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University

GILBERT + TOBIN CENTRE OF PUBLIC LAW NEWSLETTER No. 2 2019



Centre Director, Rosalind Dixon

Dear Friend,

The second half of 2019 has been a busy time for the Centre, and its members. In July, one of our Centre members, PhD student Elisabeth Perham, visited the Centre for Asian Legal Studies (CALS) at the National University of Singapore – as the first visitor under a new Memorandum of Understanding between the G+T Centre and CALS. We have also recently finalised an MOU with the Centre of Comparative and Public Law (CCPL) at Hong Kong University, and have already hosted various post-graduate visitors from the CCPL.

In August, we hosted the third annual 'Mason Conversation' – featuring a discussion between the Hon Michael McHugh AC QC, former Justice of the High Court of Australia, and our Dean, Professor George Williams AO. The event was sold-out weeks in advance and for the first time was held at the NSW Supreme Court's Banco Court, thanks to the generosity of our Advisory Council Chair, the Hon Justice John Basten and the Chief Justice of New South Wales, the Hon Justice Tom Bathurst AC.

In September, the Centre hosted our first ever judicial officer in residence, the Hon President Chris Maxwell AC of the Victorian Court of Appeal. The visit was organised by Professor Gabrielle Appleby as part of the Centre's Judiciary Project and featured a presentation to the Centre, and the broader Faculty, titled 'Discretionary Power and Consistency: Is the Sentencing Discretion Different?'

We also hosted our fifth bi-annual Public Law Postgraduate Workshop, led by Associate Professor Ben Golder, and featuring 17 papers from PhD students from across Australia and – for the first time – also from across the region, including from our new partner, the CCPL at Hong Kong University. The Workshop also featured a keynote discussion between myself and Justice Carlos Bernal Pulido, formerly a Professor at Macquarie Law School and now a justice of the Constitutional Court of Colombia.

Former Centre member and PhD student, Dr Shipra Chordia, also saw some extremely well-deserved recognition in September – with the award of the Holt Prize for her PhD manuscript, entitled, Proportionality in Australian Constitutional Law.

October likewise saw the Centre host our first ever 'Public Law Careers and Electives' fair for current and former students interested in pursuing a career in public law. The event featured a discussion on career paths with three leading Australian public lawyers – Ms Helen Chisholm (AGS), Ms Belinda Baker (NSW DPP) and Mr Brendan Lim (NSW Bar).

GILBERT + TOBIN

CENTRE
OF
PUBLIC
LAW

In October and November, we welcomed two new Centre visitors, Professor Felix Uhlmann from Zurich and Ivo Gruev from Oxford, both of whom presented some of their work in progress to the Centre on 14 November.

November also saw a range of events led by Associate Professor Melissa Crouch focused on public law in the Asia-Pacific region, including a workshop on 15-16 November exploring the topic 'Protecting Rights, Addressing Inequality: Writs as Constitutional Transfer'; a workshop on 18 November on the topic of Indonesian Law and Society; and the launch, also on 18 November, of a new book edited by Associate Professor Crouch entitled 'The Politics of Court Reform: Judicial Change and Legal Culture in Indonesia'. This also followed an earlier successful book launch in August of Stefanus Hendrianto's book 'The Law and Politics of Constitutional Courts: Indonesia and the Search for Judicial Heroes', featuring a discussion between Stefanus, Associate Professor Crouch and Professor Theunis Roux.

December itself is also be a busy month for the Centre. On 3-4 December, the Centre and OP Jindal Global University co-hosted an exciting workshop on 'The Judiciary and Public Policy: Australia and India Compared', organised and led by Professor Gabrielle Appleby, the Director of the Judiciary Project. This will also coincide with the Faculty's Hal Wootten lecture given by Justice D Y Chandrachud of the Indian Supreme Court on 4 December.

This will be followed by what is now more or less a fixture on the Centre's calendar, the Comparative Constitutional Law Roundtable I have organised for the last few years along with several colleagues, and a companion conference on 'Globalising Democracy and Distrust: Ely in the World', examining how John Hart Ely's thought has shaped constitutional design and jurisprudence across a range of jurisdictions.

Throughout this time, Centre members have also been active in pursuing their own research and a range of engagement activities, which remain a priority for the Centre – including in relation to a First Nations Voice to Parliament, and the possibility of four-year fixed terms for the Commonwealth Parliament.

The AUSBULAW blog has also continued to go from strength to strength – publishing rich and interesting posts, and gaining the attention of a wide audience, including members of the High Court (at pp 5-6). We are also delighted that the Australian Association of Constitutional Law has chosen to partner with us to make the blog an even more central part of how the Australian public law community connects and communicates.

2020 promises to be just as busy and exciting a year for the Centre. It will begin with our annual Constitutional Law Conference on Friday 21 February at the NSW Art Gallery, and I warmly invite you all to register to attend the Conference and/or Conference dinner: registration details can be found [here](#).

Public Law in the Classroom, a companion event for public law teachers, will also run on Thursday 20 February 2020, under the leadership of Professor Gabrielle Appleby, Dr Svetlana Tyulkina and PhD student Shreeya Smith, and involve an expansion of our existing collaboration with the University of Adelaide Public Law and Policy Research Unit – to bring in the energy and insights of colleagues at the Castan Centre for Human Rights Law at Monash University. Teachers of Australian public law are invited to register [here](#).

After that, Professor Appleby will be taking a period of extended leave from the Centre, including a period of maternity leave – for which she and her partner Jamie have our warmest best wishes. While temporary, her departure will leave a large hole in the Centre, as she has been a key driver of the work the Centre has done recently in engaging with the judiciary and supporting the process of indigenous-led dialogues on a First Nations Voice to Parliament. Happily for the Centre, however, her departure on leave will coincide with the return from leave of Centre Deputy Director, Dr Lisa Burton Crawford.

Upon her return, Dr Burton Crawford is looking forward to continuing her ongoing collaboration with Dr Janina Boughey – on the many exciting projects they have underway on administrative law and justice, including several new projects joint with the Allens Law + Technology Hub at UNSW on administrative justice and technology.

Even more significantly, 2020 will mark the 20th anniversary of the Centre's life as a leading site of public law scholarship and engagement activity in Australia. We are already planning a range of ways to celebrate that important milestone but look forward to sharing more details with you in the coming months.

With thanks for your ongoing interest and support for the Centre, and best wishes for the holiday season.

Rosalind Dixon
Director + Professor of Law

** SAVE THE DATE **

21 February 2020

Constitutional Law Conference and Dinner

For details of Centre events, publications, submissions and so on please go to our website: www.gtcentre.unsw.edu.au

The Centre's Twitter account keeps you up to date between newsletters and e-bulletins: [@GTCentre](https://twitter.com/GTCentre)

Or if you prefer Facebook: www.facebook.com/pages/Gilbert-Tobin-Centre-of-Public-Law/138063326284705

CENTRE ACTIVITIES

INTERDISCIPLINARY WORKSHOP ON UNDERSTANDING AND RESPONDING TO RIGHT-WING TERRORISM 15 JULY 2019

Western democracies continue to regard the greatest threat of terrorism as coming from Islamic terrorism. Legal and non-legal strategies to combat terrorism, such as community inclusion initiatives, immigration restrictions and new criminal offences, have been developed with this specific threat in mind. Nevertheless, there is a growing recognition of the significant threat posed by right-wing extremism.

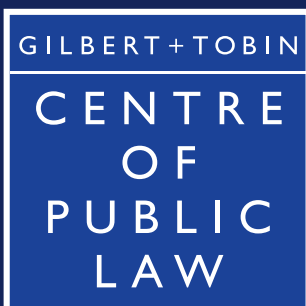
This two-day workshop, organised by Dr Nicola McGarrrity, brought together domestic and international experts from a range of disciplines to discuss the implications of the growth of right-wing terrorism, the distinctive challenges it poses, and best practice in terms of legal and non-legal responses. In particular, this workshop evaluated whether the strategies that have been adopted to date in response to Islamic extremism are 'fit for purpose' in responding to right-wing terrorism.

MASON CONVERSATION 5 AUGUST 2019

On 5 August, the Centre hosted the fourth 'Mason Conversation' between the Hon Michael McHugh AC QC, former Justice of the High Court of Australia, and our Dean George Williams AO. Professor Williams asked Mr McHugh about his early years, and career at the bar in Sydney and Newcastle, as well as his time on the NSW Court of Appeal and the High Court of Australia. In response,



Right-Wing Terrorism Workshop





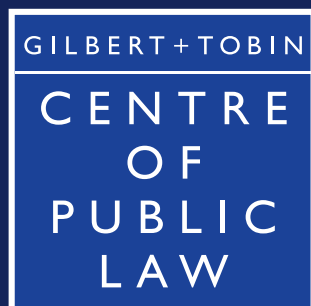
The Hon Michael McHugh AC QC



Indriaswati Saptaningrum, Melissa Crouch, Milda Istiqomah



Public Law Careers and Electives Fair



Mr McHugh shared his reflections on key mentors and influences, important cases, such as *Mabo*, and his thinking on key issues of justice – including the role of women in the legal profession and the argument for Australia adopting a national bill of rights. Consistent with the title of the event, his Honour also paid tribute to the influence and leadership of Sir Anthony Mason AC KBE GBM as Chief Justice. A video of the conversation can be viewed at this [link](#).

UNSW ASEAN STUDENT SOCIETY CONFERENCE 12 OCTOBER 2019

A highlight on campus this term was the [UNSW ASEAN Student Society conference](#) for students. Associate Professor Melissa Crouch spoke on a panel on Humanitarian Disasters in ASEAN. The student-led team attracted an impressive crowd of over 200 students from UNSW and other universities across Australia. Their program included a keynote by a former Minister of Trade from Malaysia, and from the President of the Australia-ASEAN Business Council. They had a great line up of UNSW speakers, and three of our own law PhD students contributed their expertise – Indri Saptaningrum, Milda Istiqomah and Ashraf Azad.

PUBLIC LAW CAREERS AND ELECTIVES FAIR 17 OCTOBER 2019

On 17 October, the Centre hosted a 'Public Law Careers and Electives' fair for current and former students interested in pursuing a career in public law. The event featured posters of all 2020 electives offered at the Faculty in public law, and students had the opportunity to ask Centre members questions about those offerings. The event also featured a discussion on career paths between Centre Director Professor Rosalind Dixon and Ms Helen Chisholm (AGS), Ms Belinda Baker (NSW DPP) and Mr Brendan Lim (NSW Bar), about the advantages and drawbacks of their current careers, the path they took to get where they are, and advice they have for students interested in pursuing a similar path. In addition, students had the opportunity to meet and discuss these questions informally with panellists and several Centre members and Fellows, including Mr Craig Lenehan SC and Ms Shipra Chordia, both of the NSW Bar, who generously joined us for the evening. The event was extremely well-received by students and recorded as a resource for students in coming years.

POSTGRADUATE WORKSHOP IN PUBLIC LAW 23 SEPTEMBER 2019

This year the Centre held the fifth bi-annual Postgraduate Workshop in Public Law. The workshop provided an opportunity for higher degree research students in the field of public law to gain experience in presenting their work to their peers and the wider academic public law community in a critically constructive yet supportive environment. While there are several generalist conferences held each year which postgraduate students can attend, the Centre's biennial Postgraduate Workshop in Public Law is focused on public law issues and as such is an opportunity for students to network with others working in their area.

We invited students currently enrolled in postgraduate research programs (Masters, PhD and SJD students) studying full-time or part-time in the field of public law. The students brought a constitutional or administrative law focus to a range of contemporary issues such as human rights protection, native title and Indigenous land rights, national security, federalism, refugees and migration law, executive power, electoral law, and the judiciary. This year's workshop welcomed several students from Hong Kong University who brought a global comparative perspective to the issues raised at the workshop.



Professor Rosalind Dixon and Justice Carlos Bernal Pulido

The Workshop featured a keynote discussion between Professor Rosalind Dixon and Justice Carlos Bernal Pulido, formerly a Professor at Macquarie Law School and now a justice of the Constitutional Court of Colombia.

LAUNCH OF AUSTRALIAN ELECTORAL LAW LIBRARY 14 NOVEMBER 2019

On 14 November the Australian Electoral Law Library was launched at the biennial Electoral Regulation Research Network (ERRN) workshop in Adelaide. The Library is a free online database of primary and secondary materials on election law.

The Library includes digital copies of hundreds of court and tribunal decisions on electoral matters across Commonwealth, State and Territory jurisdictions. It also covers legislation and academic scholarship. The Library's coverage extends from the mid-19th century to the present day.

The Australian Electoral Law Library is hosted by AustLII, Australia's most popular free access legal resource. It is the result of collaboration between AustLII, the ERRN and the Gilbert + Tobin Centre of Public Law. The design and contents of the Library were overseen by project manager and Centre member, Dr Paul Kildea. The Library's development and ongoing maintenance is funded by the New South Wales Electoral Commission and the Victorian Electoral Commission.

As electoral regulation gains in profile, the launch of the Library is an exciting development that will assist the work of electoral commissions, support academic research and make electoral law more accessible to the general public.

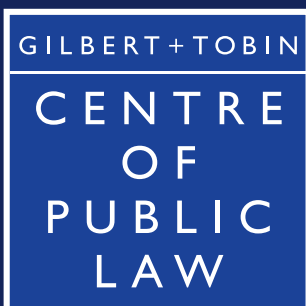
The Australian Electoral Law Library can be accessed at: <http://www.austlii.edu.au/au/special/electoral/>.

THE AUSPUBLAW BLOG

The AUSPUBLAW blog continues to provide high-quality commentary on important developments across the spectrum of Australian public law. It provides informed analysis of recent cases, and of other public law developments, as well as insights into the academic research being undertaken by Australia's best public law scholars. The blog is currently edited by Zsafia Korosy and Elisabeth Perham, two HDR members of the Centre, and co-ordinated by Professor Rosalind Dixon (while Dr Lisa Burton Crawford is on extended leave).

Since the last Centre newsletter, the blog's readership has continued to grow. We now have over 1000 email subscribers and nearly 2300 Twitter followers. We continue to publish regular substantive posts as well as an invaluable monthly roundup of public law events being held across the country. We are excited to announce that the Australian Association of Constitutional Law (AACL) has now joined the Centre as a co-facilitator of AUSPUBLAW. As part of this new collaboration, AUSPUBLAW has also begun providing information to keep readers abreast of key developments in public law (including the decisions of final courts across Australia, the UK, Canada, South Africa and New Zealand). We thank the AACL for their support to grow the blog in this way.

In the second half of this year, we have published blog posts on a wide range of issues, including the threat to the integrity of the courts posed by the decision in *Vella*, national security disclosures (in light of the current trial of Bernard Collaery, and broader public interest in the Witness K case), the approach to federalism taken by the High Court in *Spence v Queensland*, the law regarding nationality in 1900 when the s 44(i) ban on dual citizen parliamentarians was formulated, the implications of the High Court's decision in *Comcare v Banerji* on the political expression of public servants, and the resolution by the High Court in



Masson v Parsons of the nature of the test in s 79(1) of the *Judiciary Act 1903*. We were excited to see that in the [Spigelman oration](#), Justice Keane of the High Court noted the arguments made in Kieran Pender's AUSPUBLAW post on *Comcare v Banerji*.

In 2018, AUSPUBLAW began hosting "book forums": an opportunity to promote and critically analyse recent publications in Australian public law. We were pleased to publish a forum in August on Dr Dylan Lino's *Constitutional Recognition - First Peoples and the Australian Settler State* (Federation Press, 2018), featuring comment from Dani Larkin and the Hon Robert French AC, and a response from Dr Lino. We will continue to host these book forums. Authors of recent or forthcoming monographs with relevance for Australian public law who would like to see their book featured in this format should contact the editors. We are particularly keen to host forums on monographs published by early career researchers.

Additionally, we welcome contact from any friends of the Centre who are interested in writing for AUSPUBLAW. We accept contributions from academics, practitioners and students. To subscribe to the blog, sign up at www.auspublaw.org or follow us on Twitter @auspublawblog. To submit a post for consideration by the blog editors, or to advise an upcoming public law event, contact the editors at auspublaw@unsw.edu.au.

PEOPLE

INTRODUCING SOME OF OUR PHD CANDIDATES

Joshua Gibson

Josh Gibson was born in the Hunter Valley, moving to UNSW to undertake his undergraduate degrees in Law and Arts (Politics and Creative Writing), receiving the Academic Achievement Award. During his undergraduate degrees, Josh spent time on exchange at both Chuo University in Tokyo and Sciences Po in Paris. After spending time working at the Law Society of NSW upon graduation, Josh moved to Melbourne to undertake his Arts (Honours) thesis, receiving the Dwight Final Assessment Prize for Political Science. During his time in Melbourne, Josh also provided support to the legal team at the Asylum Seeker Resource Centre.

In 2018, Josh commenced his PhD at UNSW Faculty of Law, and is currently under the supervision of Scientia Professor Louise Chappell and Professor Gabrielle Appleby. His doctoral research considers the role of the amicus curiae in Australia, and specifically considers how social movements have utilised amicus curiae in the Australian High Court. Josh has taught courses in Human Rights Law at Macquarie University, and in Legal Research and Public Law at UNSW. In 2019, Josh was awarded the UNSW Law Garth Nettheim Teaching Fellowship.

Zsafia Korosy

Zsafia Korosy was born in Budapest and immigrated to Australia at a young age - living first in Melbourne, and then moving to Sydney during her primary school years. She completed undergraduate honours degrees in Law and Arts (Politics and International Relations) at UNSW, and an LLM at Yale Law School. She is currently pursuing doctoral studies at UNSW under the supervision of Professor Fleur Johns and Professor Bronwen Morgan. Her research focusses on the development of the international law regulating whaling and fishing in the Pacific Ocean. Among other roles, Zsafia has previously worked as a judge's associate at the Federal Court of Australia, in policy and law reform at EDO NSW, and as a



Joshua Gibson, Elisabeth Perham,
Zsafia Korosy

researcher at the ANU College of Law. She has taught across a range of subjects at UNSW, the University of Sydney and the ANU, including Foundations of Law, Federal Constitutional Law and International Environmental Law. She is currently a joint editor of AUSPUBLAW.

Elisabeth Perham

Elisabeth Perham is a proud Kiwi, hailing from Lower Hutt, just across the harbour from Wellington. She graduated from Victoria University of Wellington with honours degrees in Law and Arts (German and History), receiving the Victoria Medal for Academic Excellence from the Faculty of Arts and Social Sciences. After working as a judge's clerk to the Hon Justice John Wild of the New Zealand Court of Appeal, a management consultant at Boston Consulting Group, and a legal policy officer in the New South Wales Department of Justice, she completed an LLM at Harvard Law School with the support of the Frank Knox Memorial Fellowship.

Elisabeth commenced a PhD at UNSW in 2018 under the supervision of Professor Rosalind Dixon and Dr Jonathan Bonnitcha. Her research examines the mechanisms of constitutional transfer during constitution-making processes in the Pacific region. She is currently a joint editor of AUSPUBLAW, a Garth Nettheim Teaching Fellow, and was a 2019 recipient of the Sir Anthony Mason PhD Award in Public Law. She has taught Principles of Public Law at UNSW, and has also taught Legal Research, Writing and Mooting at Victoria University of Wellington.

PROJECT REPORTS

ADMINISTRATIVE LAW AND JUSTICE PROJECT PROJECT DIRECTOR: JANINA BOUGHEY

The Administrative Law and Justice Project aims to bring together UNSW Law scholars, and the wider government law community, concerned with ensuring those who exercise administrative powers act in accordance with public law principles and values. The Project is particularly interested in accountability implications of changes in the nature, scope and exercise of government powers since Australia's administrative law 'system' was designed; such as the use of technology in administrative decision-making; mixed public-private administrative arrangements; and the modern use and interpretation of statutes which confer powers on the executive branch.

One thing which has become increasingly apparent in recent decades is that administrative law is not, and cannot be, the only area of law that provides justice for those adversely affected by government action. Many areas of private law have special rules that apply to government litigants, which often interact with administrative law. There are also statutory schemes and policies which anyone seeking redress for harm caused by government action (or inaction) needs to be familiar with. Together with Dr Ellen Rock from UTS and Associate Professor Greg Weeks from ANU, the Project's Director (Dr Janina Boughey) published a book which examines the wide array of rules and remedies that apply to government. The book *Government Liability: Principles and Remedies* (LexisNexis 2019) is the first in Australia to draw together public law, private law and statutory remedies and analyse how these apply to government decisions and conduct and how they interact.

On 31 October 2019, Professor Gabrielle Appleby presented at the 7th Australian Public Service Anti-Corruption Conference (APSACC) in Melbourne in a session on the future of anti-corruption agencies and corruption prevention with Professor AJ Brown (Griffith University) and Ms Deborah Glass (Victorian Ombudsman).

Gabrielle presented a paper looking at the importance, but fragility, of the independence of executive integrity institutions, including anti-corruption commissions, arguing for reforms to the statutory frameworks that establish and regulate these institutions to strengthen their appointment and funding. Her paper drew on her earlier article, 'Horizontal Accountability: The Rights-Protective Promise and Fragility of Executive Integrity Institutions' (2017) 23 *Australian Journal of Human Rights* 168.

Another developing area of Australian law which very much intersects with administrative law and justice is human rights law. A recently published edited collection— *The Legal Protection of Human Rights in Australia* (Hart Publishing, 2019), co-edited by Janina—contains several chapters by Centre members and associates which analyse the extent to which human rights limit administrative powers in various Australian jurisdictions.

There have been some significant developments in judicial review over the past 18 months in Australia including the addition of a 'materiality' threshold for jurisdictional error. Dr Lisa Burton Crawford analyses this development in a forthcoming article, 'Immaterial Errors, Jurisdictional Errors and the Presumptive Limits of Executive Power' (2019) 30(4) *Public Law Review*. Janina spoke on the implications of materiality for procedural fairness at the NSW Civil and Administrative Tribunal's annual member conference. Lisa and Janina also published an article together which analyses the rationale and consequences for jurisdictional error in light of this and other recent developments: 'The Centrality of Jurisdictional Error: Rationale and Consequences' (2019) 30(1) *Public Law Review* 1.

A major focus of the Project's work in the second half of 2019, which will continue throughout 2020, is the challenges and opportunities that government automation presents for administrative justice. Lisa and Janina are collaborating with UNSW colleagues in the Allens Hub for Technology, Law and Innovation on various papers as well as a workshop for early 2020 which will explore these issues. Janina presented on automated administrative decision-making in comparative perspective at the ICON-S conference in Santiago in July.

COMPARATIVE CONSTITUTIONAL LAW PROJECT PROJECT DIRECTOR: ROSALIND DIXON

The CCL Project continued its work on a range of topics relating to public law, democracy, and judicial review – and especially South-East Asia.

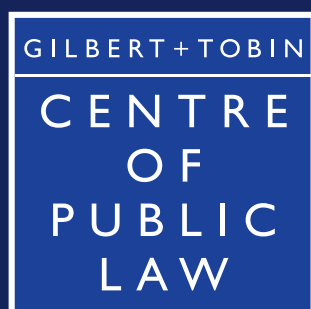
On 1 August, the Centre hosted a book panel on Stefanus Hendrianto's book 'The Law and Politics of Constitutional Courts: Indonesia and the Search for Judicial Heroes', chaired by Centre Director Professor Rosalind Dixon and featuring reflections from Project members Associate Professor Melissa Crouch and Professor Theunis Roux on the state of constitutional democracy in Indonesia today.

On November 14, the Project co-hosted a lunchtime seminar with Centre visitors Professor Felix Uhlmann from Zurich and Ivo Gruev from Oxford, at which both visitors shared some work in progress with Centre members.

In December, the CCL Project will also host two related workshops – its annual Comparative Constitutional Law Roundtable, and a symposium on 'Ely in the World', reflecting on the influence of the work of John Hart Ely, in *Democracy in Distrust*, on public law practice and thinking globally – 40 years on from when *Democracy and Distrust* was first published. The CCL Roundtable will feature 12 papers across a range of comparative constitutional law topics, and involves authors and commentators from 17 law schools across six continents. The Ely symposium will likewise feature a broad range of papers on Australia (and especially Ely's influence on the jurisprudence of Justice Stephen Gageler AC), Canada, Chile, Colombia, Germany, Mexico, New Zealand and South Africa.



Professor Theunis Roux, Professor Rosalind Dixon, Stefanus Hendrianto SJ and Professor Melissa Crouch





Protecting Rights, Addressing Inequality: The Promise of Writs as Constitutional Transfer Workshop

DEPUTY DIRECTOR: MELISSA CROUCH

In September, Associate Professor Crouch hosted three academic visitors from the Law Faculty, the University of Indonesia. This visit is part of broader efforts to enhance collaborations between UNSW Law and the University of Indonesia.

In November, Associate Professor Crouch hosted several events, including a workshop (co-sponsored by the Konrad Adenauer Stiftung) on “Protecting Rights, Addressing Inequality: The Promise of Writs as Constitutional Transfer Workshop” with a focus on South Asia; a work-in-progress workshop on Indonesian Law and Society; and the book launch of “The Constitution of Myanmar”; and “The Politics of Court Reform: Judicial Change and Legal Culture in Indonesia”.

INDIGENOUS LEGAL ISSUES PROJECT PROJECT DIRECTOR: SEAN BRENNAN

On 3 October, the 2019 Grand Final of the Mooting Competition of Australia’s First Peoples was held at Gilbert + Tobin’s offices in Barangaroo. The Moot is hosted by UNSW Law, and includes competitors from UNSW, University of Technology Sydney (UTS) and Western Sydney University (WSU). This year, the competition was organised by UNSW law student Ganur Maynard, assisted by Jeni Engels, Director of Indigenous Legal Education at UNSW. The question that competitors grappled with was written by Gabrielle Appleby, and involved an application to the High Court by the Gomeroi People, challenging the constitutional validity of a hypothetical amendment to the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth). Petra Franks (UNSW), Peter Rumble (WSU), Ashlee Christian (UNSW) and Jessie Robinson (WSU) battled it out in the final, with UNSW law student and Gomeroi woman Petra Franks taking out the top award after what was a terrific evening.

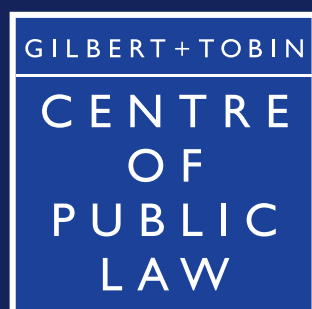
Airing on the ABC in October 2019 was the new Australian political drama Total Control, produced by Blackfella Films, directed by Rachel Perkins, and starring Deborah Mailman and Rachel Griffiths. In one of her most exciting consultancy projects as an academic, Gabrielle Appleby worked with the writers at Blackfella films in 2018-2019 as the script was developing to provide advice on the constitutional and legal issues that the show might raise.

In late September Sean Brennan was invited to participate in an expert seminar held in Pretoria, South Africa on the right to land under the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). The event was organised by the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) and attended by contributors from across Africa, the Arctic, Russia, and North, Central and South America. The EMRIP consists of seven independent experts – one of whom is UNSW Pro Vice Chancellor Indigenous Professor Megan Davis – appointed to advise the UN Human Rights Council on the fulfilment of the rights in UNDRIP by member States. Sean also produced a report on developments in Australian native title law and constitutional reform for the annual volume The Indigenous World 2019 produced by the IWGIA, a global NGO promoting Indigenous rights.

Sean and Gabrielle have continued in the second half of 2019 to support Megan’s leadership work on community education about the Uluru Statement from the Heart. Sean presented on the Uluru Statement and its historical context to school teachers at a staff seminar in the local area near UNSW, and also to primary and secondary school students during NAIDOC Week, which this year highlighted the Statement’s trilogy of reforms ‘Voice, Treaty, Truth’.



Sean Brennan speaking at a UN expert seminar on the right to land of Indigenous Peoples in Pretoria, South Africa in September





UNSW and Jindal Global Law School, Workshop on Judges and Public Policy: Left to right: The Hon Michael Kirby AC CMG, Professor C. Raj Kumar, Scientia Professor George Williams and Professor Gabrielle Appleby

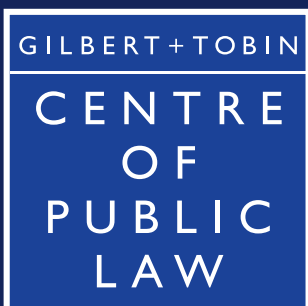
THE JUDICIARY PROJECT PROJECT DIRECTOR: GABRIELLE APPLEBY

With recent revelations of complaints against Judge Sandy Street (Federal Circuit Court), Judge Salvatore Vasta (Federal Circuit Court) and Judge Greg Borchers (Northern Territory Local Court) for their conduct towards litigants, Gabrielle has provided extensive commentary on whether the current system for dealing with complaints against judges is adequate, particularly at the federal level. These include a program-length interview with Damien Carrick on *The Law Report* (ABC Radio National, 30 July 2019), 'Who Judges the Judges', and a *Background Briefing*, 'Who Watches over our Judges' (ABC Radio National, 8 September 2019). Gabrielle's commentary drew on her work with Professor Suzanne Le Mire published in the *Melbourne University Law Review* in 2014, 'Judicial Conduct: Crafting a System that Enhances Institutional Integrity', calling for major reforms to the systems for judicial complaints across Australia.

On 16-27 November 2019, the Judiciary Project was thrilled to host the Centre's first Visiting Judicial Fellow, Justice Chris Maxwell, President of the Victorian Court of Appeal. During his visit, Justice Maxwell spent time teaching sessions in the Contemporary Constitutional Law course, and delivered two staff seminars including one co-hosted by the Gilbert + Tobin Centre of Public Law and the Centre for Crime, Law and Justice on 'Discretionary power and consistency: what is so special about the sentencing discretion?' The Centre, the Faculty and our students were extremely lucky to benefit from the frank and insightful judicial engagement that Justice Maxwell generously provided during his visit, and we look forward to continuing the many conversations that were started.

Rosalind Dixon and Gabrielle were recently involved in a collaborative, conversational-style essay among fourteen professors, representing thirteen universities across five countries, who had different experiences teaching with feminist and critical judgments projects. The essay, 'Teaching with Feminist Judgments: A Global Conversation', which will be published in the *Law and Inequality: A Journal of Theory and Practice*, explains how the judgments projects are used in the classroom, how students have responded to the judgments; how the professors achieve specific learning objectives through teaching with feminist judgments; and how working with feminist judgments—whether studying them, writing them, or both—can help students excavate the multiple social, political, economic and even personal factors that influence the development of legal rules, structures, and institutions. Gabrielle and Rosalind's contribution to the essay drew on their experience teaching with their book, *The Critical Judgments Project: Re-reading Monis v The Queen* (Federation Press, 2016), in Federal Constitutional Law, and included reflections from their students and teachers in the course.

Finally, on 3-4 December 2019, The Judiciary Project was pleased to host a delegation of nine academics from the Jindal Global Law School for a comparative academic workshop on Judges and Public Policy. The Hon Michael Kirby AC CMG delivered the opening address before participants spent two days exploring the different ways in which the judiciary has shaped public policy across the jurisdictions.



REFERENDUMS PROJECT

PROJECT DIRECTOR: PAUL KILDEA

The federal government has said it will hold a referendum this term to recognise Aboriginal and Torres Strait Islander peoples in the Constitution, provided that there is consensus on the issue and it is likely to succeed. That referendum, should it be held, is unlikely to ask people to vote on a 'Voice to Parliament'. The government has instead indicated a preference for a legislated body that it is calling a 'Voice to Government'. An advisory body has been established to engage in consultations and develop some design options.

November marked the 20th anniversary of the republic referendum. This prompted a great deal of reflection on the state of constitutional reform. George Williams wrote in *The Australian* that it had reached a 'low ebb' and that a circuit-breaker was needed. He suggested that it is time for a major review conducted by the Parliament or an independent body.

Also in November, Gabrielle Appleby and George Williams attended with Laureate Professor Emeritus Cheryl Saunders AO, Mr Malcolm Mackerras AO and Professor Anne Twomey before the Standing Committee on Social Policy and Legal Affairs for their Constitutional roundtable on fixed four-year parliamentary terms. The roundtable's discussions were broadcast live with questions taken from the Committee and the public. In addition to the technical and policy issues raised by the specific question of four-year terms, the roundtable discussion also considered the need to have a more systematised way for the parliament and the public to engage with questions of constitutional reform, and to modernise the referendum process.

STATUTES PROJECT

PROJECT CO-DIRECTORS: LISA BURTON CRAWFORD AND JANINA BOUGHEY

The Statutes Project aims to examine contemporary developments in legislative practice and statutory interpretation.

Although the Project's Director, Dr Lisa Burton Crawford has been on maternity leave in the second half of 2019 (welcome baby Charles!), the Project has been busy and had several notable achievements.

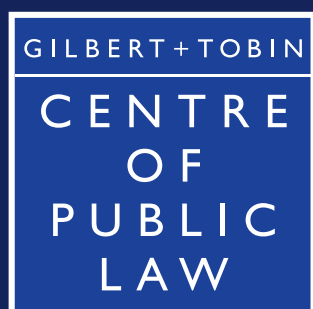
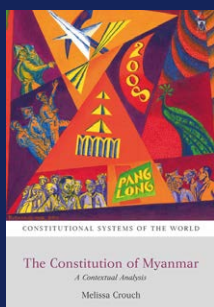
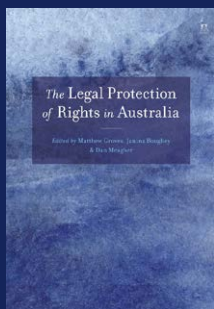
Lisa and Dr Janina Boughey are in the final stages of editing a collection on *Interpreting Executive Power* (Federation Press, forthcoming 2020) which will be launched at the annual Gilbert + Tobin Centre Constitutional Law Conference in February by the Hon Justice James Edelman. The collection brings together papers by judges, practitioners and academics exploring how courts interpret statutes which confer executive powers, and the challenges posed in this regard by the proliferation of statute law and contemporary legislative drafting techniques.

Lisa and Janina published an article on teaching statutory interpretation by situating it in the context of public law in the Legal Education Review. They are also working on a revised edition of their textbook, *Public Law and Statutory Interpretation* (with Melissa Castan and Maria O'Sullivan). The Hon Justice John Basten recently said of the first edition of the textbook:

"I know of no better text to introduce Australian law students to this critical topic... This book should be an essential text in all first year law courses. Further, its sound structure and clear expression repay reading by those of us who received no formal grounding in this vital aspect of public law, but struggle with statutes on a daily basis." (Australian Law Journal, 2019).

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PUBLICATIONS AND PRESENTATIONS

PUBLICATIONS

Joint Publications

Gabrielle Appleby and Rosalind Dixon 'Teaching with Feminist Judgments: A Global Conversation' (2019) *Law and Inequality: A Journal of Theory and Practice* 1 (with Bridget J Crawford, Kathryn Stanchi, Linda L Berger, Susan F Appleton, Ross Astoria, Sharon Cowan, Troy Lavers, Andrea L McArdle, Elisabeth McDonald, Teri A McMurtry-Chubb, Vanessa Munro and Pan Wilkins).

Janina Boughey and Lisa Burton Crawford, 'Situating Statutory Interpretation in its Public Law Context' (2019) 29 *Legal Education Review* 1.

Andrew Lynch and George Williams, 'The High Court on Constitutional Law: The 2018 Statistics' (2019) 42(4) *University of New South Wales Law Journal* 1443.

Gabrielle Appleby

'Ethical Infrastructure for a Modern Judiciary' (2019) *Federal Law Review* 335 (with Suzanna Le Mire).

'Federalism, public interest advocacy and marriage equality in Australia' in Janina Boughey, Matthew Groves and Dan Meagher (eds) *Legal Protection of Human Rights in Australia* (Hart Publishing, 2019) 265 (with Adam Webster).

Janina Boughey

Government Liability: Principles and Remedies (LexisNexis, 2019) (with Ellen Rock and Greg Weeks).

The Legal Protection of Human Rights in Australia (ed. with Matthew Groves and Dan Meagher) (Hart Publishing, 2019).

'The Victorian Charter: A Slow Start or Fundamentally Flawed?' in Matthew Groves, Janina Boughey and Dan Meagher (eds) *The Legal Protection of Human Rights in Australia* (Hart Publishing, 2019) 207.

'Rights, Rhetoric and Reality: An Overview of Rights Protection in Australia' in Matthew Groves, Janina Boughey and Dan Meagher (eds) *The Legal Protection of Human Rights in Australia* (Hart Publishing, 2019) 1.

Sean Brennan

'Australia' in International Work Group for Indigenous Affairs, *The Indigenous World 2019* (Copenhagen, 2019) 235.

'Timber Creek and Australia's Second Chance to Grasp the Opportunity of Mabo' on AUSPUBLAW (3 April 2019) <<https://auspublaw.org/2019/04/timber-creek-and-australias-second-chance/>>.

Lisa Burton Crawford

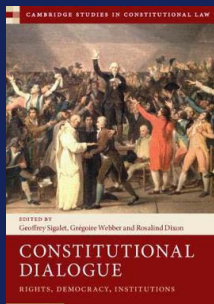
'The Human Rights (Parliamentary Scrutiny) Act 2011 (Cth): A Failed Human Rights Experiment?' in Matthew Groves, Janina Boughey and Dan Meagher (eds) *The Legal Protection of Human Rights in Australia* (Hart Publishing, 2019) 143.

'Immaterial Errors, Jurisdictional Errors and the Presumptive Limits of Executive Power' (2019) 30(4) *Public Law Review*.

Melissa Crouch

The Constitution of Myanmar: A Contextual Analysis (Hart Publishing, 2019).

'Authoritarian Straightjacket or Vehicle for Democratic Transition? The Risky Struggle to Change Myanmar's Constitution' in T Ginsburg and Aziz Huq (ed) *Implementing New Constitutions* (Cambridge University Press, 2019).



'Constitutionalism after Authoritarian Rule' (2019) 11(2-3) *Hague Journal of the Rule of Law* 349.

'Illiberalism and Democratic Illusions in Myanmar: Constitutional Reform as Capital' (2019) Oct, *New Mandala*.

Rosalind Dixon

Constitutional Dialogue: Democracy, Rights, Institutions (ed. with Gregoire Webber and Geoffrey Sigalet) (Cambridge University Press, 2019).

'Constitutional Non-Transformation? Socioeconomic Rights Beyond the Poor' in Katharine G Young (ed), *The Future of Economic and Social Rights* (Cambridge University Press, 2019) (with David Landau).

'(Why) Comparative Constitutional Amendment in Southeast Asia (2019) 14 *Asian Journal of Comparative Law* 205.

'Hybrid Constitutional Courts: Foreign Judges on National Constitutional Courts (2019)', 57 *Columbia Journal of Transnational Law* 283 (with Vicki Jackson).

'The forms, functions, and varieties of weak(ened) judicial review' (2019) 17 *International Journal of Constitutional Law* 904.

Theunis Roux

'The Constitutional Court: A Levian Take on its Place in the Reformasi' in Melissa Crouch (ed), *The Politics of Courts: Judicial Reform and Legal Culture in Indonesia* (Cambridge University Press, 2019) 245.

'A Normatively Inflected, Sociologically Aware Account of the Rule of Law' (2019) 11 *Hague Journal of the Rule of Law* 295.

'The Constitutional Court's 2018 Term: Lawfare or Window on the Struggle for Democratic Social Transformation?' (2019) 10 *Constitutional Court Review* (forthcoming).

'Response to Zim Nwokora and Mark Tushnet (2019) 30 *Public Law Review* (forthcoming).

George Williams

'Australia's Constitutional Design and the Protection of Human Rights' in Matthew Groves, Janina Boughey and Dan Meagher (eds), *The Legal Protection of Rights in Australia* (Hart, 2019) 17.

'Trust and the Constitution' in Evans, M, Grattan, M, McCaffrie, B (eds), *From Turnbull to Morrison The Trust Divide: Australian Commonwealth Administration 2016-2019* (Melbourne University Press, 2019) 75 (with Harry Hobbs).

'Treaty Making in the Australian Federation' (2019) 43 *Melbourne University Law Review* 178 (with Harry Hobbs).

'The Participation of Indigenous Australians in Legal Education, 2001-2018' (2019) 42 *University of New South Wales Law Journal* 1294 (with Harry Hobbs).

'Protecting Religious Freedom in a Human Rights Act' (2019) 93 *Australian Law Journal* 721 (with Harry Hobbs).

PRESENTATIONS

Janina Boughey

'Is Administrative Law Fit-For-Purpose in an Age of Automation?', ICON-S Conference, Santiago, Chile, July 2019.

'Recent Developments in Procedural Fairness', NCAT Conference, Sydney, 21 October 2019.

Sean Brennan

'Legal Recognition of the Right of Aboriginal and Torres Strait Islander Peoples to Own and Control their Traditional Land, Territories and Resources in Australia', UN EMRIP Expert Seminar, Pretoria, South Africa, 30 September 2019.

'Voice, Treaty, Truth and the Uluru Statement', Years 7-12 NAIDOC Week Assembly, Rose Bay Secondary College, 25 July 2019.

'Voice, Treaty, Truth and the Uluru Statement', Staff Development Seminar, South Coogee Public School, 2 July 2019.

'Voice, Treaty, Truth and the Uluru Statement', Stage 3 Students, South Coogee Public School, 27 June 2019.

'Constitutional Drafting', First Nations Voice – From Referendum to Design Workshop, UNSW, Sydney, 2 May 2019.

'Just Terms for the Extinguishment and Impairment of Native Title: The Timber Creek Compensation Case', 2019 Constitutional Law Conference, Sydney, 15 February 2019.

Melissa Crouch

Workshop on Asian Studies in the Asian Century, 22 November 2019, ANU.

Law Panels organised at the ANU.

Indonesia Council conference, 20-21 November 2019, ANU.

Protecting Rights, Addressing Inequality: The Promise of Writs as Constitutional Transfer Workshop, UNSW Law School, 15-16 November 2019.

Book Launch: *The Constitution of Myanmar*, 14 November 2019.

'Courts and Constitutionalism' invited talk at the "Constitutional Courts and Social and Economic Rights Conference", organised by the Indonesian Constitutional Court, Bali, November 2019.

Humanitarian Disaster Relief in ASEAN, UNSW ASEAN Conference, 9 October 2019.

Indonesia Australia Network for Socio-legal Studies Conference, Law Faculty, University of Indonesia, August 2019.

Rosalind Dixon

'Inequality, Constitutionalism & Social and Economic Rights', Conference in Honour of Heinz Klug, City University New York, New York, June 2019 (via video).

'Abusive Judicial Review', Presentation at International Society of Constitutional Law Conference, Santiago, Chile, 1-3 July 2019.

'Abusive Constitutional Borrowing', Presentation at International Society of Constitutional Law Conference, Santiago, Chile, 1-3 July 2019.

'Functionalism and Constitutional Facts', Presentation at Conference on Public Law and Facts, Melbourne Law School, 13 August 2019 (via video).

'The High Court and Dual Citizenship: Zines and Constitutional Method 30 Years on', Paper presented at Symposium To Honour Professor Leslie Zines: Key Issues in Australian Federal Constitutional Law Conference, ANU, 7 September 2019.

Joshua Gibson

'Public interest litigation and legal advocacy: the role of the amicus curiae' Gilbert + Tobin Centre of Public Law Postgraduate Workshop, 24 September 2019.

'Public Interest Litigation, Legal Advocacy and the Amicus Curiae: Purpose, Practice and the Politics of Listening' Public Interest Litigation Conference, La Trobe University, 8 August 2019.

Elisabeth Perham

'The Marshall Islands as a Case Study of the Mechanisms of Constitutional Transfer' Gilbert + Tobin Centre of Public Law Postgraduate Workshop, 23 September 2019.

Shreeya Smith

'Executive Power: Where are We, and What Remains to be Answered?' Gilbert + Tobin Centre of Public Law Postgraduate Workshop, 24 September 2019.

George Williams

'Electoral Law as a Discipline' Electoral Regulation Research Network Biennial Conference, University of Adelaide, 14 November 2019.

'Australia's Constitutional Quirks' International Association of Law Libraries Conference, Sydney, 29 October 2019.

'Automation of Government Decision-Making and the Rule of Law' Faculty of Law, University of Tasmania, 26 September 2019.

'The Rule of Law and Automation of Government Decision-Making' Faculty Seminar, Faculty of Law, Arizona State University, Phoenix, United States, 20 September 2019.

'The Rule of Law and Automation of Government Decision-Making' Public Lecture, Centre for Technology, Robotics, Artificial Intelligence & the Law, National University of Singapore, 20 August 2019.

'Implementing Human Rights in Australia' Workshop on Implementing, Benchmarking and Monitoring Human Rights, Australian Human Rights Commission and Australian Human Rights Institute, Sydney, 15 August 2019.

'Freedom of Speech on Campus' UNSW Sydney, 14 August 2019.

'New States for Australia?' Far North Queensland Schools Constitutional Convention, Cairns, 7 August 2019.

'Constitutional Change for Aboriginal and Torres Strait Islander Peoples' Randwick Boys High School, Sydney, 26 July 2019.

'AI and the Rule of Law in Government Decision Making' FLIP Conference, Law Society of NSW, Sydney, 25 July 2019.

'The Rule of Law and Automation of Government Decision-Making' Shanghai Jiao Tong University, Shanghai, 13 June 2019.

MEDIA PUBLICATIONS

Gabrielle Appleby

Gabrielle Appleby, "A worthwhile project": why two chief justices support the Voice to parliament, and why that matters' The Conversation (1 August 2019) <<https://theconversation.com/a-worthwhile-project-why-two-chief-justices-support-the-voice-to-parliament-and-why-that-matters-120971>>.

George Williams

'Mapping the Road to Advancement' The Australian (20 November 2019).

'Queensland Leads on Donations Fix' The Australian (4 November 2019).

'Government's Press Freedom Moves Aren't Fooling Anyone' Daily Telegraph (22 October 2019).

'When Politicians Decide What's News, No One is Safe' The Australian (22 October 2019).

'This Could All Go Up in Smoke' The Australian (30 September 2019).

'The Problem Steering Robo-debt is There are No Humans at the Wheel' The Australian (23 September 2019).

'Judges Step into the Parliament' The Australian (16 September 2019).

'Draft Religious Rules are Incomplete and Limited' The Australian (3 September 2019).

'9/11 Changed Things, but We've Overstepped the Mark' The Australian (13 August 2019).

'A Vital Westminster Convention we Somehow Overlooked' The Australian (31 July 2019).

'We Must Sort Out the Fuzzy Referendum Rules Before Our Next Vote' The Australian (22 July 2019).

'Let's Give the Public a Taste of How a Republic Might Work' The Australian (8 July 2019).

'Dumbest Curbs on Free Speech are Found Off-Campus' The Australian (24 June 2019).

'Australia is a World-Beater in the Secrecy Olympics' The Australian (10 June 2019).

'Time is Right for Indigenous Voice to be Heard in Houses of Parliament' The Australian (28 May 2019).

SUBMISSIONS

Joint Submissions

George Williams and Gabrielle Appleby, Submission (with Brendan Gogarty) to Parliament of Tasmania Legislative Council Select Committee 'Inquiry into Production of Documents' (1 August 2019).

George Williams

Submission (with Sangeetha Pillai) to Parliamentary Joint Committee on Intelligence and Security 'Review into the Australian Citizenship Amendment (Citizenship Cessation) Bill 2019' (14 October 2019).

Submission (with Lyria Bennett Moses and Monika Zalnieriute) to Senate Community Affairs References Committee 'Inquiry into Centrelink's Compliance Program' (9 October 2019).

Submission (with Lyria Bennett Moses and Monika Zalnieriute) to Joint Standing Committee on Electoral Matters 'Inquiry into 2019 Federal Election: Technology in Elections' (24 September 2019).

Submission to Joint Standing Committee on Electoral Matters 'Inquiry into 2019 Federal Election' (12 August 2019).

Submission (with Keiran Hardy) to Senate Standing Committees on Environment and Communications 'Inquiry into Press Freedom' (1 August 2019).

Submission (with Keiran Hardy) to Parliamentary Joint Committee on Intelligence and Security 'Inquiry into Press Freedom' (26 July 2019).

Submission (with Sangeetha Pillai) to Parliamentary Joint Committee on Intelligence and Security 'Review of the Australian Citizenship Renunciation by Conduct and Cessation Provisions' (17 July 2019).

Submission (with Sangeetha Pillai) to Independent National Security Legislation Monitor 'Review of the Terrorism-related Citizenship Loss Provisions in the Australian Citizenship Act 2007' (14 June 2019).

CENTRE PERSONNEL

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