

Dear Friend,

Welcome to the July 2012 newsletter of the Gilbert + Tobin Centre of Public Law. The last six months have been exceptionally busy and productive across the Centre's many projects.

In large measure this has been due to the significance of public law perspectives on many of the contemporary policy debates alive in Australia at the moment. Centre members have had much to contribute on all these topics – same-sex marriage, climate change, judicial misconduct and incapacity, constitutional recognition of indigenous Australians, federalism (both in responding to the High Court's major decision on Commonwealth executive power in the School Chaplains case and the proposals to give local government some standing under the Constitution), media reform, asylum-seekers (including Julian Assange!) and reflections on native title prompted by the 20th anniversary of the *Mabo* decision.

As the Centre embarks on its second decade, the prominence of public law issues in national debates on topics such as these has reinforced the importance of our twin goals of carrying out the highest quality academic research and also ensuring that it makes a real contribution to our society. To be sure, it is rarely possible to draw bright lines between much academic work and shifts in public policy or judicial opinion. Frequently the role most able to be played by a Centre such as this is simply to

Save the Date!

Our next Constitutional Law Conference and Dinner will be held on 15 February 2013.

explain the basis and significance of legal changes to the broader community. This can be done through talking to or writing for media outlets but also giving speeches in a diverse range of settings. The Centre's regularly updated project resource pages – just some of which are referred to in the reports in this newsletter – are a further manifestation of the emphasis we place on our public educative role.

Beyond this there are, of course, plenty of opportunities for academics to have direct input into the law-making process through submissions to parliamentary, government and independent inquiries. The Centre has a long track record of making submissions that are positively received by such committees. Less well-known though is the work the Centre does advising and assisting stakeholders in particular areas to make their own submissions through these public consultation processes.

Finally, the Centre prides itself on its consistent efforts to engage and collaborate with those outside academia. Our annual constitutional law conference and specialist events

>>>





2012 Constitutional Law Conference Keynote Panel: the Hon Justice Alan Robertson, Professor Jeffery Goldworthy and Centre Director, Professor Andrew Lynch

'Australian politics has generally been characterised by strong party discipline - on the floor of Parliament, at least - but [Campbell] Newman and his government should not take such discipline for granted.'

Fergal Davis, 'Lifting the veil on a court's injustice' *The National Times* (27 March 2012)



in the fields of federalism, indigenous affairs, migration and terrorism law regularly involve the participation of the profession, political figures and senior public servants. The publication this February of *Tomorrow's Federation – Reforming Australian Government* (edited by Paul Kildea, George Williams and myself) is just the latest example of the fruits of developing these relationships. Comprising 19 chapters, the book contains work by authors with an impressive range of expertise and professional experience in the field of federalism. As the consequence of a two day workshop in March 2011, the individual chapters reflect the authors' exposure to the insights and suggestions of those in different disciplines and also those who actually work in the front line of government.

Other major publications from the first half of this year come from the Centre's ever-energetic Professor Jane McAdam who has already published two books in 2012. The first is with Oxford University Press and is the culmination of Jane's work over the last three years under an ARC Discovery Project – *Climate Change, Forced Migration, and International Law*. Jane is also one of four co-authors of *Climate Change and Australia: Warming to the Global Challenge* (The Federation Press) with Centre Associate Ben Saul, Steven Sherwood, Tim Stephens and James Slezak. This book, in offering the public an accessible account of the climate change issues across the fields of science, economics, geography and law, is yet another great example of the kind of work on which Centre members place a high priority. Congratulations on both new titles to Jane!

Finally, the Centre extends a warm welcome to Professor Rosalind Dixon who has decided to remain at UNSW, taking up an appointment in the Law School. As mentioned in the last newsletter, Rosalind has been studying and working in the United States for the last few years. We are delighted that she has decided to leave the University of Chicago Law School in order to return to UNSW where she completed her undergraduate qualifications and look forward to working with her as a member of the Centre in the years ahead.

You can find an insightful comment by Rosalind on indigenous constitutional reform – as well as full details of all recent Centre activities and publications – in the pages of this newsletter.

Andrew Lynch
Director

Centre Activities

2012 Constitutional Law Conference



2012 Constitutional Law Conference Session 2
Panel: David Hume, the Hon Justice Margaret McMurdo AC, Dr Christos Mantziaris and Assistant Professor Rosalind Dixon

'With a spate of High Court retirements imminent, the government may hope that the appointment of new Justices will see the Court's consideration of Commonwealth executive power return to the assumptions of past decades – rather than entrench the limitations that have been so forcefully expressed in *Williams*.'

Andrew Lynch, 'School chaplains decision opens can of worms for federal funding' *The Australian* (3 July 2012)



On 17 February 2012 the Centre, with the support of the Australian Association of Constitutional Law, hosted its annual constitutional law conference. This event, now in its second decade, drew the usual audience consisting of a diverse cross section of the community, including academics, barristers, government officials and members of the judiciary.

The opening speakers on the day, Professor Jeffrey Goldsworthy and the Hon Justice Alan Robertson, reviewed the key themes of 2011 constitutional law decisions in, respectively, the High Court and the Federal and State Courts. Professor Goldsworthy's consideration of the place of statutory interpretation within the field of public law was particularly well received and stimulated much discussion over the day.

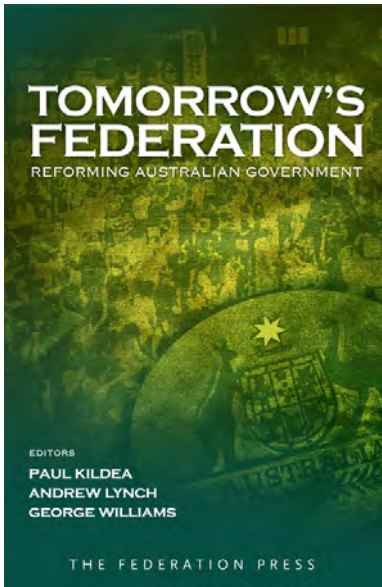
As always, the session after morning tea focused on recent cases of particular note, with the trio at this year's event being *Wooten*, *Momcilovic* and the much anticipated but as then undelivered judgments in *Williams v Commonwealth*! Dr Christos Mantziaris, who had the difficult job of speaking on the latter more than rose to the challenge and offered not just a thoughtful guide to the issues which fell for consideration but also observations on the conduct of High Court litigation involving multiple parties and interveners.

The contemporary issues featured in the third session remain ones at the forefront of public debate several months later – anti-bikie control orders, asylum-seeker policy and the constitutional recognition of indigenous Australians. Professor Megan Davis was well-placed to give interesting perspectives on the latter having been a member of the government's Expert Panel that reported on options for reform in January.

The final session of the day focused on the contemporary operation of Australia's federal system. Senator Marise Payne, who admitted that her 'dance card' as Shadow Minister for COAG was rarely full, gave an account of the Commonwealth Opposition's stance on the institutional architecture that has been built up around 'co-operative federalism' at the sub-constitutional level. At the same time, delegates were invited to consider the prospect of a new State with the Northern Territory's Solicitor-General, Michael Grant SC, discussing the legal issues involved in the NT's move to statehood.

Proceedings were followed by dinner at NSW Parliament House. The guest speaker at the dinner was the Hon James Spigelman AC QC who spoke on *A Tale of Two Panels*. A copy of Mr Spigelman's speech plus a selection of other papers presented on the day is available on the Centre website. Additionally, for the first time, all four sessions of the Conference are available as a video-cast. For papers and video just go to:
<http://www.gtcentre.unsw.edu.au/events>.

Book Launch – *Tomorrow's Federation*



Immediately after the proceedings of the Constitutional Law Conference on 17 February, the Centre and Federation Press hosted a book launch by New South Wales Premier the Hon Barry O'Farrell MP of *Tomorrow's Federation: Reforming Australian Government* edited by Paul Kildea, Andrew Lynch and George Williams.

The Premier used the occasion to reflect on the means of ensuring that Australia's federal system 'is never the sinner, and always better than just passive 'ballast' in our nation's domestic and global fortunes'. The Premier declared: 'My support for COAG is strong – but it is conditional. COAG cannot be allowed to become a fourth level of Government and it must earn its keep; and neither should the Commonwealth – or our courts - be uncontested in what many of the book's contributors identify as furthering 'the imbalance at the heart of our system of government'.

It was wonderful that so many of the book's contributing authors were able to attend the launch. They were drawn from a number of fields and the book is a clear example of the Centre's commitment not simply to inter-disciplinarity but also working closely and engaging with those in government and the legal profession.



Tomorrow's Federation Book Launch: Chris Holt (Federation Press), Paul Kildea, Andrew Lynch, the Hon Barry O'Farrell MP and George Williams



Centre Comment

Amending Australian Constitutional Identity



Centre Member Professor Rosalind Dixon

'Juries are about much more than simply determining matters of guilt or innocence – although that is part of their function. Jury trial is about involving members of the community in the process of determining guilt or innocence.'

Fergal Davis, 'Human rights bills fail in the hands of law'
The Drum Opinion (22 March 2012)



Recent proposals to amend the Constitution to give increased recognition to indigenous Australians have a number of important aims. The first is to 'clean up' the text of the Constitution, so as to remove outmoded provisions, such as s 25 of the Constitution, which are premised on the possibility of indigenous voters being disenfranchised by state governments. The second is to clarify the scope of the 1967 changes to the Constitution altering the Commonwealth's 'race power', so as to make abundantly clear that the Commonwealth cannot rely on this power as a basis for passing racially discriminatory laws. And the third, and most ambitious, is to try to ensure that the Constitution 'acknowledge[s] ... the place of Aboriginal and Torres Strait Islander peoples in our nation's history or our contemporary society' (You Me Unity' Discussion Paper, 2011).

This third objective is, in essence, nothing less than an attempt to transform Australian constitutional identity – to make it both more inclusive and more deeply acknowledging of past injustices towards indigenous Australians. Formal procedures for constitutional amendment, such as s 128 of the Constitution, can, and do, produce this kind of change in constitutional identity in two distinct ways: first, by changing the textual basis for subsequent arguments about the constraints imposed by a constitution, and second, by creating a clearer evidentiary record for subsequent generations about contemporary popular support for changes in constitutional self-understanding.

However, there is often a potential tension between these two different mechanisms for amending constitutional identity. The argument is basically that, the more a proposal for text-based change wears its identity-based colours on its sleeve, the more likely it is to mobilize political opposition in a way that leads to defeat or failure; whereas, the more opaque it is about its potential identity-freighted consequences, the more likely it is to succeed at a textual level, but to deprive subsequent generations of any meaningful evidentiary record about the significance of such change.

This potential tension is clearly visible in recent debates over the recommendation by the Expert Panel on the Constitutional Recognition of Indigenous Australians to insert a new s 116A in the Constitution providing that '[t]he Commonwealth, a State or a Territory shall not discriminate on the grounds of race, colour or ethnic or national origin', but that this provision shall 'not preclude the making of laws or measures for the purpose of overcoming disadvantage, ameliorating the effects of past discrimination, or protecting the cultures, languages or heritage of any group'. This proposal makes clear to the public the substantive vision of racial equality held by many proponents of constitutional change in this area, and more important, the degree to which such a vision of equality can entail the adoption of a range of restitutionary, or backward-looking, measures designed to redress the injustices of the past. It is in no small part because of this that the provision has attracted significant controversy: the opposition leader,

‘...a criticism that can be made of the bills is their failure to expressly address the particular sensitivities that arise in cases of judicial incapacity. This weakness is hard to explain given the publicity surrounding recent moves to take some State judicial officers suffering from mental illness off the bench. Additionally, the bills show little sign of benefitting from engagement with relevant international protections for persons with a disability despite these being embedded in the government’s new Australian Human Rights Framework.’

Andrew Lynch, ‘Federal bill is silent on how to handle issue of judicial incapacity’ *The Australian* (4 May 2012)



Tony Abbott, for example, suggested in January that the provision threatens to ‘distor[t] the traditional rights and freedoms and protections that we’ve had in this country’. In effect, he seems to be suggesting that the provision poses a threat to existing commitments to *formal* racial equality among Australians, in a way that raises significant concerns for members of the coalition. Without Coalition support, it is also highly unlikely that the proposed change will be adopted at a referendum.

Imagine, however, that the Panel were to recommend the adoption of a more formal guarantee of racial equality modeled on a provision such as s 9(1) of the 1996 South African Constitution, which provides that ‘[e]veryone is equal before the law and has the right to equal protection and benefit of the law’ (South Africa also has a far-ranging guarantee of *substantive* equality in ss 9(2)–(4) of its Constitution). Such a provision would be far more likely to pass at a referendum than the currently proposed s 116A. But it would also provide far less guidance to the High Court or other constitutional actors in the future as to the degree to which Australians in 2012–13 actually supported a change in previous understandings of racial equality.

Such an ‘evidentiary gap’ could, in turn, affect the interpretation of the Constitution in a range of ways damaging to the cause of ‘amending constitutional identity’. One reason we are still debating the need to amend the race power is that the 1967 amendments themselves did not fully surface contemporary understandings about racial equality and government power. (Had they done so, a majority of the High Court in *Kartinyeri v The Commonwealth* (1998) might have been willing to affirm a more limited view of the race power). Another area where this gap could matter is the implied freedom of political communication. Commonwealth and state hate speech laws have not yet been tested for consistency with this freedom, but when they are, one question the High Court may ask is whether such laws are appropriate and adapted to implementing shared community understandings of equality and dignity. The weaker the evidence is of community support for certain understandings of equality (ie substantive rather than formal equality), the more likely it would thus also be that the Court would conclude that such laws are impermissibly over-broad and invalid.

Amendment difficulties, or tensions, of this kind certainly do not in any way undermine the importance of attempts to change constitutional identity, or the benefits of using formal constitutional procedures such as s 128 in order to do so. They do, however, ask us to think harder about which of the two functions of constitutional amendments – the textual or the evidentiary – is likely to be most important to achieving change in this, and other, constitutional contexts.

Rosalind Dixon

Centre People

Centre Visitors



Centre Visitor Dinesha Samararatne

Dinesha Samararatne

My time at the Gilbert + Tobin Centre of Public Law as a Visiting Fellow (May – June 2012) was productive, pleasant and pleasurable. One of my primary objectives in visiting the Centre was to further develop my PhD research but in fact, I was able to achieve many other things due to the several academics whom I met at both the Centre and at the Faculty of Law of the University of New South Wales who were keen on helping me make the most of my short stay.

I was given the opportunity to talk about my PhD research at the Centre meeting in May. My research involves exploring the implications of a constitutionally recognised concept of the 'sovereignty of the People' in a context where the rule of law is being undermined due to political, historical and social factors. The experience of communicating research in the area of public law in Sri Lanka to an audience from a different background was in itself a useful learning experience for me. I am grateful to all those who responded to the ideas I shared at that meeting. On Professor Andrew Byrnes' invitation, I also attended the meeting of the Australian Human Rights Centre in the Faculty and shared very briefly about my work with those who attended. Being linked up with both the G+T Centre and the AHRC will be helpful for both my research and teaching as administrative law and human rights law are my primary areas of work.

Several academics and some postgraduate students at the Faculty took time off to have conversations and exchanges with me about research, opportunities for collaborative work etc. Many others were in general helpful and open. Being in Sydney also gave me the opportunity to meet academics attached to other universities whose work overlapped with mine. Several of the ideas discussed in those meetings are being transformed in to action already and I am excited about them.

My time at Gilbert + Tobin Centre of Public Law was my first visit to Sydney, Australia. I travelled with my (then) eight months old son and my spouse (who took leave to travel with me and care for our son). Looking back I can say with satisfaction that the effort I took to be at the Centre was well worth it both professionally and personally. I am particularly grateful to Andrew Lynch who was very supportive both before and during my time at the Centre. I would also like to place on record my gratitude to the members of the administrative staff and the library staff who met my needs efficiently and professionally. I look forward to strengthening my ties with the Centre in the years to come.





Centre Visitors Professors William and Emily Buss with Professor Kim Rubenstein speaking at a Centre seminar



Professors Emily and William Buss

A highlight of our visit to the Gilbert + Tobin Centre of Public Law was presenting our work in progress on Australian and American Family Law and Federalism at a Faculty Research Seminar at the end of February. This project grew out of our separate but merging interests: Emily (my daughter) has had a deep and continuing interest in Family Law, which she pursues as a member of the University of Chicago Law Faculty. For the last decade, as a member of the University of Iowa Law Faculty (now Emeritus), I have been working on various aspects of the way American Constitutional Law has had an impact on Australian Constitutional Law (for good and ill) and hope that this project, along with others published in Australia and the United States, will eventually find its way into a book on the subject.

Despite our ignorance of each other's field of scholarship, Emily and I were drawn to working together on this current project by the Australian constitutional framers' strong objection to the American Constitution's treatment of marriage and divorce – and especially divorce – leaving its separate regulation to the several states. Although that negative reaction resulted in the Commonwealth Parliament's having the constitutional power to regulate marriage and divorce, the power was not exercised until quite late in the 20th century. Consequently, the problem of the states' varying divorce law was eventually solved in both countries as the several states gradually settled on no-fault divorce. Now, both countries are trying to solve the problem of same-sex marriage. Despite the basic difference in the allocation of marriage and divorce power in the two federal systems, many parallels have emerged; yet the approaches of the two federal systems often differ substantially, and we are trying to determine whether any of these differences has an outcome-influencing effect. (We have continued to explore this question in a presentation of our work at the annual Family Law Meeting of the International Society of Family Law North American Regional Conference, at the Iowa College of Law in Iowa City, Iowa, June 2012.)

We both enjoyed our time at UNSW Law School immensely (a week for Emily; two weeks for me). We were particularly struck by the warmth and kindness and generosity of everyone we encountered – faculty, administration, staff, and students. Everyone seemed to have time to stop and talk to us about what we were doing, about constitutional law, about Sydney, and about the UNSW Law School. I also had the privilege of giving a Postgraduate workshop for the Centre on the purpose of section 75(v) of the Australian Constitution at which several faculty and students participated in a lively discussion. As we expected would be the case, Emily and I learned much more from the home team than it from us. Special thanks for hospitality above and beyond the call of duty to Andrew Lynch (the perfect host in all things, including the invitation to Kim Rubenstein, ANU, a long-time family friend, to comment on our presentation), to Brett O'Halloran (our temporary office-mate at UNSWLS and our guide and advisor on all things related to UNSW Law School), and to Rosalind Dixon (Emily's Chicago law school colleague and dear friend, who initiated the process leading to our visit). I have had several visits to ANU and Melbourne law schools, and love both places; I am happy to be able to add the UNSW Law School to that list.

PhD Report

Rebecca Walsh

I joined the Centre in late 2009 as a Research Associate with the Terrorism & Law Project and started my PhD in early 2010. My doctoral thesis concerns preventative detention, control orders and judicial independence under Chapter III of the Constitution. My research is supervised by Professors George Williams and Andrew Lynch and supported by Professor Williams' Australian Research Council Laureate Fellowship Project: 'Anti-Terror Laws and the Democratic Challenge'. Prior to joining the Centre I held positions in the Commonwealth Attorney-General's Department and then at DLA Phillips Fox Sydney.

My PhD research is the culmination of a long-standing interest in judicial power, particularly in how the Constitution determines and limits judicial functions and processes. The anti-terror schemes enacted in 2005 present a unique opportunity to investigate and test this area of law. Control orders enable a range of restrictions and obligations to be placed on persons by courts for the purpose of preventing terrorism. Preventative detention orders enable individuals to be imprisoned for a brief period for similar preventative purposes by the Federal Police or by judges acting in a personal capacity. My research sets out to try and 'make sense' of how a very similar task resulting in such severe orders may be conferred on separate arms of government, when the constitutional rules in the area strictly limit courts to judicial tasks and other bodies to non-judicial tasks. In tackling this issue my thesis also interrogates whether the involvement of judges in such schemes compromises the independence or integrity of federal courts.

My work thus far has focussed on taking a fresh look at whether the involvement of judges in the control order or preventative detention measures up against rules regarding the separation of federal judicial power. Now in the third year of my research, I have returned to reconsider my fundamental assumptions and assertions about how Chapter III of the Constitution may be interpreted in order to do justice, as best as possible, to the constitutional text and underlying values. This is no small task, and as I try to navigate this fraught area of law I have been assisted immeasurably by the support of the Laureate team and my colleagues at the Centre. The opportunities this collaborative environment has provided for challenging and strengthening my research in work-in-progress seminars and at conferences – including presentations in Mexico, Milan, Oxford and Washington DC – have been invaluable.



Centre PhD student Rebecca Walsh

'It is essential that international, regional, and national responses to climate change-related movement are informed by a bottom-up approach, taking account of the desires of affected communities and responding appropriately to their needs and concerns.'

Jane McAdam, *Climate Change, Forced Migration, and International Law* (OUP, 2012)



Emily Burke

Interning at the Gilbert + Tobin Centre of Public Law has been one of the most interesting, challenging and rewarding experiences I have had at Law School. Right from my first day I became involved in a wide array of projects: submissions to three parliamentary inquiries (with Andrew Lynch and George Williams); updating resources on the proposed amendment of the Constitution to provide recognition for Aboriginal and Torres Strait Islander people (for Sean Brennan); collating information on terrorism prosecutions in Australia (for Nicola McGarrrity); and writing for the UK Constitutional Law Group blog on the Australian gay marriage debate.

One of my most memorable experiences was appearing before the Senate Legal and Constitutional Affairs Committee with Andrew to speak about the Centre's submission on Senator Hanson-Young's same-sex marriage equality bill. Together with the Law Council of Australia we submitted that the bill was likely within Parliament's legislative power, and voiced strong support for the removal of discrimination against same-sex couples. When Senator Hanson-Young asked why there was so much disagreement amongst lawyers over the constitutionality of the bill, Andrew let me (attempt) to explain the legal issues involved. It was not only exciting to speak at a parliamentary inquiry about these issues, but also to hear from other witnesses such as the Hon Michael Kirby, and be a participant in a debate of such contemporary social importance.

This internship was thus an invaluable complement to my law studies, particularly as I am interested in law reform and a career as an academic. As I had never written submissions or blog posts on complex legal issues before, I valued the opportunity to develop my legal writing and advocacy skills in new mediums. I was also grateful for the opportunity to contribute to the Centre's work, and see first-hand the role of its advocacy in government decision-making and community engagement with pertinent legal issues.

I chose to study law at UNSW because of its strong social justice orientation, and working at the Centre has only increased my admiration for the staff at UNSW who continue to passionately and effectively tackle social justice issues in law reform. It has been a pleasure and a privilege to intern at the Centre, and I would like to particularly thank Andrew, George, Greg Weeks, Nicola and Sean for their guidance and patience in making this experience as rewarding and enjoyable as it has been for me.



Centre Social Justice Intern Emily Burke

Stefan Nystrom has spent the past six years fighting to return to Australia. His case has been backed by an important United Nations committee but the federal government has rejected its decision. In doing so, Australia has once again shown its willingness to promote human rights abroad, but not at home.

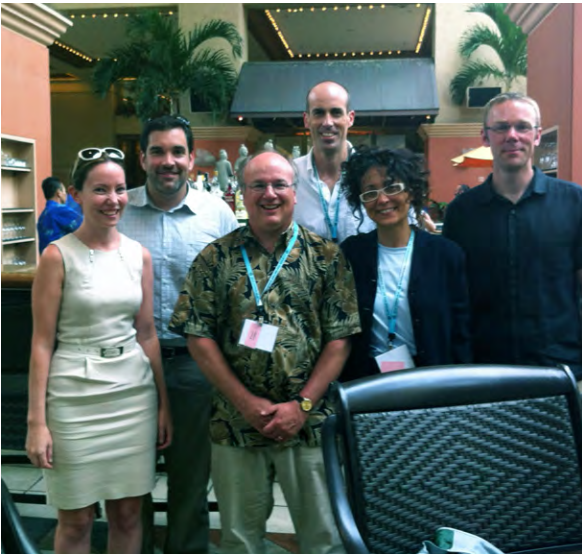
George Williams, 'Human Rights Hypocrisy Hurts Canberra's Role on World Stage' Sydney Morning Herald (8 May 2012).



Project Reports

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

Project Director: George Williams



Centre staff and other participants in the 'Author Meets Reader' session on Professor Kent Roach's (centre) *The 9/11 Effect* at the 2012 Law and Society Conference in Hawaii

The Laureate team has been extremely busy across the full range of academic activities. Members of the team have published papers; attended conferences in Australia, Canada, the United Kingdom and the United States; developed new courses; and continued their individual academic achievements.

Nicola McGarrity and Edward Santow (formerly of the Laureate Project) published a chapter on 'Anti-Terrorism Laws: Balancing National Security and a Fair Hearing' in the second edition of *Global Anti-Terrorism Law and Policy* (Cambridge University Press, 2012).

That major volume was a direct result of a workshop organised by the Laureate Project in August 2010. The book was edited by Victor Ramraj, Michael Hor, Kent Roach and the Project's Director, Professor George Williams. Professor Williams also completed a major assessment of the Australian Security Intelligence Organisation's questioning and detention powers. That research formed the basis for a joint paper with Lisa Burton and Nicola McGarrity.

In other publication news, Dr Jessie Blackbourn co-edited a special edition of the journal *Critical Studies on Terrorism* with Helen Dexter, Rani Dhanda and David Miller. The editor's introduction to that issue asks: 'A Decade on from 11 September 2001: What has Critical Terrorism Studies Learned?' [(2012) 5(1) *Critical Studies on Terrorism*, 1-10].

Members of the Laureate Project were again extremely active in presenting at international conferences:

- Professor George Williams presented a paper, prepared jointly with Lisa Burton, on human rights scrutiny in the Australian Federal Parliament at an international conference in London.
- Rebecca Welsh presented a paper 'Why Argentina and Brazil Resist Criminalising 'Terrorism'' at the Comparative Law Young Comparativists' Committee Conference at George Washington University in April. Whilst in the United States, Rebecca took the opportunity to attend the Brennan Centre Jorde Symposium presentation by Judge Diane P Woods and the Center on the Administration of Criminal Law's 'New Frontiers in Race and Criminal Justice Conference', both of which were held at New York University.
- Dr Fergal Davis presented a paper entitled 'The Ongoing Threat of Terrorism and the Suspension of Criminal Justice Norms: Lessons from the Irish Free State' to an international conference on 'The Criminal Justice System' held in Karachi, Pakistan.



'Climate change is having real impacts on people's lives, but in most cases it is only one of a number of reasons why people decide to move. This is because climate change tends to multiply pre-existing stressors, rather than solely causing movement. In other words, climate change acts as a threat multiplier, which magnifies existing vulnerabilities.'

Jane McAdam, *Climate Change, Forced Migration, and International Law* (OUP, 2012)



- Dr Jessie Blackbourn and Dr Svetlana Tyulkina both presented papers at the Centre for Interdisciplinary Justice Studies, The University of Winnipeg, international conference: 'Securing Justice: A Critical Examination of Security 10 Years after 9/11'. Dr Blackbourn's paper examined 'The UK's Independent Reviewer of Terrorism Legislation: Controlling Executive Power or Constraining Legislative Scrutiny?' while Dr Tyulkina's paper was entitled 'Constitutional Exceptions to Combat Terrorism: A Way to Secure More Justice or a Shortcut to Normalize the Use of Emergency Powers?'
- Dr Tyulkina also presented a paper on 'Terrorism and Constitutional Change: Lessons from Spain' and Nicola McGarrity presented two papers ('Policing Intelligence: The Powers of Intelligence Agencies in Comparative Perspective' and 'Author Meets Reader: a Discussion with Kent Roach', in which she was joined by Centre Director Professor Andrew Lynch) at the prestigious Law and Society Association Conference in Honolulu, the United States.

Domestically, the team presented at a wide range of conferences and events. Nicola McGarrity presented a paper on 'Designing Control Orders after *Totani and Wainohu*' at the G+T Centre's Annual Constitutional Law Conference. Tamara Tulich ('Pre-emptive Surveillance: The Curious Case of the Hybrid Control Order') and Nicola McGarrity and Jessie Blackbourn ('Listening and Hearings: Using Telecommunications Intercepts as Evidence in Terrorism Trials') presented papers at the 'Surveillance in/and Everyday Life: Monitoring Pasts, Presents and Futures' conference at the University of Sydney. Lastly, Professor Andrew Lynch spoke on 'The Rule of Law & the Commonwealth Principles – Terrorism, Emergency Laws & Human Rights', at the Commonwealth Law Association Regional Conference in Sydney in April.

The team continued their highly successful Working Paper Series. Alongside papers from members of the Laureate Project, we welcomed a contribution from Dr Greg Martin of the Department of Sociology and Social Science at the University of Sydney. Greg and his colleague Dr Rebecca Scott Bray are currently visiting scholars at UNSW and they have both sought to engage constructively with the members of the Laureate Project.

Nicola McGarrity and Keiran Hardy are convening a course on 'National Security Law and Human Rights' in Semester II, 2012. This course, which was established by Andrew Lynch in 2009, is a wonderful example of researched teaching and clearly demonstrates the impact of having committed researchers available to improve the undergraduate and postgraduate learning experience. Such engagement was further demonstrated by Rebecca Welsh's presentation for the UNSW Law Students Society Speakers Forum (14 May) on the mental health and well-being issues associated with the clerkship and graduate program application process.

Congratulations to Dr Svetlana Tyulkina on being awarded her PhD by the Central European University, Budapest. Her graduation will be in Budapest in June. Congratulations are also due to Tamara Tulich who has been awarded one of the UNSW Faculty of Law's Nettheim Teaching Fellowships. The selection process was highly competitive and Tamara's success demonstrates her outstanding ability as a new scholar.

Finally, 9 May was the closing date of the Call for Papers for the IACL Research Group on Constitutional Responses to Terrorism Workshop: 'States of Surveillance: Counter-Terrorism and Comparative Constitutionalism' for 2012. The Workshop attracted over sixty abstracts and the competition for the 18 available slots was fierce. The Centre at UNSW will host the Workshop in December 2012 and it looks set to be an event of an exceptionally high calibre.

Federalism Project

Project Director: Paul Kildea

Following the release of *Tomorrow's Federation* (The Federation Press 2012) in February, the Federalism Project has had plenty of opportunity to engage in policy debates with a strong federal dimension. Paul Kildea argued in the *Daily Telegraph* that a significant barrier to establishing a News Media Council to regulate print, broadcast and online news content is the federal parliament's absence of direct law-making power over print media. George Williams wrote in the *Sydney Morning Herald* about the prospects for success of a possible State challenge to the mining tax under sections 51(ii) and 114 of the Constitution, and concluded that it would be 'surprising' if such a challenge succeeded. Federal issues also featured in the Centre's submission to Senate and House of Representatives inquiries into legislation authorising same sex marriage. George, Andrew Lynch and Centre intern Emily Burke concluded that it was not possible to reach a definite conclusion, but there is a good argument that the marriage power in section 51(xxi) authorises Commonwealth legislation permitting same-sex unions.

The High Court's decision in the case of *Williams v Commonwealth (School Chaplains Case)* drew very directly on the implications of the Constitution's federal structure for the scope of executive power and both Andrew and George spoke and wrote for media outlets keen to understand the importance of the decision. As the Project now enters its next phase, focused on the constitutional principles and mechanisms that support and constrain co-operative federalism, the significance of *Williams* will doubtless continue to be felt.

Indigenous Legal Issues

Project director: Sean Brennan

Native title, constitutional reform and the legacy of the High Court's decision in *Koowarta v Bjelke-Petersen* have all featured in the work of the Centre's Indigenous Legal Issues Project over the past six months. The 20th anniversary of the High Court's *Mabo* decision prompted public interest in evaluating two decades of developments in native title, particularly with the announcement by Attorney-General Nicola Roxon of proposed amendments to the *Native Title Act*. A piece for *Inside Story* by Project Director Sean Brennan combined these themes, reviewing the Attorney's four proposals and placing the current reform debate in its historical context. Sean also presented to the annual Native Title Consultative Forum



New Centre PhD candidate, Jackie Hartley



The decision by Justice Finn in the Torres Strait sea claim represented precisely the rare and modest breakthrough in native title-style economic empowerment which governments could have sought to accommodate, even build upon, rather than appeal and try to kill off.

Sean Brennan, 'Native Title and Economic Empowerment', Native Title Consultative Forum, Canberra, 15 May 2012.



Professor Jane McAdam presenting at The Brookings Institution, Washington DC



in Canberra in May. This is a national stakeholder forum convened by the Attorney-General's Department and this year it also focused on the *Mabo* anniversary. Sean's paper was on the degree to which native title has been (and could have been to a much greater degree) a vehicle for Indigenous economic empowerment.

This year also marks the 30th anniversary of the *Koowarta* decision. The High Court narrowly upheld the *Racial Discrimination Act*, after Queensland Premier Joh Bjelke-Petersen had blocked John Koowarta in efforts to regain traditional ownership of a pastoral station for his Winychanam people. The Melbourne Law School hosted a symposium on *Koowarta* in May and, together with Indigenous Law Centre Director Professor Megan Davis, Sean Brennan presented a paper on the constitutional significance of the case thirty years on. Sean also appeared in a 7.30 story on ABC TV as, belatedly, the Queensland government transferred freehold ownership of some of the area to its traditional owners.

The debate continues over constitutional change regarding Australia's first peoples, following the Expert Panel's report to government in January this year recommending a referendum package. The Centre's submissions to the Panel (from several Centre members) and its work over the past decade on legal and constitutional change were referred to many times in the report. Sean Brennan wrote an opinion piece for the *Age* in February on the need to dispel myths concerning a non-discrimination clause and the Panel's recommendations. He has also continued to engage with Aboriginal and Torres Strait Islander organisations and the legal profession through presentations on constitutional change. In recent weeks, Social Justice Intern Emily Burke has done a great job of upgrading the [Resource Page](#) on the Centre's website about Constitutional Change and Aboriginal and Torres Strait Islander people.

International Refugee and Migration Law Project

Project Director: Jane McAdam

The International Refugee and Migration Law Project enjoyed a very productive start to 2012. In March 2012, eight students (Guiliana Burgos, Angela Kintominas, Riona Moodley, Maria Nawaz, Sally Richards, Rebecca Webb, Tamara Wood and Robert Woods) had the opportunity to undertake for the United Nations High Commissioner for Refugees (UNHCR) in Geneva. The project required the students to compile country-of-origin information relating to refugee claims based on sexual orientation and gender identity from lesbian, gay, bisexual, transgender and intersex (LGBTI) asylum seekers from Uganda, Zimbabwe and Iran. The students had to compile high quality, current, reliable country-of-origin information on the treatment (in law and in practice) of LGBTI persons in these countries, and the availability of protection for them. Their research will assist UNHCR protection officers assessing refugee claims from those countries, and will also provide important background information for UNHCR when it drafts its thematic eligibility guidelines on LGBTI claims. UNHCR praised the students' 'systematic and transparent approach' and issued them with certificates of

appreciation. We are honoured to have been invited to undertake future collaborative projects with UNHCR, which gives further practical effect to our Memorandum of Understanding with UNHCR.

We have also been running a regular reading group on refugee and forced migration, coordinated by PhD student and Nettheim Doctoral Teaching Fellow, Tamara Wood. Every six weeks a group of between four and ten meet to discuss a published article or work-in-progress, and there is always a rich and engaging conversation.

The Project Director, Jane McAdam, has published two books this year. The first book, *Climate Change, Forced Migration, and International Law* (OUP 2012) is the culmination of her three year research project examining the relationship between climate change and human movement, and the role of international law in responding to it. The book evaluates whether the phenomenon of 'climate change-induced displacement' is an empirically sound category for academic inquiry by examining the reasons why people move (or choose not to move); the extent to which climate change, as opposed to underlying socio-economic factors, provides a trigger for such movement; and whether traditional international responses, such as the conclusion of new treaties and the creation of new institutions, are appropriate solutions in this context.

The second book, *Climate Change and Australia: Warming to the Global Challenge* (The Federation Press 2012) is co-authored with Ben Saul, Steven Sherwood, Tim Stephens and James Slezak. It aims to provide an easy-to-read overview of the impacts of climate change on Australia and the policy options available to respond to it. It gives a balanced and rational account of the diverse ways in which climate change impacts on society, drawing on the expertise of its authors in science, economics, geography and law.

In January, Jane was appointed as a non-resident Senior Fellow of The Brookings Institution in Washington DC, which is regarded as the world's leading think tank. Jane spent a few weeks at Brookings in March, speaking at a public event on 'Addressing the Legal Gaps in Climate Change Migration, Displacement and Resettlement' and meeting with government officials, NGOs and other academics. While there, she also attended and spoke on a panel at the American Society of International Law conference. She was invited to join an international research project at Georgetown University on 'Crisis Migration', led by Professor Susan Martin and funded by the Macarthur Foundation. The project examines the movements of people who do not fit within existing legal protection frameworks and who flee various 'crisis' situations, such as extreme natural hazards, environment degradation or disasters (including nuclear and industrial accidents), communal violence, civil strife, and global pandemics. In September, the research team will meet for a workshop in Washington in the lead-up to the publication of the project's first edited book.

The first half of this year was also very busy on the community engagement front. Jane was invited to present a number of professional training and information sessions on Australia's new complementary protection laws, which took effect on 24 March. Jane was commissioned by the



2012 Constitutional Law Conference
third session panel: Professor Megan
Davis, Nicola McGarrity, Nicholas
Poynder and Nicholas Cowdery, QC





2012 Constitutional Law Conference



Refugee Review Tribunal to write a comprehensive manual on complementary protection in Australia and to provide training to around 150 decision makers and other RRT staff. She also ran CPD sessions for other IAAAS (Immigration Advice and Application Assistance Scheme) service providers in the community and corporate sectors, and addressed the Law Council of Australia's Immigration Law Conference on this subject. On its Resource Page, the Project maintains a [database](#) of all Australian and New Zealand decisions relating to complementary protection which is updated weekly.

Judiciary Project

Project Director: Andrew Lynch

Over the last few months the Centre has conducted work that relates squarely to the state of the judiciary in Australia. The Centre director, Andrew Lynch and Intern Emily Burke made a submission to the Senate Legal and Constitutional Affairs Committee inquiry into the Judicial Misbehaviour and Incapacity (Parliamentary Commissions) Bill 2012 and Courts Legislation Amendment (Judicial Complaints) Bill 2012 which led to an invitation to give oral evidence to the Committee. Andrew also wrote an opinion piece on the bills for *The Australian* newspaper and a more substantial comment for the *Public Law Review*.

The longstanding interest of this project in judicial disagreement and dissent (frequently discussed in the statistics on High Court decision-making produced by Andrew with George Williams for the Centre's annual conference) informed the writing of a conference paper by Andrew that examines its significance for debates on judicial diversity. This work was presented at the 2012 International Conference on Law & Society in June and was the subject of a lengthy contribution titled 'Roxon's High Court dilemma' to the online magazine, *Inside Story*, in early July.

Public Law and Legal Theory Project

Project Director: Ben Golder

Three major pieces of work conducted under this project are about to come to fruition. The first is an edited collection on 'Foucault and International Law' coming out with the *Leiden Journal of International Law* in August of this year, featuring contributions from Anne Orford, Matthew Craven, Susanne Krasmann and Stephen Legg. The second is a sole-edited collection entitled *Re-reading Foucault: On Law, Power and Rights* (Routledge 2012) featuring contributions from major and upcoming Foucault scholars in law, philosophy, political theory, sociology and criminology. Finally, the *Public Law and Legal Theory* project will co-host, along with the School of History and Philosophy (FASS, UNSW) and the Faculty of Arts (Sydney), a workshop on 17-18 August on 'Contemporary Critical Approaches to Rights'.

Referendums Project

Project Directors: Paul Kildea/George Williams

'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.'

'Andrew Lynch 'All politics isn't necessarily local', *Inside Story* (10 January 2012)

Following the release in January of the Expert Panel's report on constitutional recognition of Aboriginal and Torres Strait Islander peoples, Centre members have been highly active on the issue in a variety of ways. Sean Brennan, Paul Kildea and George Williams have written several opinion pieces calling for a sustained period of community education and debate to build on the work of the Expert Panel. For example, Sean argued in the *Age* that renewed public discussion was need to help counter some of the myths and misunderstandings that had emerged since the report's release, while Paul Kildea wrote in the *Australian Financial Review* that differences in opinion among lawyers about the Panel's recommendations were healthy and should be encouraged as part of a process of debate and analysis.

Sean, Paul and George also continue to be involved in the issue through making speeches at various conferences and events and by offering information and advice to individuals and organisations on the political and legal aspects of the proposed reforms.



Centre Staff, PhD students and guests at *Tomorrow's Federation* Book Launch



Publications and Presentations

Publications

'Displacement caused by conflict and human rights violations is typically resolved through the pursuit of three "durable solutions": local integration, resettlement or voluntary return. It has often been assumed that durable solutions mark the end of mobility for refugees and internally displaced persons (IDPs). However, in recent years it has become clear that this assumption needs to be reconsidered.'

Megan Bradley and Jane McAdam, 'Rethinking Durable Solutions to Displacement in the Context of Climate Change' (Brookings Institution Web-Ed, 14 May 2012)

Joint Publications

Matthew Albert and Jane McAdam, *Manual for the Refugee Review Tribunal on Complementary Protection* (2012);

Megan Bradley and Jane McAdam, 'Rethinking Durable Solutions to Displacement in the Context of Climate Change' (Brookings Institution Web-Ed, 14 May 2012);

Rosalind Dixon and Martha Nussbaum, 'Children's Rights & a Capabilities Approach: The Question of Special Priority' (2012) 97 *Cornell Law Review* 549-593;

Paul Kildea, Andrew Lynch and George Williams (eds), *Tomorrow's Federation: Reforming Australian Government*, (The Federation Press, Sydney, 2012);

Jane McAdam and Tamara Wood, 'Australian Asylum Policy All at Sea: An Analysis of *Plaintiff M70/2011 v Minister for Immigration and Citizenship* and the Malaysia–Australia Arrangement' (2012) 61 *International and Comparative Law Quarterly* 274-300;

Nicola McGarrrity and Edward Santow, 'Anti-Terrorism Laws: Balancing National Security and a Fair Hearing' in Victor V Ramraj *et al* (eds), *Global Anti-Terrorism Law and Policy* (CUP, 2nd ed, 2012) 122-50;

Sangeetha Pillai and George Williams, 'Commonwealth Power over Higher Education' (2011) 30 *University of Queensland Law Journal* 287-303;

Victor V Ramraj, Michael Hor, Kent Roach and George Williams (eds), *Global Anti-Terrorism Law and Policy* (CUP, 2nd ed 2012);

Edward Santow and George Williams, 'Terrorism Threat Assessments: Problems of Constitutional Law and Government Accountability' (2012) 23 *Public Law Review* 33-49;

Ben Saul, Jane McAdam, Steven Sherwood, Tim Stephens and James Slezak, *Climate Change and Australia: Warming to the Global Challenge* (The Federation Press, Sydney, 2012).

Rosalind Dixon

'A new inter(national) human rights experiment for Australia', (2012) 23 *Public Law Review*, 75-80.

Ben Golder

'The Distribution of Death: Notes Towards a Biopolitical Theory of Criminal Law', in Matthew Stone, Illan Rua Wall and Costas Douzinas (eds), *New Critical Legal Thinking: Law, Politics and the Political* (London: Birkbeck Law Press, 2012) 91-111;

'Human Rights *Contra* Critique: Preliminary Notes on the Politics of Interpretation' (2011) 17(2) *Australian Journal of Human Rights* 185-214;



'Foucault's Critical (Yet Ambivalent) Affirmation: Three Figures of Rights' (2011) 20(3) *Social & Legal Studies* 283-312.

Andrew Lynch

'Legislating Anti-Terrorism: Some Observations on Form and Process' in Ramraj *et al* (eds) *Global Anti-Terrorism Law and Policy* (CUP, 2nd ed, 2012) 151-82;

'Judicial Complaints and Suspension' (2012) 23 *Public Law Review* 81-4;

'The Reference power: The Rise and Rise of a Placitum?' in Paul Kildea, Andrew Lynch and George Williams (eds), *Tomorrow's Federation* (The Federation Press, Sydney, 2012) 193-209;

'The Impact of Post-Enactment Review on Anti-Terrorism Laws: Four Jurisdictions Compared' (2012) 18(1) *Journal of Legislative Studies* 63-81;

'Commonwealth Financial Powers – Taxation, Direct Spending and Grants – Scope and Limitations' (2011) 6 *Public Policy* 23-32.

Jane McAdam

Climate Change, Forced Migration, and International Law (OUP, Oxford, 2012);

'From Humanitarian Discretion to Complementary Protection: Reflections on the Emergence of Human Rights-Based Refugee Protection in Australia' (2011) 18 *Australian International Law Journal* 53-76;

'Australian Complementary Protection: A Step-by-Step Approach' (2011) 33 *Sydney Law Review* 687-734.

George Williams

'Rewriting the Federation Through Referendum' in Paul Kildea, Andrew Lynch and George Williams (eds) *Tomorrow's Federation* (The Federation Press, Sydney, 2012) 294-309;

'Anti-terror Legislation in Australia and New Zealand' in Ramraj *et al* (eds) *Global Anti-Terrorism Law and Policy* (CUP, 2nd ed, 2012) 541-569;

'The Path to Statehood: The Northern Territory as Australia's Seventh State' (2012) 2 *Northern Territory Law Journal* 145-153;

'Recognising Australia's Indigenous Peoples in the Constitution' *Australian Options*, Autumn 2012, No 68, 6-8;

'How the Australian Constitution Should Recognise Australia's First Nations' *Native Title News*, February 2012, 10(4&5), LexisNexis, 45-50.

Presentations

Joint Presentations

Jessie Blackbourn and Nicola McGarrity, 'Listening and Hearings: Using Telecommunications Intercepts as Evidence in Terrorism Trials', *Surveillance in/and Everyday Life Conference*, University of Sydney, 20 February 2012;



The Panel's proposal was for substantive change. As 2011 unfolded, the case for purely symbolic change faded. That is because the Panel process asked people around Australia to take seriously the question of what the Constitution should say about first peoples and the possibility that they will be discriminated against on the basis of race.

Sean Brennan, 'It's time for our first peoples to get a fair go in the Constitution', *Age* (17 February 2012)



Megan Davis and Sean Brennan, 'Koowarta: Constitutional Landmark, Turning Point or Missed Opportunity?', *Turning Points: Remembering Koowarta v Bjelke-Petersen Symposium*, Melbourne Law School, 11 May 2012.

Sean Brennan

'Constitutional Change and Australia's First Peoples', Gilbert + Tobin Lawyers, Sydney, 8 June 2012;

'Proposals to Change the Australian Constitution', Board of the National Aboriginal Community-Controlled Health Organisation, Canberra, 1 June 2012;

'Native Title and Economic Empowerment', *Native Title Consultative Forum*, Old Parliament House, Canberra, 15 May 2012;

'The Australian Constitution: The Basics', *Constitutional Recognition Forum*, National Centre for Indigenous Excellence, Sydney, 15 March 2012.

Fergal Davis

'The ongoing threat of terrorism and the suspension of criminal justice norms: lessons from the Irish Free State', *The Criminal Justice System: Towards a Systematic Approach – Perspectives from Asia and the Pacific Conference*, Pakistan, 16-19 April 2012.

Andrew Lynch

'Judicial Diversity: Is Disagreement a Positive Objective in Law?', *Sociolegal Conversations across a Sea of Islands*, 2012 International Conference on Law & Society, Honolulu, USA, 5-8 June 2012;

'Author Meets Reader: *The 9/11 Effect*', *Sociolegal Conversations across a Sea of Islands*, 2012 International Conference on Law & Society, Honolulu, USA, 5-8 June 2012;

'Rule of Law & the Commonwealth Principles—Terrorism, Emergency Laws & Human Rights', *Commonwealth Regional Law Association Conference*, Sydney, 19 April 2012.

Jane McAdam

Annual Sophia Holland Lecture, Australian Federation of Graduate Women, 4 May 2012;

'From Sinking Islands to Flooded Deltas: Climate Change Migration, Displacement and Resettlement: Addressing the Legal Gaps', The Brookings Institution, Washington DC, 3 April 2012;

'International Norm-Making on Forced Displacement: Challenges and Complexity', *American Society of International Law Conference*, Washington DC, 28-31 March 2012;

'Complementary Protection in Australia', *Law Council of Australia Immigration Law Conference*, 10 March 2012;

Keynote address, Young Women's Leadership Seminar, NSW Parliament House, 8 March 2012.

‘Whatever the merits of stronger media regulation, the whole idea will come to nought if it is not constitutionally sound.’

‘In the end, the most serious constitutional barrier to the proposed News Media Council is the federal parliament’s inability to put in place a truly comprehensive regulatory regimen.’

Paul Kildea, ‘Constitution could bite news watchdog’
Daily Telegraph (16 March 2012)



Nicola McGarrrity

‘Policing’ Intelligence: The Powers of Intelligence Agencies in Comparative Perspectives’, *Sociolegal Conversations across a Sea of Islands*, 2012 International Conference on Law & Society, Honolulu, USA, 5-8 June 2012;

‘Author Meets Readers: Kent Roach, *The 9/11 Effect*’, *Sociolegal Conversations across a Sea of Islands*, 2012 International Conference on Law & Society, Honolulu, USA, 5-8 June 2012;

‘Much Ado About Nothing? Drafting Control Orders for Serious Organised Crime Groups after *Totani* and *Wainohu*’, Gilbert + Tobin Centre of Public Law 2012 Constitutional Law Conference, Sydney, 17 February 2012.

Tamara Tulich

‘Pre-emptive Surveillance: the curious case of the hybrid control order’, *Surveillance in/and Everyday Life: Monitoring Pasts, Presents and Futures*, University of Sydney, 20-21 February 2012.

Svetlana Tyulkina

‘Constitutional exceptions to combat terrorism: a way to secure more justice or a shortcut to normalize the use of emergency powers?’, *Securing Justice – A Critical Examination of Security 10 Years after 9/11*, Centre for Interdisciplinary Justice Studies, University of Winnipeg, 10- 12 May 2012;

‘Terrorism and Constitutional Change: Lessons from Spain’, *Sociolegal Conversations across a Sea of Islands*, 2012 International Conference on Law & Society, Honolulu, USA, 5-8 June 2012.

George Williams

‘What the School Chaplains Case Means for Local Government’, *National General Assembly of Local Government*, National Convention Centre, Canberra, 20 June 2012;

‘Recognising Aboriginal Peoples in the Constitution’, KPMG National Board, Sydney, 18 June 2012;

‘Constitutional Recognition’, *National General Assembly of Local Government*, National Convention Centre, Canberra, 18 June 2012;

‘Refugees and Human Rights’, Manning Clark House Public Forum, National Press Club, Canberra, 9 June 2012;

‘Even Researching Referendums is Exciting!’, *The Passion of Socio-Legal Research*, Griffith Law School Research Colloquium, Gold Coast, 30 May 2012;

‘What’s it All About? Recognising Aboriginal Peoples in the Constitution’, KPMG National Reconciliation Week Forum, Reconciliation Australia, 29 May 2012;

‘Occasional Address’, All Faculty Graduation Ceremony, University of New South Wales, Sydney, 25 May 2012;

‘The Coming Referendum’, *Forum on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples*, AnTAR NSW, Sydney, 12 May 2012;

The Gillard government's carbon and mining taxes are set to be tested in the High Court. These constitutional assaults will be launched by two of Australia's mining billionaires. At this stage, it is far from clear that they have even the beginnings of a winnable case.

George Williams, 'Don't expect the Court to Undo Carbon and Mining Taxes' *The Age* (27 March 2012).

'Human Rights in the Australian Parliament', *Redressing the Democratic Deficit in Human Rights Conference*, UK Arts & Humanities Research Council, London, 18 April 2012;

'The Australian Constitution: The Basics', *Constitutional Recognition Forum*, National Centre of Indigenous Excellence, Sydney, 15 March 2012;

'Regulation v Audit: Higher Education in Australia', *Universities Australia 2012 Higher Education Conference*, Canberra, 8 March 2012;

'Is the Idea of the University Dead?', *Australian Universities: Today and Tomorrow*, National Tertiary Education Union, Sydney, 23 February 2012;

'The Coming Referendum', National Youth Advisory Council, National Centre of Indigenous Excellence, Sydney, 27 January 2012.

Media Publications

Joint Media Publications

Jane McAdam and Ben Saul, 'Assange's Asylum Bid is Baseless and Ecuador's Motives Are Suspect', *The Australian* (21 June 2012).

Sean Brennan

'Unlocking Native Title', *Inside Story* (14 June 2012);

'It's time for our first peoples to get a fair go in the Constitution', *The Age* (17 February 2012).

Fergal Davis

'Electoral avalanche may force Newman to focus on enemy within', *The Sydney Morning Herald* (4 April 2012);

'Lifting the veil on a court's injustice' *The National Times* (27 March 2012);

'Human rights bills fail in the hands of law' *The Drum Opinion* (22 March 2012).

Paul Kildea

'Constitution could bite news watchdog' *Daily Telegraph* (16 March 2012).

Andrew Lynch

'Roxon's High Court dilemma' *Inside Story* (9 July 2012);

'School chaplains decision opens can of worms for federal funding' *The Australian* (3 July 2012);

'Federal bill is silent on how to handle issue of judicial incapacity' *The Australian* (4 May 2012);

'By nature, judges are seldom in agreement', *The Australian* (17 February 2012);

'All politics isn't necessarily local', *Inside Story* (10 January 2012).





Jane McAdam

'Lunch with Jane McAdam: Immersed in a Fight for Lost Ground', *Sydney Morning Herald* (10 December 2011).

George Williams

'Chaplaincy Ruling Casts Doubt on Federal Programs' *The Age* (21 June 2012);

'School Chaplains Ruling Alters Concept of Federal Funding' *Sydney Morning Herald* (21 June 2012);

'Referendums Lack Friendly Persuasion' *Sydney Morning Herald* (19 June 2012).

'State of Same-Sex Union: Federal Defeat Won't Spell End of Debate' *Sydney Morning Herald* (5 June 2012);

'New Body Needed to Fill Cracks of Corruption' *Sydney Morning Herald* (22 May 2012);

'Human Rights Hypocrisy Hurts Canberra's Role on World Stage' *Sydney Morning Herald* (8 May 2012);

'Judge Her on Merits: Roxon's Proposed Reforms Well Constructed' *Sydney Morning Herald* (24 April 2012);

'No One Should be Allowed to Double Park, Not Even Clover Moore' *Sydney Morning Herald* (10 April 2012);

'Don't expect the Court to Undo Carbon and Mining Taxes' *The Age* (27 March 2012);

'Tax Challengers Take a Swing, but Legislation is Unlikely to Buckle' *Sydney Morning Herald* (27 March 2012);

'Easier to Pick a Melbourne Cup Winner than Next High Court Judge' *Sydney Morning Herald* (13 March 2012);

'Donations Reform a Big Win, but Will it Last?' *Sydney Morning Herald* (17 February 2012);

'If There is a Union, It Won't be Peaceful' *Sydney Morning Herald* (14 February 2012);

'Only Political Negligence can Kill off this Historic Referendum' *Sydney Morning Herald* (31 January 2012);

'A Referendum that Can, and Should, be Won' *The Age* (17 January 2012);

'Pathway to Referendum Success is Now Clear' *Sydney Morning Herald* (17 January 2012).

Submissions

Joint Submissions

Nicola McGarrrity and George Williams, Submission to NSW Department of Finance and Services 'Inquiry into Just Terms Compensation Legislation', 16 May 2012;

Emily Burke and George Williams, Submission to Joint Standing Committee on Treaties 'Inquiry into Treaties Ratification Bill 2012', 10 May 2012;

Andrew Lynch and Emily Burke, Submission to the Senate Legal and Constitutional Affairs Committee 'Inquiry into the Judicial Misbehaviour and Incapacity (Parliamentary Commissions) Bill 2012 and Courts Legislation Amendment (Judicial Complaints) Bill 2012', 26 April 2012;

Emily Burke, Andrew Lynch and George Williams, Submission to the Senate Legal and Constitutional Affairs Committee 'Inquiry into the Marriage Amendment Bill 2010', 15 March 2012;

Emily Burke, Andrew Lynch and George Williams, Submission to the House of Representatives Social Policy and Legal Affairs Committee 'Inquiry into the Marriage Amendment Bill 2012 and Marriage Equality Amendment Bill 2012', 15 March 2012;

Michael Grewcock, Jane McAdam and George Williams, Submission to Senate Legal and Constitutional Committee 'Inquiry into the Migration Amendment (Removal of Mandatory Minimum Penalties) Bill 2012', 20 February 2012;

Nicola McGarrity and George Williams, Submission to Senate Education, Employment and Workplace Relations Committee 'Inquiry into the Building and Construction Industry Improvement Amendment (Transition to Fair Work) Bill 2011', 20 January 2012.

George Williams

Submission to NSW Shadow Attorney General's 'Discussion Paper on Property Rights and Just Terms Compensation', 19 June 2012;

Submission to Standing Committee on Administration and Procedure, ACT Legislative Assembly 'Review of the *Australian Capital Territory (Self-Government) Act 1988* (Cth)', 8 February 2012.





Audience at 2012 Constitutional Law Conference

Centre Personnel

Director

Andrew Lynch, *Professor*, LLB (Hons) LLM QUT, PhD UNSW

Administrator

Belinda McDonald, BA UNSW

Foundation Director

George Williams, *Anthony Mason Professor*, BEc LLB (Hons) Macq, LLM UNSW, PhD ANU

Centre Members

- Jessie Blackburn**, *Postdoctoral Fellow*, BA (Hons) MA PhD Queen's University Belfast
- Sean Brennan**, *Senior Lecturer*, BA (Hons) LLB (Hons), LLM ANU
- Fergal Davis**, *Senior Lecturer*, BCL UCC, MA (Crim Justice) Leeds, PhD TCD
- Rosalind Dixon**, *Professor*, BA LLB UNSW, LLM, SJD Harvard
- Ben Golder**, *Senior Lecturer*, BA (Hons) LLB UNSW, PhD Lond
- Paul Kildea**, *Lecturer*, BA (Hons) LLB UNSW
- Jane McAdam**, *Professor*, BA (Hons) LLB (Hons) Syd, DPhil Oxon
- Nicola McGarrity**, *Lecturer*, BA (Hons) Syd, LLB (Hons) Macq
- Svetlana Tyulkina**, *Postdoctoral Fellow*, LLB (Hons) LLM CEU, MLitt Monash, PhD CEU
- Greg Weeks**, *Lecturer*, BA Syd, MBus UTS, LLB UNSW



Centre Associates

Tony Blackshield, *Adjunct Professor*, LLM Syd

Megan Davis, *Professor*, BA LLB UQ, LLM ANU

Arthur Glass, *Associate Professor*, BA LLB PhD Syd

Cassandra Goldie, *ACOSS*, B Juris LLB (Hons) UWA, LLM Dist UCL, PhD UNSW

Janice Gray, *Senior Lecturer*, BA LLB Dip Ed MA UNSW

Devika Hovell, *Lecturer, LSE*, BA LLB(Hons) UWA, LLM NYU

David Hume, *Solicitor*, BA (Hons) LLB (UNSW) LLM (Harvard)

Jill Hunter, *Professor*, BA LLB UNSW, PhD Lond Syd

Garth Nettheim, *Emeritus Professor*, LLB Syd, AM Tufts

Richard Potok, *Visiting Fellow*, BComm LLB UNSW, BCL Oxon

Rosemary Rayfuse, *Professor*, LLB Queens, LLM Cantab, PhD Utrecht

Alex Reilly, *Associate Professor, University of Adelaide*, BA (Juris) UNSW, LLB (Hons) Adel, GDLP SA, LLM British Columbia

Ben Saul, *Professor, University of Sydney*, BA (Hons) LLB (Hons) Syd, DPhil Oxon

Jeremy Webber, *Visiting Professor*, BA British Columbia, LLB McGill, LLM Osgoode

Postgraduate Students

Andrew Dahdal, BCom (Ec) LLB (Hons) Macquarie

Keiran Hardy, BA LLB (Hons 1) UNSW

Jackie Hartley, BA (Hons) LLB (UNSW) LLM (Arizona)

Grant Hooper, LLB (Hons) BEc Macq, LLM Syd

Mitchell Landrigan, BA LLB UNSW, SJD Syd

Jennifer Norberry, BA (Hons) Syd, LLB (Hons) LLM ANU

Soula Papadopoulos, BEc LLB Syd, LLM UNSW

Sangeetha Pillai, B Laws (Hons 1) UNSW

Leon Terrill, BA LLB (Hons) Melbourne

Tamara Tulich, BA BCom LLB (Hons) Syd, LLM ANU

Rebecca Welsh, BA LLB (Hons) Wollongong

Kelvin Widdows, LLB (Hons) Syd, LLM (Hons) MLitt Cambridge

Tamara Wood, AmusA, BA Grad Dip Ed LLB (Hons 1) Melb



Centre Advisory Committee

Sir Anthony Mason, Former Chief Justice, High Court of Australia (Chair)

The Hon John Basten, Supreme Court of New South Wales Court of Appeal

Professor Rosalind Croucher, Australian Law Reform Commission

Professor David Dixon, Dean, Faculty of Law, UNSW

Mr Stephen Gageler SC, Commonwealth Solicitor-General

Mr Danny Gilbert, Managing Partner, Gilbert + Tobin

Dr Melissa Perry QC, New South Wales Bar

Mr Michael Sexton SC, Solicitor-General of NSW

Centre Management Board

Professor David Dixon, Dean, Faculty of Law, UNSW (Chair)

Associate Professor Andrea Durbach, Faculty of Law, UNSW

Mr Steven Glass, Gilbert + Tobin

Professor Peter Saunders, Social Policy Research Centre, UNSW

Dr Claudia Tazreiter, Faculty of Arts and Social Sciences, UNSW

Research Assistants

Lisa Burton

Harkiran Narulla

