Dear Centre friends,

2020 marks the 20th anniversary of the Gilbert + Tobin Centre’s life at UNSW Law – and we are planning to celebrate that important milestone in a range of ways during the coming year. But 2020 has alas also marked the beginning of new and challenging times for Australia and the world, and the Centre, like all organisations, is rapidly adjusting to new routines and ways of working in the COVID-19 era.

We began the year on a very strong note, with a very successful Public Law in the Classroom conference and a very successful Constitutional Law conference in February. The former was held on 20 February and was a joint initiative between the G+T Centre, the Public Law & Policy Research Unit at the University of Adelaide, and the Castan Centre for Human Rights Law at Monash University. It was ably organised by Professor Gabrielle Appleby and Centre members Dr Svetlana Tyulkina and Shreeya Smith. It was attended by 67 academics from a range of law schools across Australia, including from ANU, Bond, Deakin, Macquarie, University of Sydney, University of Southern Queensland, University of Wollongong, University of South Australia, UTS, WSU, Victoria University, RMIT, La Trobe, Australian Catholic University and Flinders University.

The Constitutional Law conference, held on 21 February, attracted more than 200 registrations and featured a very well-received keynote address on constitutional law in the High Court’s 2019 term, delivered by Associate Professor Elisa Arcioni, and a range of engaging panels. These featured a number of distinguished speakers discussing constitutional developments in 2019, on topics including federalism, legality and executive power, Chapter III Courts and the Kable principle, and the implied freedom of political communication and freedom of the press. The conference was followed by a wonderful launch by his Honour Justice James Edelman of the new collection *Interpreting Executive Power*, edited by Drs Janina Boughey and Lisa Burton Crawford and published by The Federation Press, and by the conference dinner at the NSW Parliament Strangers’ Dining Room. We were very fortunate to have numerous members of the judiciary in attendance at the dinner, including The Hon Justice Christine Adamson, The Hon Justice John Basten, The Hon Chief Justice Tom Bathurst, The Hon Justice Robert Beech-Jones, The Hon Justice Andrew Bell, The Hon Justice James Edelman, The Hon Justice Stephen Gageler, The Hon Chief Justice Catherine Holmes, The Hon Justice Anna Katzmann, The Hon Justice Duncan Kerr, The Hon Justice Anthony Meagher, The Hon Justice Richard Niall, The Hon Justice Julie Ward,
The Hon Justice Elizabeth Wilson, and The Hon Justice Margaret Wilson, and were treated to a witty and enlightening dinner address from The Hon Justice Virginia Bell. All guests were especially grateful that the dinner was also attended by Sir Anthony Mason, and that we were able to honour his ongoing contribution to the Centre and Australian public law community in that context. As you may recall, Sir Anthony has sponsored a scholarship for PhD students at the Centre, and the Centre continues to host an undergraduate student intern/essay writer each year under the auspices of an award in Sir Anthony's name.

In the early months of this year we also continued to strengthen our links with some of our new international Partner Centres, through visits by our members to those Centres under our new MOUs. In January, Dr Janina Boughey visited the Centre for Asian Legal Studies at the National University of Singapore, and in February/March, Elisabeth Perham visited the New Zealand Centre for Public Law at Victoria University of Wellington. The visits were very productive and supported our members to build stronger relationships with international colleagues.

Since March, the Centre has been focused on adapting our ways of working to meet the challenges of the COVID-19 era. Our first priority has been our students, and we have worked as a Centre to support the Faculty's transition to online teaching and learning, and provide the additional support needed for our students in this context. Our second priority has been to ensure appropriate support for Centre members – especially our PhD students and early career scholars. To that end, we have continued our usual meeting schedule and format via Zoom, added additional mentoring Zoom sessions, and created a new special emergency research fund run by the Centre, to support the ongoing research of early career scholars who are members of the Centre.

We are also beginning to think about how best to engage the broader community on the challenges for public law values and institutions posed by the COVID-19 pandemic. After appropriate consultation with Centre members, we have decided to create a new Public Law and Public Health project that focuses on these issues, and engages a broad range of Centre members and experts across UNSW – including scholars at the George Institute for Global Health and Professor Marylouise Mc Laws, Professor of Public Health, as an expert affiliate/advisor. The project has already begun work by supporting a series of fascinating COVID-19 and Public Law posts on the AUSPUBLAW blog, which is co-facilitated by the Centre and edited by Centre members Zsofia Korosy and Elisabeth Perham, with the support of Lisa Burton Crawford. The posts have looked at a number of topics such as regulation-making, elections, Medicare, human rights, executive power and the COVIDSafe app (see the AUSPUBLAW Report on p 8 for more information). The Centre has also organised a new Public Law and COVID-19 webinar series on Fridays from 1-2pm on a range of key topics, including:

- Public law responses to COVID-19: Lessons (or Cautions) from Taiwan, Singapore and Hong Kong (15 May)
- COVID-19 and Cruise Ships (29 May)
- COVID-19 and the COVIDSafe App (12 June)
- COVID-19, Human Rights Restrictions and Proportionality (26 June)
- COVID-19 and Federalism: Seeding Chaos or a More Effective Response? (24 July)
- COVID-19 and the Turn to E-Courts (14 August)

The first two of these took place in May and were very successful, attracting a number of participants from across Australia and the world, and provoking very productive discussions. These events are co-hosted with various partners, but you can register free of charge on the Centre website, and also view the recorded event there afterwards if you are not able to join us for the live event: click here for more details.
Our other work on key public law challenges also continues, albeit in new ways. We still plan to host virtual events on public law institutions and government automation, Democratic Constitutions and Electoral Commissions, and Comparative Constitutional Law later in the year. We will maintain our focus on our ‘Administrative Justice and Technology’ project (together with the Allens Hub for Law, Technology and Innovation at UNSW Law), and continue our work to support the campaign for a First Nations Voice to Parliament.

We have also been fortunate to welcome new members to the Centre in recent months, including Siddharth Narrain and Ayesha Wijayalath – and we invite you to read their engaging profiles in the newsletter.

The Centre also welcomed UNSW graduate and lawyer at Herbert Smith Freehills, Amelia Loughland, as a new Centre affiliate. Amelia’s work on the gender dynamics of argument before the HCA was recently published in the Melbourne University Law Review, and has attracted great interest among practitioners and scholars alike.

_Rosalind Dixon and Lisa Burton Crawford_

**SAVE THE DATE**
12 February 2021
Constitutional Law Conference and Dinner

For details of Centre events, publications, submissions and so on please go to our website: [gtcentre.unsw.edu.au](http://gtcentre.unsw.edu.au)

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

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**CENTRE ACTIVITIES**

**COMPARATIVE CONSTITUTIONAL LAW ROUNDTABLE AND POST-ROUNDTABLE WORKSHOP: ELY IN THE WORLD, 12-13 AND 16-17 DECEMBER 2019**

The Centre once again hosted the two-day Comparative Constitutional Law Roundtable, organised by Professor Rosalind Dixon. The Roundtable provides a forum for comparative constitutional law scholars from Australia and the world to come together and present and discuss work-in-progress papers on a range of comparative constitutional law topics. The 2019 Roundtable including presentations by Centre members Professor Rosalind Dixon, and Elisabeth Perham (joint with Associate Professor Maartje de Visser). This Roundtable was followed by a special two-day conference on the topic of ‘Ely in the World’. Further detail on these events can be found in the Comparative Constitutional Law Project report on p 11.

**PUBLIC LAW IN THE CLASSROOM, 20 FEBRUARY**

Organised by the Gilbert + Tobin Centre of Public Law, UNSW; the Public Law and Policy Research Unit, University of Adelaide; and the Castan Centre for Human Rights Law, Monash University.
Public Law in the Classroom has become a community-building forum in which teachers of Australian public law can share ideas and inspire one another. The 2020 Workshop opened with a panel session on how technology has changed public law and how we must respond to this in the classroom. This was followed by a special session on contextualising public law for students, made up of short presentations of between 5-7 minutes given by early career public law teachers. The final session of the day focused on increasing student awareness of public lawyering, and had the dual aims of exploring how we teach our students about the peculiar ethical position of lawyers working for government and discussing our responsibilities as public law teachers to increasing awareness of public lawyering careers.

The day concluded with a launch of the new book Law Making and Human Rights by Julie Debeljak (Monash University) and Laura Grenfell (University of Adelaide).

Event program available [here](#).

**CONSTITUTIONAL LAW CONFERENCE AND DINNER 21 FEBRUARY 2020**

The Constitutional Law Conference and Dinner is the Centre’s flagship event, and in 2020 it was staged for the nineteenth consecutive year. As in recent years, it was held at the Art Gallery of New South Wales on Friday 21 February 2020. Over 200 participants attended this year’s conference and were updated on recent important constitutional law developments in the High Court, Federal Court and state courts, and discussed surrounding issues that will emerge in 2020 and beyond. This event was organised by the Gilbert + Tobin Centre, with the support of the Australian Association of Constitutional Law.

Associate Professor Elisa Arcioni (University of Sydney) delivered the morning keynote on 2019 the High Court in constitutional law in 2019. Other speakers were:

- the Hon Justice Andrew Bell (President of the NSW Court of Appeal);
- Ms Kate Richardson SC (NSW Bar);
- Ms Philippa Mott (Crown Law Queensland);
- Mr Craig Lenehan SC (NSW Bar);
- Professor Anne Twomey (University of Sydney);
- Mr Mark Hosking (Victorian Bar);
- Dr Rebecca Ananian-Welsh (University of Queensland);
- Ms Julia Watson (Victorian Bar);
- Mr Peter Dunning QC (Queensland Bar); and
- Dr Daniel Joyce (UNSW).

We were also grateful to Mr Paolo Buchberger (NSW Crown Solicitor’s Office), Dr Janina Boughey (UNSW), the Hon Chief Justice Catherine Holmes (Chief Justice of the Supreme Court of Queensland) and the Hon Justice Anna Katzmann (Federal Court of Australia) for expertly chairing the panels, which covered a range of recent and forthcoming High Court, Federal Court and state court decisions, as well as broader constitutional developments:

- the Federal and State Courts on constitutional law in 2019;
- *Spence v Queensland*, with an emphasis on its implications for federalism;
- developments relating to the principle of legality;
- the implications for Australia of the UK Supreme Court's decision in *Cherry v Miller*;
- *BMW v Brewster; Westpac v Lenthall* with an emphasis on issues of judicial power, and the Kable principle, in relation to common fund orders;
- *Vella v Commissioner of Police*, and the broader topic of ‘preventive justice’;
• the implied freedom of political communication in relation to public servants (Comcare v Banerji) and journalists (Smethurst); and
• the freedom of the press.

The conference was followed by the launch of Centre members Janina Boughey and Lisa Burton Crawford’s new edited collection, Interpreting Executive Power, by the Honourable Justice James Edelman. Further details can be found in the report of the Statutes Project on p 12.

The Conference Dinner was held at NSW Parliament House, and the dinner speaker was the Hon Justice Virginia Bell of the High Court of Australia.

Copies of select papers from the conference can be found at the Centre’s website.

BOOK LAUNCH: THE CONSTITUTION OF MYANMAR

In January 2020, Melissa Crouch held a book launch for The Constitution of Myanmar in Yangon, Myanmar. The book launch panel included Dr Lian H Sakhong (expert on federalism), Saw Kapi and Htet Min Lwin (Forum of Federations). The event was co-organised with The Asia Foundation and Mosaic Myanmar.

PUBLIC LAW RESPONSES TO COVID-19: MAY – AUGUST 2020

The G+T Centre are currently running a series of webinars discussing the impact on and responses of public law to the COVID-19 pandemic. These webinars will be collaborative exercises, drawing on the expertise of members of our partner Centres, our colleagues from universities and institutes across Australia, and legal professionals, as well as Centre members, affiliates, and alumni. They are also designed to complement the special series of blogs posts on COVID-19 and Public Law curated by the Centre on www.auspublawblog.org. Two webinars, focussed on East Asia and on COVID-19 and Cruise Ships, were held in May and are reported on at p 11.

COVID-19 AND THE COVIDSAFE APP
12 JUNE 2020

This webinar examined the COVIDSafe App launched by the Australian government in response to the COVID-19 pandemic. It considered the design and function of the app and the legal restrictions on its use, as part of a broader discussion of its potential risks and benefits and public trust in government-operated technology.

Speakers:

• Professor Lyria Bennett Moses, Director of the Allens Hub on Law, Technology and Innovation at the University of New South Wales Faculty of Law
• Dr Caroline Compton, Research Associate at the University of New South Wales Faculty of Law
• Associate Professor Kate Galloway, Griffith University Law School
• Associate Professor David Byrnes, Faculty of Business and Economics at the University of Melbourne
• Associate Professor Joshua Miller, Faculty of Business and Economics at the University of Melbourne

Chair:

• Dr Lisa Burton Crawford

This Webinar is a joint initiative of the Gilbert + Tobin Centre of Public Law, Allens Law + Technology Hub and New Economic Policy Initiative at the University of New South Wales.
COVID-19, HUMAN RIGHTS RESTRICTIONS AND PROPORTIONALITY
26 JUNE 2020

This webinar will focus on restrictions to various human rights – such as freedom of movement and association, and the right to an adequate standard of living. It will note the various countervailing human rights arguments for imposing restrictions of this kind – including the right to the highest attainable level of health. Drawing on public health and economic experts, as well as experts on human rights and proportionality, it will debate how these different rights are best weighed or balanced – or how we achieve a truly proportionate set of restrictions on some rights in the name of protecting others.

Speakers:

• Professor Richard Holden, Director, New Economic Policy Initiative, University of New South Wales
• Professor Marylouise McLaws, School of Public Health and Community Medicine, University of New South Wales; Member, World Health Organization (WHO) Health Emergencies Program Experts Advisory Panel for Infection Prevention and Control Preparedness, Readiness and Response to COVID-19
• Mr Edward Santow, Human Rights Commissioner, Australian Human Rights Commission

Chair:

• Professor Rosalind Dixon

This Webinar is a joint initiative of the Gilbert + Tobin Centre of Public Law and the New Economic Policy Initiative at the University of New South Wales.

COVID-19 AND FEDERALISM: SEEDING CHAOS OR A MORE EFFECTIVE RESPONSE?
24 JULY 2020

What is the relationship between Commonwealth and state government responses to the COVID-19 pandemic? States have responded differently to the pandemic, and we have seen Commonwealth-state co-operation through novel public law institutions such as the ‘National Cabinet’, as well as disagreement among Commonwealth and state governments in a range of key areas – especially in the context of education and the closure/opening of schools. Ultimately, we will ask whether federalism has made us safer, or simply more confused, as we confront the challenges raised by the pandemic.

Speakers:

• Professor Andrew Lynch, Head of School and Deputy Dean of the Faculty of Law, University of New South Wales
• Professor The Hon Adrian Piccoli, Director of the UNSW Gonski Institute for Education and Professor of Practice, School of Education, University of New South Wales
• Dr Tamara Tulich, Senior Lecturer, University of Western Australia
• Dr Shipra Chordia, NSW Bar.

Chair:

• Professor George Williams, Dean of the Faculty of Law, UNSW

This Webinar is a joint initiative of the Gilbert + Tobin Centre of Public Law, Gonski Institute for Education and the New Economic Policy Initiative at the University of New South Wales.
COVID-19 AND THE TURN TO E-COURTS
14 AUGUST 2020

This webinar will examine the measures and changes to court procedures put in place across Australia in response to the COVID-19 pandemic, including the move to online hearings and expansion of non-jury trials. It will discuss the rationale and design of these measures, their compatibility with public law norms and values, and look forward to lessons that may be learned about the broader digitisation of court process.

Speakers:
- Stephen McDonald, SA Bar
- Dr Joe McIntyre, Senior Lecturer in the University of South Australia Law School
- Dr Anna Olijnyk, Senior Lecturer and Director of the Public Law and Policy Research Unit at the University of Adelaide
- Kieran Pender, visiting fellow at the Centre of International and Public Law at The Australian National University

Chair:
- Dr Lisa Burton Crawford

THE AUSPUBLAW BLOG

It has been a busy start to 2020 for the AUSPUBLAW blog editorial team. We have worked hard to respond to the public law implications of the COVID-19 pandemic while continuing to publish scholarly analysis of recent cases and 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 Zsofia Korosy and Elisabeth Perham, two HDR members of the Centre, and co-ordinated by Dr Lisa Burton Crawford.

Since the last Centre newsletter, the blog's readership has continued to grow. We now have over 1100 email subscribers and over 2500 Twitter followers (an increase of over 100 subscribers and 200 followers respectively since the beginning of 2020).

In late March, the blog began publishing a series of posts on COVID-19 and Public Law. This series includes a mixture of commissioned and submitted posts from public law scholars and practitioners across Australia. The first post, by Andrew Edgar of Sydney Law School, noted some of the challenges of regulation-making in times of emergency and was cited by the delegated legislation committee when it resolved to establish an inquiry into non-disallowable instruments. Over the two months since then, the blog has published ten further posts focused on COVID-19-related issues, including posts on holding elections during a pandemic, the impact of rapidly changing Medicare rules on doctors and patients, the role of Parliamentary Committees while Parliaments are not meeting, the implications of the rapid move to E-Courts, the Australian Human Rights Acts and the way the rights they protect are implicated by COVID-19, the COVIDSafe app, the scope of Commonwealth executive power, and the scope of the Tasmanian Subordinate Legislation Committees’ jurisdiction to scrutinise government action in response to COVID-19. We have a number of new posts in this series planned for the coming months.

In addition to the new series, we were also pleased to publish Salman Shah’s essay on Democracy as the Justification for Judicial Review, which won the 2019 Sir Anthony Mason Constitutional Law Prize, as well as well-received posts on the question of whether the High Court was right to refuse to issue a s 75(v) injunction in Smethurst, the meaning of non-refoulement in relation
to Ministerial directions on visa cancellations, the potential for climate change litigation to be brought under the Australian Human Rights Acts, the prospects of success of a compensation claim brought by Dr Galarruwuy Yunupingu in relation to Commonwealth grants of mining rights in the 1960s, concerns about Australia’s metadata retention scheme, the place of extreme examples in constitutional law, and the question of whether Parliamentary privilege can be invoked to prevent Parliament from ensuring ministerial accountability. Following the important High Court decision of Love and Thoms, we also published a mini-forum with analysis of the decision from Eddie Synot, Director of the Indigenous Law Centre at UNSW, and from Elisa Arcioni and Rayner Thwaites of Sydney Law School.

We have also continued to provide a monthly roundup of public law events across the country. Although the holding of events has obviously been disrupted, we are committed to continuing to provide this service, albeit for the immediate future bringing attention to webinars of interest to the Australian public law community.

In the coming months, the blog will continue to commission and welcome analysis on the public law implications of the COVID-19 pandemic, as well as continuing to bring you posts analysing other public law developments and highlighting research focussing on Australian public law. We will also be publishing a book forum in the next few months (we are excited about this one, but it has been slightly delayed by COVID-19-related postage problems). These forums were instituted in 2018 and provide an opportunity for scholars and practitioners to critically engage with new book-length scholarship focused on Australian public law.

As always, we welcome contact from any friends of the Centre who are interested in writing for AUSPUBLAW. To subscribe to the blog, sign up at www.auspublaw.org or follow it 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.

Elisabeth Perham and Zsofia Korosy

PEOPLE

New Centre affiliates:

- Amelia Loughland, Herbert Smith Freehills

INTRODUCING SOME OF OUR PHD CANDIDATES

Siddharth Narrain

Siddharth Narrain is from Bangalore, India. He completed an undergraduate law degree at the National Law School of India University, Bangalore. Deciding to try his luck with a career in journalism, he completed a P.G. Diploma in Print Journalism at the Asian College of Journalism and worked for 3 years with The Hindu Group of Publications in Delhi, writing mostly on socio-legal issues.

After this stint, Siddharth joined the Alternative Law Forum, Bangalore, where among other public law related themes, he was fortunate to have had the opportunity to work on the national campaign and legal challenge to Section 377 of the Indian Penal Code, the law that criminalized homosexuality in India (and was declared unconstitutional by the Supreme Court of India in 2018). In 2014, Siddharth completed an LLM at Harvard Law School with the support of a Fulbright-Nehru scholarship.
After a brief research stint with the Sarai Programme, CSDS, Delhi and teaching at the Ambedkar University Delhi, Siddharth commenced a PhD at UNSW Law in 2019 under a Scientia scholarship under the supervision of Professor Fleur Johns, Dr Daniel Joyce and Dr Vicki Sentas. His project examines the legal regulation of hate speech online, virality, and incitement to violence in India, with a specific focus on WhatsApp and Facebook.

Shreeya Smith

Shreeya Smith is a Deputy Director of the centre’s recently established project on public law and public health in light of COVID-19. Her doctoral research is focused on the scope of Commonwealth executive power to respond to a public health crisis, seen through the lens of a functionalist approach to interpreting the ‘nationhood’ power recognised under s 61 of the Constitution. She is supervised by Professors Rosalind Dixon and Gabrielle Appleby, and Dr Janina Boughey. She was a recipient of the Sir Anthony Mason PhD award in 2018 and is the current holder of a Nettheim Teaching Fellowship. Shreeya’s teaching interests are public law focused, having taught public law and federal constitutional law courses at the University of New South Wales, and public law at Western Sydney University.

Shreeya was born in India, and moved to Sydney during her primary school years. She has vivid and funny memories of culture shock from those early years. Of note was her confusion over why there were signs declaring ‘No Standing’ at her bus stop when no provision was made for her to sit. It may well be here that the seeds of her interests in the law and exercises of state power were sown. She completed her undergraduate studies in Law and Commerce at the University of New South Wales. Other than a brief stint in private practice, her previous roles were in legal and policy roles in the Commonwealth public service, focused on telecommunications policy, and law reform.

Ayesha Wijayalath

Ayesha Wijayalath is a PhD candidate in UNSW Law and is part of the UNSW Scientia PhD project ‘A Liberal Response to Populist Constitutionalism’ supervised by Professor Rosalind Dixon, Professor Theunis Roux and Associate Professor Melissa Crouch. Her research intends to focus on the role of constitutional culture and constitutional design in addressing populism in Sri Lanka.

Prior to joining UNSW, Ayesha worked as a Research Associate in the Centre for Asian Legal Studies, National University of Singapore and was an Associate Editor of the Asian Journal of Comparative Law. She also worked as a Consultant for the ‘Constitutional Law’ project in the Max Planck Institute of International Peace and the Rule of Law.

Ayesha graduated from the National University of Singapore in July 2017 with an LLM specialising in International and Comparative Law. She is also an Attorney-at-Law from Sri Lanka and has appeared in fundamental rights matters and civil appeals in the superior courts of Sri Lanka. She holds an MA in International Relations from the University of Colombo, Sri Lanka and a BA in French from the University of Kelaniya, Sri Lanka.

Ayesha takes a keen interest in comparative constitutional law, international humanitarian law and transitional justice.
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.

A major focus of the Project’s work in 2020 is the challenges and opportunities that government automation presents for administrative justice. Drs Janina Boughey and Lisa Burton Crawford are working with colleagues in the Allens Hub for Technology, Law & Innovation on several projects and publications exploring these issues. These include an online workshop in June 2020 (delayed from May due to COVID-19) which will bring together senior bureaucrats, judges, practitioners, and law and technology academics to examine what Australia’s public law institutions might need to do to adapt to the challenges and opportunities of government automation.

The COVID-19 pandemic and governments’ responses to it have served to highlight the importance of administrative law in holding governments to account for their decisions. Australian governments, like their overseas counterparts, have exercised extraordinary powers in response to the pandemic. Most would agree that these powers were necessary and appropriate to respond to a global public health emergency. However, several of the blog posts on the Centre’s AUSPUBLAW blog have explored the ways in which ordinary democratic and legal oversight mechanisms have been eroded in relation to these emergency powers.

Centre members will continue to lead discussions and debates on the important topic of government accountability in the context of emergency powers including through Elisabeth Perham and Zsofia Korosy’s coordination and editing of the AUSPUBLAW blog and through the webinar series organised by Professor Rosalind Dixon and Dr Lisa Burton Crawford. Dr Crawford will be hosting two webinars looking at two of the most controversial aspects of the legal response to COVID-19. The first, on 12 June, will discuss the COVIDSafe App. A panel of experts drawn from law and economics will consider the design and function of the app and the legal restrictions on its use, as part of a broader discussion of its potential risks and benefits and public trust in government-operated technology. The second, on 14 August, will examine the range of changes to court procedure swiftly implemented in response to the pandemic, and their compatibility with core principles of open justice and procedural fairness.

Pre-pandemic, Janina took part in a comparative workshop on the codification of administrative law at the University of Zürich. The workshop, and forthcoming book project was led by Professor Felix Uhlmann, who was a Centre visitor in late 2019. During his visit, Professor Uhlmann spoke to Centre members about the comparative codification project and had many fruitful discussions with our academic and HDR members. Janina also spent two weeks as a visiting scholar at the National University of Singapore’s Centre for Asian Legal Studies, where she gave a seminar on the practical implications of the emerging ‘culture of justification’ for administrative decision-makers.
In addition, Janina continued her research into the role that deference plays in Australian administrative law, including in her recently published chapter ‘The Case for ‘Deference’ to (Some) Executive Interpretations of Law’ in Janina Boughey and Lisa Burton Crawford (eds), Interpreting Executive Power (Federation Press, 2020). This new collection is explained in more detail in the report for the Statutes Project, but includes contributions from some of Australia’s leading administrative law scholars and addresses crucial topics of administrative justice, including the automation of government decision-making, the conferral of broad discretionary powers, and the intersection between statutory and non-statutory administrative powers.

COMPARATIVE CONSTITUTIONAL LAW PROJECT

Project Director: Rosalind Dixon
Project Deputy Director: Melissa Crouch

The Comparative Constitutional Law project saw a very busy end to 2019, with a series of events in December. On December 12 & 13, the Project hosted its annual Comparative Constitutional Law roundtable – featuring works in progress by scholars from around Australia and the world, including scholars visiting from institutions in Canada, Chile, Germany, Hong Kong, Ireland, New Zealand Singapore, South Africa, the UK and the US. For the first time, we also welcomed scholars from our partner Centres at Victoria University of Wellington (Professors Joel Colón-Ríos and Claudia Geiringer) and National University of Singapore (Dr Bo Tiojanco), as part of our new international MOUs with the Centre for Asian Legal Studies (CALS) at the National University of Singapore, and the New Zealand Centre for Public Law at Victoria University of Wellington. A range of topics were discussed, including the pedagogy of comparative constitutional law, super-presidentialism, participatory constitution-making, constitutional amendments, and constitutionalising the party.

This event was followed by a special conferenced hosted and supported by the Centre on 'Ely in the World', which examined the influence of John Hart Ely’s ideas in Democracy and Distrust on contemporary constitutional thinking and practice in a range of jurisdictions worldwide. The influence of Ely’s ideas in Australia was examined by Project director, Rosalind Dixon, in a paper joint with Amelia Loughland on the ideas and jurisprudence of Justice Stephen Gageler. The conference also included contributions on the influence (or lack thereof) of Ely in Canada, Chile, Colombia, Germany, Mexico, New Zealand and South Africa.

As part of the Centre’s COVID-19 Webinar series, the Comparative Constitutional Law project arranged a discussion on public law responses to COVID-19 in Hong, Kong, Singapore and Taiwan (held by Zoom on 15 May). More information on this webinar is given below in the Public Law and Public Health Project report. On 27 May, Project deputy director Melissa Crouch also took part in a Virtual Roundtable hosted by CALS on the topic of COVID-19 and Constitutionalism in Asia: Executive Power in a Time of Crisis.

PUBLIC LAW AND PUBLIC HEALTH PROJECT

Project Co-Directors: Rosalind Dixon and Janina Boughey
Project Deputy Directors: Elisabeth Perham and Shreeya Smith

This new centre Project is dedicated to exploring the public law implications of the current COVID-19 crisis, by engaging a broad range of Centre members and experts from across UNSW, Australia and the world – including scholars at the George Institute for Global Health and Professor Marylouise McLaws, Professor of Public Health, as an expert affiliate/advisor.
The Project has already supported a range of posts on the AUSPUBLAW blog (as reported above on p 8), and has organised a series of Webinars on Public Law Responses to COVID-19.

The first two webinars were held in the last two weeks of May. The first, on 15 May, focused on public law responses to COVID-19 in Hong Kong, Singapore and Taiwan. We were delighted to host colleagues from our partner centres at the National University of Singapore (CALS Director Associate Professor Jaclyn Neo), and Hong Kong University (Associate Professor Calvin Ho and Assistant Professor Daisy Cheung), as well as our colleague Professor Wen Chen Chang, who is the Dean of National Chiao Tung University School of Law in Taiwan. We were joined by over 70 colleagues from around Australia and across the world. The discussion was facilitated by Centre Members Melissa Crouch and Theunis Roux, and covered a range of topics from the importance of legal preparedness to the quality of responses to COVID-19, issues of privacy and discrimination in designing and monitoring responses, how to deal with a second wave of cases, elections and democracy during COVID-19, and the degree of centralisation of power in the executive during COVID-19.

The second webinar, on 29 May, featured a discussion on COVID-19 and Cruise Ships. We were very pleased to host two speakers from the NSW Bar, Centre Fellow Craig Lenehan SC and Ms Christina Trahanas, as well as Centre Steering Committee Member and expert on international law and law of the sea Professor Natalie Klein, and historian and expert on global public health history Professor Alison Bashford. Ms Shreeya Smith, one of the Project’s Deputy Directors, also joined the discussion and contributed her expertise on executive power, and the discussion was facilitated by Project Director Rosalind Dixon. We were joined by over 80 colleagues from across the country, and discussed a range of issues presented by cruise ships during this pandemic, including the government’s power to exclude and enforce exit of cruise ships from Australian ports (under both domestic and international law), the NSW Government’s Commission of Inquiry into the Ruby Princess and the role of such Commissions, the parallels between regulation of ships and disease in current times with regulation of ships and disease through history, and questions about flag states and legal (and moral) responsibility for ships and crews.

Recordings of these webinars may be viewed online here.

STATUTES PROJECT

Project Co-Directors: Lisa Burton Crawford and Janina Boughey

The Statutes Project examines contemporary developments in legislative practice and statutory interpretation. One of the core aims of the project is to shed new light on the way in which statutes are used as a tool of modern governance. Lisa has recently published a path-breaking empirical and theoretical study of the volume and complexity of federal legislation and its implications for the rule of law (‘The Rule of Law in the Age of Statutes’ (2020) 48(2) Federal Law Review 159). She has also written on the implications of these legislative trends for administrative law doctrine, in her contribution to the collection of essays edited by Janina and Lisa and published by the Federation Press in January this year (‘Between a Rock and a Hard Place: Executive Guidance in the Administrative State’ in Janina Boughey and Lisa Burton Crawford (eds), Interpreting Executive Power (Federation Press, 2002)).

This collection is the culmination of a workshop previously held at UNSW, and we were delighted to see it launched by the Honourable Justice James Edelman of the High Court of Australia at the annual Constitutional Law conference in February. As explained in previous newsletters, the aim of this collection was to examine the way in which Australian courts interpret statutes
that confer executive power. It includes contributions from Centre members Shreeya Smith and Dr Sangeetha Pillai, as well as Lisa and Janina. In his foreword to this collection, Justice James Edelman described it as a ‘highly ambitious project’ which traversed a ‘minefield of theory’, as well as doctrinal and practical concerns. Justice Edelman concluded:

*the authors have met the highly ambitious goal that the work sets for itself to understand and explain how courts interpret the scope of executive power. Without doubt, the range and depth of thought contained in the uniformly outstanding chapters in the work will serve greatly to advance the coherent development of what is commonly described as Australian administrative law. The authors and editors have done a great service to the law.*

Lisa continues to work on various research projects in the field of statutory interpretation, and together with their co-authors from Monash University, Lisa and Janina are completing a revised edition of their student-focused text, *Public Law and Statutory Interpretation: Principles and Practice*, to be published by the Federation Press late this year. Lisa will also be teaching a revised Advanced Statutory Interpretation elective course in T3 this year.

While face-to-face events are on hold for now, Lisa and Janina are presently examining interpretive issues connected with the plethora of COVID-19 related laws, regulations and directives as part of their affiliation with the Public Law and Public Health project, and look forward to taking part in webinars on this and other topics in the near future.

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**PUBLICATIONS AND PRESENTATIONS**

**PUBLICATIONS**

**Joint Publications**


Janina Boughey

Lisa Burton Crawford

Melissa Crouch

Rosalind Dixon

Zsofia Korosy

Elisabeth Perham

Jemimah Roberts

Shreeya Smith
‘The Scope of a Nationhood Power to Respond to COVID-19: Unanswered Questions’ on AUSPUBLAW (13 May 2020)

PRESENTATIONS
Janina Boughey
‘The Developing Culture of Justification in Administrative Law: Rationales and Consequences for Decision-Makers’, Seminar at National University of Singapore, Centre for Asian Legal Studies, 10 January 2020.
Melissa Crouch
Comparative Constitutional law, seminar at the University of Mandalay and the University of Yangon, January 2020.
‘Constitutional Processes, Constitutional Commitments, and Democratic Change in Asia’, Law Faculty, National University of Singapore, Feb 2020.
Workshop on Constitutionalism in Asia, Centre for Asian Legal Exchange, the Law School, Nagoya University, Japan, January 2020.
Sydney Writers’s Festival, Chair and moderator, Book panel: Thant Myint-U: The Hidden History of Burma (*cancelled due to covid-19)

Rosalind Dixon

Paul Kildea
‘Same Sex Marriage, First Nations Voice and Beyond: Recent Referendum Developments in Australia’, Edinburgh Law School, University of Edinburgh, 10 February 2020; Faculty of Laws, University College London, 12 February 2020; School of Law, Trinity College Dublin, 20 February 2020.

Elisabeth Perham
‘The Mechanisms of Constitutional Transfer in the Pacific’ Victoria University of Wellington Faculty of Law Staff Seminar, 10 March 2020.

George Williams

MEDIA PUBLICATIONS

Melissa Crouch

Rosalind Dixon
‘What Should Governments Do to Protect Jobs and Incomes, Now and In the Future?’ (with Richard Holden), Crikey, 9 April 2020.
George Williams
‘This Win Came with a Quite Nasty Sting in the Tail’ The Australian (21 April 2020).
‘This is 700 Pages of Power this Country has Never Seen Before’ The Australian (23 March 2020).
‘No Place for Politics when Selecting Our Judges’ The Australian (16 March 2020).
‘Will the High Court Uphold your Right to Know?’ The Australian (2 March 2020).
‘Racism was Built into the System’ The Australian (19 February 2020).
‘Once Again, Bill Misses the Mark’ The Australian (6 February 2020).
‘We Have Waited Long Enough for a Bill of Rights’ The Australian (24 December 2019).
‘Our Privacy is Bought and Sold — Let’s Take Control’ The Australian (9 December 2019).
‘It is a Long Time Since We Polished our Constitution’ The Australian (25 November 2019).

SUBMISSIONS

Joint Submissions

Melissa Crouch
Submission to the National Library of Australia on the review of the Asian Collection, Dec 2019 (with the Asian Studies Association of Australia, and separately with the Association of Mainland Southeast Asia Scholars)

George Williams
Submission (with Harry Hobbs) to Department of Aboriginal and Torres Strait Islander Partnerships ‘Path to Treaty Process’ (4 December 2019).

GRANTS

Melissa Crouch was successful in receiving a competitive Australia-ASEAN Council Grant 2019-2020 on ‘Fostering Women’s Empowerment through Digital Entrepreneurship’ with academics from the Faculty of Business at UNSW. The project involves collaboration with the Ford Foundation, the Social Trust Fund, the State Islamic University (Jakarta) & Thammasat Business School (Thailand).

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