference wove together a fascinating array of multi-disciplinary analyses of the phenomenon of climate-related movement in the Asia-Pacific region. Presentations traversed both big, conceptual issues – how do we understand climate 'displacement'? What normative frameworks apply? What is the role of refugee law, human rights law, environmental law, and the law of the sea? – and detailed fieldwork-based analysis of particular communities in Tuvalu, Kiribati, Papua New Guinea, the Maldives, and Bangladesh.

Specialists in their respective fields (including law, geography, psychology, and international relations) travelled from all around the world to take part. Speakers included academics, government officials from affected countries, and representatives of international organizations. Participants delighted in the richness of discussions, and the unexpected connections between different disciplines.

Podcasts of all the sessions are available on the conference website: <http://www.gtcentre.unsw.edu.au/events/climate-change-and-migration-asia-pacific-legal-and-policy-responses>. Media reports, including a two-part series on *The Law Report* on ABC Radio National, are also available for download there.

The conference was part of the International Refugee and Migration Law Project and organised by Project Director Jane McAdam. Thank you very much to the Australian Research Council for funding the conference, and the Hon Trevor Khan MLC for hosting it. An enormous thank you goes to Centre Administrator, Belinda McDonald, for her outstanding assistance. Thanks are also due to the student volunteers who assisted on the two days of the conference: Fiona Chong, Angela Kintominas, Sean Lau, Maria Nawaz, and Zulpha Styer.

Anti-Terror Laws & Preventive Justice Postgraduate Workshop

On 5 December, the Centre co-hosted a workshop in which its own PhD students working under Professor George Williams' Laureate Fellowship Project on Anti-Terror Laws and the Democratic Challenge discussed their research with students at the University of Oxford who are completing their studies in the same field. Our co-host was Professor Lucia Zedner, Professor of Criminal Justice, Law Fellow at Corpus Christi College and a Member of the Centre for Criminology, University of Oxford. Lucia is also a Conjoint Professor in the Faculty of Law at UNSW.

The papers were arranged around key themes, including inchoate liability, control orders and preventative detention, immigration and citizenship, and the intersection of security and rights. Discussion was undoubtedly enriched by the fact that the Oxford students came from a variety of jurisdictions, including Canada, Poland, South Africa and Denmark. The students involved from the Centre were Tamara Tulich, Rebecca Welsh, Sangeetha Pillai and Keiran Hardy. Keiran had been based at Oxford since October, working on his thesis under Lucia's supervision, and took the central role





Associate Professor John Campbell, University of Waikato, speaking at Climate Change Conference

in organising the event down to the smallest detail. In addition to George and Lucia, the staff of both universities who contributed to the discussions were Professor Andrew Ashworth and Dr Patrick Tomlin from the University of Oxford and, from UNSW, Dr Fergal Davis and Professor Andrew Lynch.

At the Christmas-themed dinner which followed the day's formal program, the consensus from all participants was that the discussions had been constructive, insightful and stimulating. We thank our new friends amongst the postgraduate cohort at Oxford and also Lucia and her colleagues whose participation ensured the success of this event.



Centre PhD Student Sangeetha Pillai with Oxford candidate Ana Aliverti at the Anti-Terror Laws and Preventative Justice Postgraduate Workshop

Comparative Constitutional Law - Final Courts Round-up 2011

On 13 December, the Centre co-hosted an evening seminar with the NSW Chapter of the Australian Association of Constitution Law. The event was billed as a 'Final Courts Round-Up' and brought together a distinguished trio of academic visitors to offer an assessment of recent constitutional developments in their home jurisdictions of Canada, New Zealand and the United Kingdom. The speakers were, respectively, Assistant Professor Yasmin Dawood (University of Toronto), Professor Andrew Geddis (University of Otago) and Professor Tom Poole (London School of Economics). They each reported on major constitutional cases argued or decided in the last year (or thereabouts); reflected on the significance of any changes in the composition and politics of each country's highest court; and flagged the state of debate over constitutional reform or other significant legal developments in areas with a strong public law dimension such as immigration, prisoner rights and national security. In the wake of the High Court's decision in *Momcilovic v R*, in which there was much discussion about the various models of human rights protection in these same three jurisdictions, a fair amount of time was spent on the interpretative principles applied in respect of bills of rights – which was not just highly topical but also most illuminating.

Moderating the discussion was Assistant Professor Rosalind Dixon, visiting the Gilbert + Tobin Centre for a year from her home institution of the University of Chicago. Rosalind is a renowned comparative constitutional law scholar and the event was her brainchild. Thanks are also due to Dr Christos Mantziaris from the Sydney Bar, and the Convenor of the NSW Chapter of the AACL. Christos was enthusiastic about the proposal when we took it to him and we look forward to further possible collaborations with the AACL of this sort in the future.

The activism debate is more about ideology than fair and accurate criticism of the High Court. An accusation of 'activism' can reveal more about the person making the claim than about the High Court.

George Williams 'When the Umpire Takes a Stand'
Sydney Morning Herald (12 November 2011).



CENTRE COMMENT

Will there be a referendum for the constitutional recognition of local government after all?



Centre Director,
Professor Andrew Lynch

As Australians enjoy the traditional diversions of January – the beach, cricket and festivals – it is understandable that their thoughts will not dwell on the topic of local government. To the extent local councils even cross their minds, it is a safe bet they are not thinking about constitutional reform at the same time.

This is just one of several serious obstacles facing the proposal to hold a referendum before the next Commonwealth election in 2013 to amend our Constitution by providing ‘recognition’ to local government.

Just before Christmas, the Expert Panel on Constitutional Recognition of Local Government, headed by retired New South Wales Chief Justice, James Spigelman AC QC, delivered its final report to the Gillard government. The Panel had been set up to gauge the level of community support for changing the Constitution – which currently makes no reference at all to local councils as a form of government in this country. It was also asked to report on options for the actual form that any change might take.

Although a majority of panel members did conclude that there was a ‘viable option’ for altering the Constitution with respect to local government by 2013, overall it must be said that the Panel’s prognosis for successful constitutional change is pretty bleak. Its polling of the community showed ‘at this time, only limited public support’ for recognition of local government. Both the idea itself and the importance of pursuing it via referendum struggled to reach a nationwide approval of more than 30%. Although the breakdown differs across State lines, only in Queensland was there greater than 50% support.

When we examine the forms that constitutional change might take, the difficulties become manifest. Symbolic recognition of local government – presumably through inclusion in a new preamble – was seen as dependent on wider constitutional reform and of little value as a stand-alone option.

The Panel reported strong resistance across the political spectrum at the State level and also from the Federal Coalition to any reform geared towards ensuring the democratic legitimacy of local government by constitutionally guaranteeing their status as elected bodies. Although the election of local government is currently provided for by laws of each State, there was a concern that State governments should retain the ‘ability to manage and reform local councils’. The need to appoint administrators to run the Wollongong City Council in recent times serves as a strong example.

Amendment that would secure the financial position of local government in Australia’s federal system is the most significant proposal – and it was this that a majority of the panel were prepared to advise the government was ‘viable’. As a result of the 2010 High Court decision in *Pape v Commissioner of Taxation*, a major question mark hovers over the validity of Commonwealth direct grants to local councils. There is much to be said for using any referendum on local government to clarify the legal position of these



payments. The Panel voiced the opinion that the community would be likely to respond favourably to a proposal which appeared geared towards addressing a perceived problem.

However, this reform option remains hopelessly contentious. Although it comprises the main plank of the Australian Local Government Association's push for change, and would appear to be in the interests of both parties at the Commonwealth level, it seems hard to see the States wearing it.

Their fear is that the Commonwealth, armed with express constitutional authority to deal directly with local councils on any subject it wishes, will happily bypass the States, thus further unbalancing our lop-sided federal system. Under the Constitution, change requires not just a majority of voters but also a majority of States voting 'Yes'. Experience shows that State support for the referendum proposal is vital.

Recognising this, the majority of the Panel who were prepared to endorse this option did so subject to the condition that the Commonwealth put in the necessary spadework to get the States to support – or at least, not oppose – financial recognition of local government. That is likely to prove quite a tall order if the States hold to the views they expressed in submissions to the panel, which can hardly be described as effusive for the prospect of financial recognition.

In part, this must explain the fact that not all members of the panel were able to agree that pursuing *any* form of constitutional recognition of local government was 'viable'. But it appears that the primary stumbling block for those members was the depth of public indifference generally.

The Panel's consultations were conducted alongside those of the Expert Panel on Constitutional Recognition of Indigenous Australians. The latter will release its report in the middle of this month. Based on the public comments of several of its members, it is anticipated that Panel will provide the government with a very strong case for a referendum to improve the constitutional position of First Australians. It would be most surprising if it shared the wary pessimism of the Local Government report.

To an extent, this simply reflects our constitutional history. In 1967, an overwhelming 90% majority of the Australian electorate supported a change they believed was to the advantage of Aboriginal Australia. But two attempts to amend the Constitution by the inclusion of local government have failed dismally – in 1974 and 1988.

As the report of the Expert Panel on this question shows, Australians' lack of interest in constitutional reform around local government is not confined to just the hazy days of summer. It is something on which they continue to place a low value generally.

There is no political gain, and indeed much to lose, in conducting expensive referendums on issues that lack strong public support. While the Gillard government displayed gritty determination on several unpopular issues over 2011, it would be very surprising if it felt that promoting local government in the Constitution was a fight worth having in 2012.

Professor Andrew Lynch



CENTRE PEOPLE

Dr Svetlana Tyulkina



Centre Postdoctoral Fellow
Svetlana Tyulkina

I am a Postdoctoral Research Fellow on the Australian Research Council Laureate Fellowship: Anti-Terror Laws and the Democratic Challenge Project in the Gilbert + Tobin Centre of Public Law.

Prior to joining UNSW I was a PhD student at the Central European University, where I completed my doctoral thesis entitled 'Militant Democracy'.

I am currently working on the topic of terrorism and constitutional changes as a part of a bigger project to be devoted to the problem of accommodating the so-called 'war on terror' within the boundaries of constitutional normalcy. While working on this project I recently visited two Spanish Law Schools – at the Pompeu Fabra University (Universitat Pompeu Fabra) where I presented a paper 'Terrorism and Constitutional Changes: Lessons from Spain', and the Autonomous University of Madrid (Universidad Autónoma de Madrid).

Dr Jessie Blackbourn

Prior to taking up my position as Postdoctoral Research Fellow on the Australian Research Council Laureate Fellowship: Anti-Terror Laws and the Democratic Challenge Project within the Gilbert + Tobin Centre of Public Law, I was lecturer in Terrorism and Security Studies at the University of Salford in the UK. I have a PhD from the School of Politics, International Studies and Philosophy at Queen's University Belfast, where I wrote my thesis on the security normalisation of post-Troubles Northern Ireland in the context of the normalisation of exceptional powers in the whole of the UK since the 2001 terrorist attacks on the USA.

My current research focuses on two aspects of terrorism legislation: the application of terrorism laws in the UK; and the post-enactment review of terrorism laws in the UK. I am also currently co-editing a special issue of the journal *Critical Studies on Terrorism* on the past decade of terrorism and counter-terrorism.



Centre Postdoctoral Fellow Jessie Blackbourn



CENTRE VISITOR

Matthew Groves

I was invited by the Gilbert + Tobin Centre as a visitor during September 2011, during a break from my teaching in the Law Faculty at Monash University. I must thank the Gilbert + Tobin Centre for its invitation and Greg Weeks especially, who arranged my visit and ensured that it was a very enjoyable and productive time.

I spent my visit researching on administrative law and human rights. This issue was very timely. During my visit the High Court delivered its first decision on the Victorian Charter of Human Rights and Responsibilities (*Momcilovic v R*) and the Court of Appeal of Victoria delivered a decision on the interaction between the remedies under the Victorian Charter and judicial review (*Director-General of Housing v Sudi*).

I delivered a paper titled 'Statutory Judicial Review and Human Rights' at the Centre's half-day seminar on 'Administrative Law and Human Rights'. The intersection between human rights and judicial review is a topical issue because the Commonwealth Administrative Review Council and the New South Wales government are considering reforms to judicial review. My paper was greatly informed by the Centre's meeting of staff and postgraduate students to discuss the *Momcilovic* case a few days after it was handed down, and the valuable conversations I had with many other members of the Faculty.

The seminar included papers from barristers who had appeared in the *Momcilovic* case. Those speakers explained the key issues settled by the High Court in *Momcilovic* and, perhaps more importantly, the many questions the case left open. My own paper was about a problem that came before *Momcilovic*, which is whether we should amend our judicial review statutes to take incorporate human rights issues as a ground of review. In other words, can and should we allow government decisions to be reviewed because they have not taken account of human rights issues? Such a change would assimilate human rights issues into public administration, whether or not we have a bill or charter of rights. A change of this nature was recommended by the National Human Rights Consultation (the Brennan Report) as one of many possible reforms to enhance Australia's observance of rights. My paper confirms one of the key points made by the Gilbert + Tobin Centre in its Charter of Rights Project, namely that greater compliance with human rights principles requires a wide ranging package of reforms.

During my time as a visitor I also began work with Greg Weeks on a paper about recent migration litigation, particularly those cases dealing with applicants for refugee status who are intercepted before they arrive in Australia. This topic arose from a case delivered just days before I arrived at UNSW (*Plaintiff M70/2011 v Minister for Immigration and Citizenship* or "the Malaysian Solution case). The argument that Greg and I will pursue is that, while the decision of the High Court to essentially overturn a scheme to send applicants for refugee status to Malaysia surprised many at the time, it was actually a small and inevitable progression of recent High Court doctrine.



Associate Professor Matthew Groves, Monash University, speaking at the Administrative Law and Human Rights Seminar



PHD REPORT

Tamara Tulich

Topic: The rise of the preventive state: anti-terror laws and the judiciary

I joined the Centre in mid-2010 as a PhD candidate in Professor George Williams' Australian Research Council Laureate Fellowship: Anti-Terror Laws and the Democratic Challenge Project. My research is supervised by Professor George Williams and Dr Fergal Davis. Prior to joining the Centre, I practiced as a solicitor at the Mental Health Advocacy Service at NSW Legal Aid.

My research examines prevention and pre-emption as legislative strategies in Australia's anti-terror laws, and the challenges these laws pose for the judiciary. I am interested in how governments use the law to prevent and pre-empt harm, and the extent to which the state may engage the objective of prevention to encroach upon an individual's liberty on the basis of an anticipated future harm.

Through my research I aim to address the broader question of whether there is anything new or different about the operation of preventive anti-terror laws, and whether these laws have altered Australia's public law system. To do this, I will compare anti-terror measures with other Australian preventive measures, namely those contained in mental health and serious sex offender legislation at the state level.

Recently, I have focused on whether we might understand the imperative of prevention in anti-terror law as part of a broader shift in governance rather than as an isolated response to the threat of terrorism following 9/11. My research is now turning to an investigation of the connections and distinctions between the involuntary detention, treatment and control provisions of NSW and Victorian mental health legislation and preventive anti-terror laws. My aim is to compare not only the form of the laws but their operation and the effects they produce in the courtroom.

My PhD experience has been greatly enriched by being part of the dynamic and collaborative Laureate team, and the supportive research community of the Centre. I am very fortunate to receive a postgraduate scholarship through the Laureate project, and to have the opportunity (and exposure) to travel far and near - Milan, Oxford and Brisbane - to present my PhD research and a paper co-authored with other Centre members.



Centre PhD Student Tamara Tulich



SOCIAL JUSTICE INTERN REPORT

Fiona Chong



Centre Intern Fiona Chong

Conceptually, the refugee law paradigm is premised on people fleeing something in a hurry. And that doesn't really fit with people fleeing the slow-onset impacts of climate change, recognising that in the longer term they may need to move.

Jane McAdam, 'Climate Change: Indian Ocean', *The Law Report* (ABC Radio National, 29 November 2011)



My internship with the Gilbert + Tobin Centre of Public Law involved work on an array of projects: a submission to a parliamentary inquiry on Australia's immigration detention network (with Jane McAdam, Greg Weeks and Alice Noda); opinion-editorials for online media sources on the High Court decisions in *Plaintiff M70/2011* (with Andrew Lynch) and *Momcilovic*; a submission on a proposed private member's bill to amend the *Interpretation Act 1987* (NSW) (with George Williams); and research tasks on a number of issues, including the amendment of the Commonwealth Constitution to provide both symbolic recognition and substantive rights protection to Aboriginal and Torres Strait Islander people.

In a number of respects, this internship has formed a perfect complement to my studies in law. Putting into practice what I have learned in theory has deepened my understanding of a number of legal issues, particularly in the areas of refugee and migration law, statutory interpretation and human rights. Moreover, it has provided me with the unique opportunity to develop a rather novel set of skills: for example, my forays into the unfamiliar territory of writing for the online media on recent High Court decisions involved the challenge of striking a balance between formulating clear and succinct analysis of the judgments on the one hand, while remaining faithful to complex nuances in the judicial reasoning on the other.

However, more significantly, the merging of theory and practice has taken another form: what I have valued most about this internship is the greater appreciation that it has given me for the important role that public law can play in achieving social justice. It has been an invigorating experience to be able to witness first-hand how the legal academic work of the Centre has been channelled into engagement with the legal profession, the government, and the broader community in public discussions on important and pertinent issues of law – whether it has been through the Centre's engagement with the media, or its involvement in conferences, parliamentary inquiries, and public consultations.

I am very grateful to Andrew Lynch, Sean Brennan, Ben Golder, Jane McAdam, Alice Noda, Greg Weeks and George Williams for their helpful guidance over the course of the semester and for making this internship the immensely interesting and enjoyable experience that it has been for me. It has been a real pleasure and privilege to intern at the Centre.

PROJECT REPORTS

ARC Laureate Fellowship: Anti-Terror Laws and the Democratic Challenge

Project Director: George Williams



George Williams speaking on 'The Path to Statehood: The Northern Territory as Australia's Seventh State' at the Northern Institute Lecture Series, Charles Darwin University

In July 2011, the final two members of the Laureate team – Dr Jessie Blackburn and Dr Svetlana Tyulkina – commenced their employment as postdoctoral researchers on the project. The team consists of Professor George Williams (Laureate Fellow), Dr Fergal Davis (Senior Lecturer), Nicola McGarrity (Lecturer), the two post-doctoral researchers, and three full- and part-time research assistants. The project also supports five PhD students. In early December, a one-day workshop was held at Oxford University. This workshop brought together the Laureate PhD students and a number of Oxford PhD students researching counter-terrorism law and policy. This provided the students with an important opportunity to present their PhD research and develop international and inter-disciplinary networks.

The last six months have been extremely busy for the project. Members of the Laureate team have presented their research at domestic conferences, such as the *Public Law Weekend* (McGarrity and Welsh), the *Australian Political Studies Association Conference* (Dr Davis), and *Crime, Justice and Social Democracy: An International Conference* (McGarrity and Tulich). Many members of the team have also travelled overseas to conduct research or present their research findings:

- Dr Blackburn delivered a paper at the *Fifth Annual CICA-STR International Conference: Contemporary Issues on Violence Aggression and Terrorism* in California in September 2011. This paper concerned the threat faced by the United Kingdom from international, domestic and Northern Irish terrorism. Dr Blackburn is also co-editing a special issue of *Critical Studies on Terrorism*.
- In October 2011, Nicola McGarrity presented a paper on the role of religion in Australia's terror trials at Osgoode Law School in Toronto, and participated in a constitutional roundtable at the University of Toronto on comparative counter-terrorism law (with New Zealand's Dr John Ip and Canada's Professor Kent Roach). During this trip, she also attended a two-day conference in Montreal on Canada's response to terrorism since 9/11, and met with academics researching United States anti-terrorism law and terrorism trials.
- Dr Tyulkina spent several weeks in Spain in November 2011 researching that nation's constitutional response to terrorism and presented a paper at the Pompeu Fabra University.
- In December 2012, Dr Davis gave a paper on the role of juries in Irish and New Zealand terrorism trials for the Centre for Criminal Justice Studies (University of Leeds) Public Seminar Series. He also had a stint as a visiting fellow at the Centre for Criminal Justice and Human Rights (University College Cork) for several weeks in December, during which he gave a staff seminar and engaged in LLM teaching.



The expansion of Security Council measures over the last decade or so has not been accompanied by the creation of mechanisms that would enhance accountability.

Christopher Michaelsen, presentation 14 December 2011



Participants at the Anti-Terror Laws & Preventive Justice Postgraduate Workshop, 5 December 2011

- December 2011 also saw seven members of the Laureate team travel to Milan to participate in the International Association of Constitutional Law conference on *Constitutional Responses to Terrorism: Secrecy, National Security, and the Vindication of Constitutional Law*. Professor Andrew Lynch and two of the Laureate PhD students (Tamar Tulich and Rebecca Welsh) presented a paper at this conference on secrecy in the control order context. The IACL conference is an annual event. The 2012 conference will be hosted by the Gilbert + Tobin Centre of Public Law (5-6 December 2012).

Charter of Human Rights

Acting Project Director: Rosalind Dixon



Assistant Professor Rosalind Dixon with Chief Justice Bathurst of the New South Wales Supreme Court at the Faculty of Law Book Launch, November 2011

The Centre is pleased that Rosalind Dixon (Assistant Professor, University of Chicago Law School and Senior Visiting Fellow, UNSW Faculty of Law) has agreed to act as the Director of the Charter of Human Rights project. Ros taught an intensive course on Australian Bills of Rights in early December. Jackie Hartley, freshly returned to UNSW to embark on her PhD studies with Sean Brennan and the Indigenous Law Centre's Professor Megan Davis, has also commenced work on the project as a researcher.

The Charter project's resource page on the Centre's website has recently been updated. The site now includes information and links to media reports on developments such as *Momcilovic v R*, dealing with issues relating to the scope, validity and ordering of questions relating to justification, interpretation and the declaratory remedies under the *Charter of Human Rights and Responsibilities Act 2006* (Vic). The site also includes information on recent reports, such as the Victorian Scrutiny of Acts and Regulations Committee (SARC)'s *Review of the Charter of Human Rights and Responsibilities Act 2006* (tabled in Parliament on 14 September 2011).

In future, the project will be looking at the impact and effectiveness of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth), enacted just before the end of the year. The new Act requires Ministers, when introducing legislation or creating a disallowable legislative instrument, to table a Statement of Compatibility with Australia's human rights obligations. It also establishes a Parliamentary Joint Committee on Human Rights. This is the first Commonwealth parliamentary committee dedicated solely to human rights scrutiny.



Federalism Project

Project Director: Paul Kildea



Centre Members Jessie Blackbourn, Greg Weeks, Lucas Lixinski and Svetlana Tyulkina at the Faculty's 40th Annual Dinner in September.

The inability to pigeonhole past justices by virtue of their connection to big or 'other' States suggests that a federalist judicial outlook is not made solely, or even at all, by an individual's distance from Sydney Harbour or Collins Street.

Andrew Lynch and Marianna Matevosian, 'Preserving the 'Federal Balance' through Judicial Diversity: Clutching at Straws?' (2011) 13(3) *Constitutional Law and Policy Review* 42



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In November the Federalism Project received the exciting news that the Australian Research Council will continue to support it for a further three years. The new grant will be led by Professors Andrew Lynch and George Williams, and will fund research into the effect of intergovernmental cooperation on Australia's system of constitutional democracy. The work undertaken will build on and extend the Project's research of the last three years into how to balance the need for efficiency in federal-State relations with bedrock constitutional principles such as responsible government and public accountability.

The Project's existing work on this topic continues to influence policy debate. In November the Joint Committee of Public Accounts and Audit tabled a report on National Funding Agreements and made extensive reference to a Centre submission by Paul Kildea, Andrew Lynch and Semester 1 Centre intern Robert Woods. That submission, supported by oral evidence by Paul and Andrew, argued that funding agreements between federal and State governments should be subject to greater parliamentary oversight, and generally made more transparent. The Joint Committee made five recommendations aimed at improving scrutiny of such agreements, including calling for the tabling of National Partnership Agreements, and for COAG Reform Council reports to tabled in the Commonwealth Parliament and be referred to a Joint Standing Committee for review. Addressing a similar theme, Paul delivered a paper, co-authored with Andrew, on 'COAG, the Constitution and State Accountability' at the 3rd Annual Intergovernmental Relations Conference, held during August in Canberra.

Another focus of Project research has been the impact of the federal system on the shape of media regulation in Australia. Paul Kildea, George Williams and Daniel Joyce made a submission to the Independent Media Inquiry exploring the constitutional questions arising from various proposals to reform regulation of print media and online journalism. In noting that while the Commonwealth has a direct head of legislative power with respect to radio and television broadcasting there is no such power in relation to print media, the submission argued that the Commonwealth's capacity to strengthen regulation of print media will rest primarily on its ability to make laws under the corporations power. Meanwhile, successful federal regulation of online journalism, including blogs, may depend on the reach of the Commonwealth's broadcasting power, the scope of which remains untested in the High Court since the advent of the internet. The Project will continue undertaking research on these issues into the new year.

A third topic of research in recent months has been the relationship between a judge's state of origin and the extent of their federalist commitment. Andrew Lynch and Marianna Matevosian published an article in the *Constitutional Law and Policy Review* challenging the oft-expressed view that High Court jurisprudence would be likely to be less centralist if more judges were to be appointed from smaller states. Andrew and Marianna found that there is little empirical or comparative support for this view. In doing so, they argued that the case for reform of judicial appointments which emanates from concern with the 'federal balance' is overstated.

The opportunity for practical reforms cannot be missed: Aboriginal and Torres Strait Islander people have waited too long for substantive change and Australian voters will be looking to the Panel for practical measures that can make a material difference to people's lives.

Sean Brennan, Submission to the Expert Panel on Constitutional Recognition of Indigenous Australians (30 September 2011).



Finally, everyone involved in the Federalism Project is looking forward to the launch of the book *Tomorrow's Federation* in February 2012. Edited by Paul Kildea, Andrew Lynch and George Williams, the book emerged from our recent Federalism Research Roundtable and promises to be a major contribution to academic and policy debate on Australian federalism and intergovernmental relations. Focusing on the means by which reform can be achieved in the federal system, the book features contributions from leading figures in academia and government. The collection offers in-depth analysis of recent developments, such as the Intergovernmental Agreement on Federal Financial Relations and the creation of the COAG Reform Council, and includes case studies on health reform, higher education, water management, child care and violence against women.

Indigenous Legal Issues

Project Director: Sean Brennan

The focus for the Project has been the prospect of a referendum on constitutional recognition of Aboriginal and Torres Strait Islander people. A number of opportunities to consolidate and develop our collective thinking on proposals for a 2013 referendum arose in the second half of the year. As well as working with several major Aboriginal organisations around Australia in the lead up to their submissions to the Panel on Constitutional Recognition of Aboriginal and Torres Strait Islander People, Sean Brennan presented on constitutional change at an event held in Redfern in September which was organised by local community organisations. He authored a Centre submission to the Panel, participated in the Sydney Legal Roundtable called by the Panel in November to discuss specific ideas for reform and wrote a number of academic and other articles on the Constitution and Aboriginal and Torres Strait Islander people.

Centre Intern, Fiona Chong, did a great job in creating a specific Resource Page on the Centre's website for community use about Constitutional Change and Aboriginal and Torres Strait Islander people (www.gtcentre.unsw.edu.au/node/3053). It includes links to background information on the Constitution and the prospective referendum in 2013, as well as a variety of Indigenous and non-Indigenous contributions to the debate over constitutional change. This new website component coincided with a general overhaul for the Indigenous Legal Issues Project Resource Page (www.gtcentre.unsw.edu.au/content/indigenous-legal-issues-project-resource-page). It now features a wider range of downloadable articles, presentations, submissions and media comment on Indigenous legal issues, produced by Centre staff and covering not just constitutional change but also land rights and native title, alcohol regulation, voting rights and the Northern Territory Intervention.

In August Sean contributed to an international conference held at UWS in Sydney, as the discussant to papers on Indigenous governance by Kent McNeil (Osgoode Hall), Kirsty Gover (Melbourne) and Carwyn Jones (VUW), and he was also the respondent to a paper by Andrew Schaap on the Aboriginal Tent Embassy as part of the Centre's Public Law and Legal Theory Seminar Series.

International Refugee and Migration Law Project

Project Director: Jane McAdam

What I would like to see is political leadership to explain to the general public that asylum seekers are people who are fleeing serious forms of harm – and often they are fleeing for their lives.

Jane McAdam, *The Facts about the Malaysian Solution and Australia's International Obligations'*
The Conversation (16 June 2011)



Climate Change Event Speakers: Professor Walter Kälin, University of Bern; Mr Marc Limon, Legal Adviser to the Government of the Maldives; Ms Rabab Fatima, International Organization for Migration (Bangladesh)



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Barely a day has gone by this year without asylum seekers featuring on the national political agenda. The overt politicization of the issue, fuelled by an over-simplification of the drivers of movement (at best) and ignorance of them (at worst), means that it is very difficult for principled legal analysis to hold any sway. Nevertheless, the High Court's decision in *M70* in August served as an authoritative reminder to political leaders that Australia does not, and cannot, operate in a vacuum, and that long-standing principles of international refugee and human rights law must necessarily inform national law and policy.

This has been a busy period for parliamentary inquiries. In August, Project Director Jane McAdam, along with Centre member Greg Weeks, Centre intern Fiona Chong, and JD student Alice Noda made a joint submission to the Joint Standing Committee Inquiry into Immigration Detention, and were subsequently invited to give oral evidence. The submission canvassed: (a) the ways in which Australia's mandatory detention regime breaches international law, including its impact on children and rights of review; (b) some of the problems faced by asylum seekers residing in the community in accessing rights and entitlements; and (c) the role of the courts' supervisory jurisdiction with respect to the outsourcing of immigration detention network contracts to private contractors.

In September, Jane McAdam coordinated a joint submission of 14 Australian refugee law academics to the Senate Standing Committee on Legal and Constitutional Affairs on Australia's Arrangement with Malaysia in relation to Asylum Seekers. The submission examined the consistency of the agreement with Australia's international obligations; and the extent to which the agreement complied with Australian human rights standards. Jane gave oral evidence to the Committee in Canberra, and her comments and the submission itself were cited frequently throughout the Committee's report. Subsequently, Jane and PhD student Tamara Wood wrote an article about the Arrangement and the implications of the High Court's decision in *M70*, which will be published early in 2012 in the *International and Comparative Law Quarterly*.

Also in September, Jane travelled to Bled, Slovenia for the International Associate of Refugee Law Judges world conference, chairing the Subsidiary Protection Working Party of which she is the Associate Rapporteur. The focus of the Working Party this year was on the application of subsidiary protection provisions to situations of generalized violence, and the function of international humanitarian law.

The main project event this semester was a two-day international conference on Climate Change and Migration in the Asia-Pacific: Law and Policy Responses (see 'Centre Activities' for a full report). This marked the conclusion of Jane's three year ARC Discovery Grant on climate change-related displacement and international law, and was a fitting culmination in that it brought together many of the researchers and practitioners with whom she has worked, and stimulated new ideas and energy for future collaborations.



Professor George Williams, Jeswynn Yogaratnam and Nancy King and the One Mob dancers prior to talk at Northern Territory Committee for Human Rights Education, Charles Darwin University



In January 2012, Jane will take up an ARC Future Fellowship. This is a four year research fellowship which will enable her to examine the implications of slow-onset climate change-related displacement and relocation in the Pacific region.

Referendums Project

Project Directors: Paul Kildea/George Williams

The Referendums Project is becoming increasingly active as the public debate surrounding possible constitutional amendment intensifies. In September, Paul Kildea made a submission to the Expert Panel's inquiry into constitutional recognition of Aboriginal and Torres Strait Islander peoples. Paul's submission focused on issues of process, and argued that more needed to be done to raise public awareness and engage the community on the reform options. The submission recommended that resources be devoted to further popular engagement initiatives in 2012, including a citizens' assembly and local deliberative forums. Sean Brennan also made a submission to the Panel as Director of the Centre's Indigenous Legal Issues project. Paul, Sean and George Williams also met with the Expert Panel as part of specialist roundtables on constitutional recognition held in November and December.

In September, George published an issues paper for the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) outlining specific proposals for constitutional amendment and explaining the legal, practical and political preconditions for referendum success. George also wrote an opinion piece for the *Sydney Morning Herald* in which he argued for a constitutional prohibition against racial discrimination. Centre members have also given a range of public talks and workshops on the topic of constitutional recognition. In August, Paul and George delivered a workshop on the substance and process of reform to an audience of non-government organisations, while Paul also teamed up with Anna Cody of Kingsford Legal Centre to conduct a workshop at the National Association of Community Legal Centres conference in October.

The Project has also been involved in public consultations surrounding constitutional recognition of local government, which is the subject of the second referendum likely to be held before the end of 2013. In November, George, Paul, Andrew Lynch and Nicola McGarrity made a submission to the Expert Panel on constitutional recognition of local government. The submission canvassed a range of legal issues arising from the various reform options set out in the Panel's discussion paper, and made a number of suggestions with respect to the process of reform and the likely barriers to achieving change at a referendum. Paul and George also participated in a roundtable on the topic with members of the Expert Panel.

PUBLICATIONS AND PRESENTATIONS

Publications

Joint Publications

Barbara Harlow, Daniel Kahozi and Lucas Lixinski, 'Working Paper: *United Nations Security Council Resolution 1973* (2011): Libya in the Dock', Rapoport Center Human Rights Working Paper Series 6/2011;

Fernando Lusa Bordin, Lucas Lixinski and Claudia Lima Marques, 'Articles 11-16' in Aziz Tuffi Saliba (ed), *Treaty Law – Commentary to the Vienna Convention on the Law of Treaties* (1969) (Arraes Editores 2011) 55-98;

Lucas Lixinski and Claudia Lima Marques, 'Family and Succession Law' in Fabiano Deffenti and Welber Barral (eds), *Introduction to Brazilian Law* (Kluwer Law International, London, 2011) 49-69;

Andrew Lynch and Marianna Matevosian, 'Preserving the 'Federal Balance' through Judicial Diversity: Clutching at Straws?' (2011) 13(3) *Constitutional Law and Policy Review* 42-57;

Andrew Lynch and George Williams, 'The High Court on Constitutional Law – the 2010 Statistics' (2011) 34(3) *University of New South Wales Law Journal* 1030-47;

George Williams and Andrew Lynch, 'The High Court on Constitutional Law – the 2010 Term' (2011) 34(3) *University of New South Wales Law Journal* 1006-29.

Sean Brennan

'Constitutional Reform and its Relationship to Land Justice', *Land, Rights, Laws: Issues of Native Title*, Vol 5 Issues Paper No 2, October 2011, 1.

Lucas Lixinski

'Selecting Heritage: The Interplay of Art, Law and Politics', (2011) 22(1) *European Journal of International Law* 81-100.

Jane McAdam

'Refusing Refuge in the Pacific: (De)constructing Climate-Induced Displacement in International Law', in E Piguet, A Pécoud and P de Guchteneire (eds), *Migration and Climate Change* (Cambridge University Press, Cambridge, 2011), 102;

'The Right to Leave Any Country: An Intellectual History of Freedom of Movement in International Law' (2011) 12 *Melbourne Journal of International Law* 27;

The slums of Dhaka are some of the most horrific places that I have ever been to. We're talking about extreme poverty, and really a cycle of poverty; it's very, very difficult to break out of that.

Jane McAdam, 'Climate Change: Indian Ocean', *The Law Report* (ABC Radio National, 29 November 2011)



[E]xceptional powers and sanctions thought to lie outside the rules of a liberal democracy except during wartime have now become part of Australian law. Moreover, they remain on the statute book, and have taken on a character of permanence.

George Williams 'The Laws that Erode Who We Are' *Sydney Morning Herald* (10 September 2011).



'Semantics, Law and "Environmental Refugees"' (2011) 1 *LingApp@ Quarterly*.

Christopher Michaelsen

'The Cross-border Transfer of Dangerous Persons, the Risk of Torture and Diplomatic Assurances' in Saskia Hufnagel, Clive Hartfield and Simon Bronitt (eds), *Regional Law Enforcement Cooperation - European, Australian and Asia-Pacific Perspectives* (Routledge, Oxford, 2011) 211-30.

George Williams

'The Australian Constitution and the *Aid/Watch Case*' (2011) 3 *Cosmopolitan Civil Societies: An Interdisciplinary Journal* 1;

'How to Win the Referendum to Recognise Indigenous Peoples in the Australian Constitution', July/August 2011, 7(25) *Indigenous Law Bulletin* 18;

'International Law and the War Power in Australia' in Jurgen Bröhmer (ed) *The German Constitution turns 60: Basic Law and Commonwealth Constitution; German and Australian Perspectives*, Peter Lang Press, 101-09;

'Recognising Indigenous Peoples in the Australian Constitution: What the Constitution Should Say and How the Referendum Can be Won', *Land, Rights, Laws: Issues of Native Title* (Vol 5 No 1, September 2011, Australian Institute of Aboriginal and Torres Strait Islander Studies);

'Recognition of Local Government in the Australian Constitution', *The Australian Local Government Infrastructure Yearbook 2011/2012* (Executive Media, 2011), 7;

'The Constitution and Federalism', *Your Memento*, National Archives of Australia, Issue 3, July 2011;

'Australia's Second-Class Citizens', (2011) 51(2) *Australian Fabian News* 5;

'How Should the Australian Constitution be changed to Recognise Indigenous Peoples?', *Civil Liberty* (Journal of the New South Wales Council for Civil Liberties), June 2011, Issue 225, 3.

Presentations

Joint Presentations

Nicholas Cowdery AM QC, Dr Anthony John Billingsley, Joanne Lennan, Jane McAdam and Rebecca Welsh, *Social Justice Q & A*, UNSW, 11 October 2011;

Paul Kildea and Andrew Lynch, 'COAG, the Constitution and State Accountability', *3rd Annual Intergovernmental Relations Conference*, National Convention Centre, Canberra, 16-17 August 2011;

Mika Hayashi and Christopher Michaelsen, 'Arms Control and International Norm Development: Is there a Role for Civil Society?', *8th Asian Law Institute Conference*, Kyushu University, Fukuoka, Japan, 27 May 2011;

The problem with the proposed Malaysian Solution is that we seem to have a blanket designation of Malaysia as a safe country to which people can be sent. Putting aside for one moment the question of whether we should be engaging in a regional framework of this nature at all, my primary concern is that we ought to be conducting a case by case determination of whether Malaysia is a safe place to send particular individuals. That's what our non-return obligations oblige us to do.

Jane McAdam, 'The Facts about the Malaysian Solution and Australia's International Obligations' *The Conversation* (16 June 2011)



Andrew Lynch, Tamara Tulich and Rebecca Welsh, 'Secrecy and Control Orders: The Role and Vulnerability of Constitutional Values', *Secrecy, National Security and the Vindication of Constitutional Law*, International Association of Constitutional Law – Research Group on Constitutional Responses to Terrorism, Bocconi University, Milan, Italy, 1-2 December 2011;

Nicola McGarrrity and Kent Roach, 'Terrorism Trials and Human Rights', *Constitutional Roundtable*, University of Toronto, Canada, 19 October 2011.

Jessie Blackbourn

'Conflicting counter-terrorisms? The UK's response to terrorism since September 11', *5th Annual CICA-STR International Conference on Contemporary Issues on Violence, Aggression and Terrorism*, University of California, USA, 7-9 September 2011.

Sean Brennan

'Options for Constitutional Change', *Aboriginal and Torres Strait Islander Forum on Constitutional Recognition*, Redfern Community Centre, Sydney, 15 September 2011;

'The Formalisation of Indigenous Governance', *Between Settler and Indigenous Governance Conference*, University of Western Sydney, 19 August 2011.

Fergal Davis

'Trial by jury and the state of exception: lessons in anti-terrorism law and politics from Ireland and New Zealand', Centre for Criminal Justice and Human Rights, University College Cork, Ireland, 7 December 2011;

'I Saw Two Shooting Stars Last Night': Caution against wishing for constitutional reform of the UK royal prerogative' *Australian Political Science Association Conference* 2011, ANU, Canberra, 26–28 September 2011;

'Trial by jury and the state of exception: lessons in anti-terrorism law and politics from Ireland and New Zealand', Centre for Criminal Justice Studies, University of Leeds, United Kingdom, 6 December 2011.

Keiran Hardy

'Hearts, Minds and Bodies: Community-Based Approaches To Preventing Terrorism', *Anti-Terror Laws & Preventive Justice Postgraduate Workshop*, Oxford University, United Kingdom, 5 December 2011.

Andrew Lynch

'Judicial Dissent and Strategy', *A Big Day Out for Judicial Development*, South Australian Judicial Education Committee, Adelaide, 3 November 2011;

'National Priorities and State Referrals: The Age of Section 51 (xxxvii)', *Sixteenth Public Law Weekend – '10 Years on from September 11: the Impact on Public Law'*, ANU, 9-10 September 2011.

A key minimum benefit from constitutionalising non-discrimination in relation to race is that it will encourage better quality and more careful use of governmental and law-making power in Indigenous affairs.

Sean Brennan, 'Constitutional Reform and its Relationship to Land Justice', *Land, Rights, Laws: Issues of Native Title*, Vol 5 No 2, Oct 2011, p 13.



Jane McAdam

'Overarching Normative Frameworks: Developing Principled Legal Responses to Climate-Related Displacement', *Climate Change and Migration in the Asia-Pacific: Legal and Policy Perspectives* (NSW Parliament House, 10–11 November 2011;

Nicola McGarrrity

'The Role of Religion in Australia's Terrorism Trials', Osgoode Hall Law School, York University, Toronto, Canada, 12 October 2011;

'10 Years After September 11 – Will Muslims in Australia Ever be (Viewed) the Same?', *Public Forum*, NSW Young Lawyers and the Justice and Arts Network, Gilbert + Tobin, 6 October 2011;

'Principles Relevant to the Sentencing of Individuals for Terrorism in Australia', *Justice, Crime and Democracy Conference*, Queensland University of Technology, 27 September 2011;

'Challenges for the Judiciary in Australia's Terrorism Trials', *Sixteenth Public Law Weekend – '10 Years on from September 11: the Impact on Public Law'*, ANU, 9-10 September 2011;

'The Politics of Australia's Anti-Terrorism Regime', Guest Lecture, 'Australian Politics and Human Rights', University of Sydney, 5 September 2011.

Christopher Michaelson

'The Security Council and Judicial Review of Atypical Enforcement Measures: A Role for the ICJ?', *The Security Council, Sanctions and the Rule of Law Workshop*, ANU, Canberra, Australia, 14 December 2011;

'Prioritising "Security" over "Liberty": The UN Security Council's Approach to Counter-Terrorism and Domestic Legislative Responses', *Democratic State's Response to Terrorism under the Rule of Law Workshop*, International Institute for the Sociology of Law, Oñati, Spain, 14 July 2011;

Sangeetha Pillai

'Citizenship and Anti-Terror Laws', *Anti-Terror Laws & Preventive Justice Postgraduate Workshop*, Oxford University, United Kingdom, 5 December 2011;

Tamara Tulich

'A View Inside the Preventive State: Australia's anti-terror laws', *Anti-Terror Laws & Preventive Justice Postgraduate Workshop*, Oxford University, United Kingdom, 5 December 2011;

'Inside the Preventive State', *Crime, Justice and Social Democracy: An International Conference*, School of Justice, QUT, Brisbane, 28 September 2011.

Svetlana Tyulkina

'Terrorism and Constitutional Changes: Lessons from Spain', Department of Constitutional Law, Faculty of Law, Pompeu Fabra University, Spain, 8 November 2011.

The rapid development of COAG is an example that political entities may evolve to a point where the prospect of constitutional convergence is something that requires careful consideration.

Paul Kildea and Andrew Lynch, 'COAG, the Constitution and State Accountability', *3rd Annual Intergovernmental Relations Conference*, National Convention Centre, Canberra, 17 August 2011



Rebecca Welsh

'Control Orders and Judicial Independence: the Legacy of *Thomas v Mowbray*', *Anti-Terror Laws & Preventive Justice Postgraduate Workshop*, Oxford University, United Kingdom, 5 December 2011;

'Independence under Interrogation: Chapter III and ASIO', *Sixteenth Public Law Weekend – '10 Years on from September 11: the Impact on Public Law'*, ANU, 9-10 September 2011.

George Williams

'A Culture of Inclusion: Constitutional Recognition of Indigenous Australians', *Reconciliation Australia and Dreamworld Public Forum*, Gold Coast, 23 November 2011;

'Indigenous Australians and Constitutional Recognition', *Public Forum*, Reconciliation Australia and Allens Arthur Robinson, Sydney, 17 November 2011;

'People Power', *WEA Seminar*, Sydney, 9 November 2011;

'Constitutional Recognition', *Local Government Association of NSW 2011 Conference*, Nowra, 24 October 2011;

'Ten Years of The War on Terror', *Australian Lawyers Alliance 2011 National Conference*, Hamilton Island, 22 October 2011;

'Human Rights in the 21st Century: Challenges and Opportunities', *Change the World Conference: 50th Anniversary of Amnesty International Australia*, Brisbane, 6 October 2011;

'Constitutional Recognition Strategy', *Local Government Association of Queensland Annual Conference*, Gold Coast Convention and Exhibition Centre, 5 October 2011;

'The Path to Statehood: The Northern Territory as Australia's Seventh State', *2011 Northern Institute Lecture Series: A Working Future in the Seventh State*, Charles Darwin University, Northern Territory Assembly Building, 21 September 2011;

'Does the Northern Territory need a Charter of Human Rights?', *Public Lecture*, Northern Territory Committee for Human Rights Education, Charles Darwin University, Darwin, 20 September 2011;

'A Decade on from 9/11: Taking Stock of Australia's Anti-Terror Laws', *UNSW Faculty of Law Professorial Lecture Series*, UNSW, Sydney, 12 September 2011;

'Taking Stock of Australia's Anti-Terror Laws', *Sixteenth Public Law Weekend – '10 Years on from September 11: the Impact on Public Law'*, ANU, 9-10 September 2011;

'Lessons from a Decade of Australian Anti-Terror Law', *Lowy Lunch Club*, Lowy Institute for International Policy, Sydney, 31 August 2011;

'Federal Power over Higher Education', *University & Tertiary Education Symposium 2011*, University of Sydney, 31 August 2011;

The 10th anniversary of the 9/11 attacks provides an opportune moment for a comprehensive review and reform of Australia's flawed anti-terrorism law and policy

Christopher Michaelsen, 'Our Flawed Responses to 9/11', *Canberra Times*, 9 September 2011



'Options for Reform and How to Win the Referendum', *Constitutional Recognition of Indigenous Peoples NGO Workshop*, Sydney, 25 August 2011;

'A Conversation about Human Rights', *Public Seminar*, Gilbert + Tobin, Sydney, 24 August 2011;

'Localism – The Global Way', *Western Australian Local Government Association 2011 Convention*, Perth Convention and Exhibition Centre, 4 August 2011;

'The Constitutional Reform Agenda', *Public Seminar*, Australian Association of Constitutional Law, The Constitutional Centre of Western Australia and UWA Law School, 3 August 2011;

'Federalism and Federal Reform', Address to Members of Parliament Luncheon, Perth Convention and Exhibition Centre, 3 August 2011;

'Referendums to Alter the Constitution', Expert Panel on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples, Melbourne, 28 July 2011;

'Comment on The High Court in *Rowe v Electoral Commissioner* and its Implications', *Challenges of Electoral Democracy Workshop*, University of Melbourne Law School, Melbourne, 14 July 2011;

'Internet Censorship', *Australian Law Students Association 2011 Conference*, Sydney, 13 July 2011;

'2011 Constitution Day Address: A Guide to our Constitution', *Speakers Corner Lecture Series*, National Archives of Australia, Canberra, 10 July 2011;

'Comment on the Politics of Constitutional Reform', *Constitutional Reform and Indigenous Peoples Workshop*, Indigenous Law Centre and Gilbert + Tobin Centre of Public Law, UNSW Faculty of Law, Sydney, 1 July 2011.

Media Publications

Joint Media Publications

Fiona Chong and Andrew Lynch, 'Why the Malaysia solution was as useless as old rendang', *The Punch* (31 August 2011).

Sean Brennan

'A rare chance for positive change: the referendum on indigenous recognition', *Lawyers Weekly* (11 August 2011).

Fergal Davis

'Redefining the role of the monarchy', *The Drum Opinion* (4 November 2011);

'The failure of Australia's 'Malaysia Solution' is a positive step for refugees', *The Guardian* (4 September 2011).

The citizens' assembly model is well-suited to the question of constitutional recognition of Aboriginal and Torres Strait Islander peoples because it has the potential to spark the widespread public awareness, and informed public debate, that has not yet been achieved.

Paul Kildea, Submission to the Expert Panel on Constitutional Recognition of Indigenous Australians, September 2011



Jane McAdam

'Explainer: The Facts about the Malaysian Solution and Australia's International Obligations', *The Conversation* (16 June 2011).

Christopher Michaelson

'Our flawed responses to 9/11', *Canberra Times* (9 September 2011).

George Williams

'Minimum Sentence, Maximum Injustice', *Sydney Morning Herald* (6 December 2011);

'Money has Driven the Federal System Right Off the Rails', *Sydney Morning Herald* (22 November 2011);

'When the Umpire Takes a Stand', *Sydney Morning Herald* (12 November 2011);

'Abbott Courts Trouble with Carbon Tax Plans', *Sydney Morning Herald* (26 October 2011);

'Offshore Processing Bill is Tampa Law Mark II: Unjust and Bad', *Sydney Morning Herald* (11 October 2011);

'Race Vote Should Offer Protection All Round', *Sydney Morning Herald* (27 September 2011);

'The Laws that Erode Who We Are', *Sydney Morning Herald* (10 September 2011);

'While the Guilt is not Certain, the Damage is Beyond Doubt', *The Age* (30 August 2011);

'It's not Law Thomson Should Fear', *Sydney Morning Herald* (30 August 2011);

'Malaysia Court Case Pitches Minister Against Basic Refugee Rights', *Sydney Morning Herald* (16 August 2011);

'Breaches of Privacy by Large Corporations the Real Problem', *Sydney Morning Herald* (3 August 2011);

'A State of Confidence up North as NT Moves Towards Adulthood', *Sydney Morning Herald* (19 July 2011);

'Latest Chapter Ignores the Fatal Flaw in Territory Intervention', *Sydney Morning Herald* (5 July 2011);

'National Plebiscite on Carbon Tax an Expensive, Bad Idea', *The Age* (21 June 2011);

'Why Put it to the People when Labor is Free to Ignore the Result?', *Sydney Morning Herald* (21 June 2011).

Submissions

Centre member Lucas Lixinski recently concluded work on the Latin American Case Library on Law and Policy, a multi-year project funded by the Inter-American Development Bank. The project enables students to unpack the multi-faceted legal issues of a real-life situation based solely on a narrative. Lucas's contribution was a narrative (and teaching notes) about the Cotton Field Case, a recent judgment of the Inter-American Court of Human Rights about femicide in Ciudad Juarez, on the border between the US and Mexico. The case brings to the fore elements for discussing the impact of economic integration processes on development and the enjoyment of human rights, as well as a critical assessment of women's rights movements in Latin America.

Joint Submissions

Daniel Joyce, Paul Kildea and George Williams, Submission to Independent Media Inquiry (14 November 2011);

Paul Kildea, Andrew Lynch, Nicola McGarrrity and George Williams, Submission to Expert Panel on Constitutional Recognition of Local Government (1 November 2011).

Fiona Chong and George Williams, Submission to NSW Shadow Attorney General's 'Consultation on Proposal to amend *Interpretation Act 1987* (NSW)' (22 September 2011);

Jane McAdam et al, Submission to Senate Standing Committee on Legal and Constitutional Affairs, Inquiry into the Agreement between Australia and Malaysia on the transfer of asylum seekers to Malaysia, 15 September 2011;

Fiona Chong, Jane McAdam, Alice Noda and Greg Weeks, Submission to Joint Select Committee on Australia's Immigration Detention Network, 10 August 2011.

Sean Brennan

Submission to the Expert Panel on Constitutional Recognition of Indigenous Australians (30 September 2011).

Paul Kildea

Submission to the Expert Panel on Constitutional Recognition of Indigenous Australians (30 September 2011).

Jane McAdam

Position paper on 'A Statelessness Determination Procedure for Australia' (for the Refugee Council of Australia, submitted to the Department of Immigration and Citizenship (September 2011).

Greg Weeks

Submission to the Administrative Review Council, Response to Consultation Paper (1 July 2011).

George Williams

Submission to ACT Justice and Community Safety Directorate on 'Inquiry into Economic, Social and Cultural Rights – A Good Idea for the ACT?' (29 July 2011);

Submission to Australian Law Reform Commission 'National Classification Scheme Review' (14 July 2011);

Submission to Expert Panel on Constitutional Recognition of Indigenous Australians (12 July 2011).





Centre PhD students, Keiran Hardy, Rebecca Welsh and Tamara Tulich in Milan for the International Association of Constitutional Law – Research Group on Constitutional Responses to Terrorism, December 2011

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