

Dear Friend,

Welcome to this newsletter updating you on the activities, people and publications of the Gilbert + Tobin Centre of Public Law over the first half of 2013. Inside you will find the usual mix of reports on the events and seminars held by the Centre, including our annual Constitutional Law conference, profiles of new members, postgraduate students and interns, as well as the research activities of Centre members under our various projects. As always, the newsletter illustrates the diverse and energetic culture of academic research and community engagement on public law issues that defines the Centre.

This is my last newsletter as Director of the Centre. I have been engaged in management of the Centre since arriving at the UNSW Law School in 2005 – first as Deputy Director to Professor George Williams and then as his successor from 2008. Over this time, the Centre has experienced real growth in terms of both academics and postgraduates. When I began Centre meetings took place in the Director's office with about five or six people around a small table – these days they are held with about 20 or so in the Faculty Boardroom.

This increased size has, I think, been strongly matched by an exponential growth in achievement – although the Centre is now much larger, it continues to punch above its weight. As the pages of these newsletters consistently show, members are highly productive in the publication of both traditional academic work and in contributions to public debate and understanding via other means.

What is more, the Centre has managed to maintain its highly collegial and non-hierarchical culture as new members have joined the fold. It is an example of that thing which is often talked about in universities but rarely as easy to observe – a vibrant and productive academic community. It has been an enormous privilege to lead such a smart, distinguished, and committed group of people over these years. I am grateful to all past and



Keynote Panel at the 2013 Constitutional Law Conference: Centre Director Professor Andrew Lynch, the Hon Justice Anna Katzmann and Professor Nicholas Aroney

2014 Constitutional Law Conference and Dinner

Our next Constitutional Law Conference and Dinner will be held on 14 February 2014.

present colleagues and postgraduate members of the Centre – they have made my job not merely incredibly easy, but also enormously fun.

Special thanks are due to a number of key people. Danny Gilbert's interest and support have been invaluable and his vision for the Centre continues to inspire the efforts of all its members. The members of the Centre's Management Board and Advisory Committee, and especially Sir Anthony Mason as Chair of the latter, have all provided shrewd advice and generous encouragement when it was needed. Finally, the Dean of Law, Professor David Dixon, has been a strong friend of the Centre and assisted me greatly in my directorship.

I am delighted that over the next nine months Professor Rosalind Dixon will be directing the Centre, and then Sean Brennan will be taking on the role for the longer term from March. These are two excellent colleagues who will both bring a renewal of vigour and vision. I greatly look forward to continuing my involvement in the research and activities of the Centre with them at the helm.

Professor Andrew Lynch
Director



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CENTRE ACTIVITIES

2013 Constitutional Law Conference and Dinner

On 15 February 2013 the Centre held its twelfth annual conference on constitutional law. As ever, the opening session of the conference was titled 'The Courts on Constitutional Law' and reviewed decisions in the High Court and Federal and State Courts during the previous year. Professor Nicholas Aroney looked at the High Court decisions of 2012 and the Hon Justice Anna Katzmann spoke on developments in the Federal and State Courts over the same period.

Undoubtedly the major decision of interest last year was, of course, *Williams v Commonwealth*. As well as featuring solidly in Nicholas Aroney's overview, this case received special attention in the final session of the day titled 'Commonwealth Executive Power – Questions after the Chaplains Case'. An expert panel of Dr Gabrielle Appleby, Leigh Sealy SC and Senator George Brandis discussed the decision itself and also its likely aftermath.

But 2012 featured other notable cases including *Plaintiff M47/2012* and *British American Tobacco v Commonwealth*. These were analysed by Emeritus Professor Reg Graycar and Associate Professor Matthew Rimmer respectively, in a session where Stephen Free also gave a paper on *State Courts After Kirk – PSA v Industrial Relations Commission SA*.

As is customary, the focus of the day broadened a little after lunch. Session 3 was titled 'Judicial Institutions and Practices'. Professor Elizabeth Handsley looked at a myriad of issues around the topic of judicial appointment while Mark Moshinsky SC and Professor Kim Rubenstein reviewed the contemporary practice around amicus curiae applications in the High Court. Due to illness, Professor Brian Opeskin was unfortunately unable to present his fascinating survey 'The State of the Australian Judicature: 35 Years On', but Centre Director Andrew Lynch delivered this paper on his behalf.

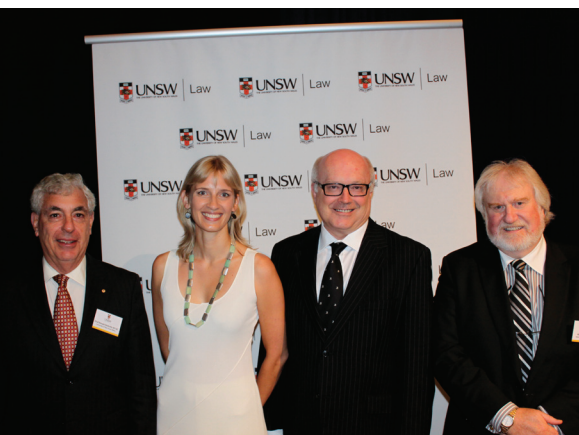
The dinner that evening, hosted by NSW Attorney-General, the Hon Greg Smith SC, had as its guest speaker, the Hon Virginia Bell AC of the High Court of Australia. Justice Bell turned the tables on several in the audience when she embarked on an address titled 'Reviewing the reviewers'. In her sights were the critique and predictions that had been offered by a range of speakers at the Centre's 2003 conference. Just how well had these stood the test of time? Certainly, the Centre Director was given pause to reflect on the wisdom of his remarks from a decade ago about the likely place Justice Dyson Heydon would occupy in the Court's decision-making. The judicial 'roasting' of academic and other commentators on the work of the Court occurred with her Honour's legendary deadpan delivery and enters the pantheon of our conference dinner speeches as assuredly the funniest! Solemnity reasserted itself however, when Justice Bell concluded her address by paying a generous tribute to her colleague Justice Heydon, present in the audience, on the occasion of his retirement from the Court.

Centre Seminars

The Centre held two occasional seminars in the first six months of 2013. The first, on 27 March, was delivered by Professor Tonja Jacobi of Northwestern Law School on 'The Self-Stabilising Constitution' (co-authored with Barry Weingast). The authors' state that the three central problems for constitutional stability are commitment, coordination and adaptation – finding mechanisms that commit governing elites to respecting rights, creating means by which the public can coordinate to oppose violations of those rights, and allowing constitutional doctrines to adapt to changing



Mr Leigh Sealy speaking at the 2013 Constitutional Law Conference



Panel 4 at 2013 Constitutional Law Conference: Professor Ronald Sackville, Gabrielle Appleby, Senator George Brandis and Leigh Sealy





Professor Tonja Jacobi and Centre Director Andrew Lynch at 'The Self-Stabilizing Constitution' seminar



Associate Professor Dan Meagher and Centre Director Andrew Lynch at the 'The High Court on Free Speech: Offensive Letter Writing, Public Preaching and the Constitution' seminar



technological and social developments. They go on to argue that many of the clauses of the Constitution serve an additional purpose that is not generally recognised in either the standard literature on democracy or the legal literature on constitutions: providing these three conditions of constitutional stability that solve each of these three problems. Together these provisions create a self-stabilizing framework for political action, by ensuring that those not currently in power have incentives to nonetheless support the democratic system, and those in power obey its constraints. Tonja applied this analysis to governmental takings, comparing the Australian acquisitions power to the takings jurisprudence in the United States.

On 23 May 2013 the Centre held a second seminar titled 'The High Court on Free Speech: Offensive Letter Writing, Public Preaching and the Constitution'. This seminar was initially planned as a dialogue between Professor Adrienne Stone of the University of Melbourne and Associate Professor Dan Meagher of Deakin University analysing the High Court's recent decisions on the use of the implied freedom of political communication in *Monis v The Queen* and *Attorney-General (SA) v Corporation of the City of Adelaide*, both delivered on 27 February 2013. Unfortunately, Adrienne was unable to make it to Sydney at the last minute and so Dan soldiered on as a solo act. A full webcast of this seminar is available on the Centre's homepage.

In future, we hope to continue recording seminar presentations for the benefit of those unable to make it to the UNSW campus – though all are indeed welcome to attend seminars and the informal drinks held afterwards.

Workshop Critical Debates on Counter-Terrorist Judicial Review

On June 12th 2013, the G+T Centre and the Durham Human Rights Centre hosted a major international workshop on critical debates on counter-terrorist judicial review at the Durham University Law School.

The appropriateness and quality of judicial review of counter-terrorist measures has long been a matter of contention within the legal academy, especially as it arises in liberal democracies struggling to confront terrorist violence while maintaining their constitutional(ist) form. On the one hand are those scholars who argue that counter-terrorist judicial review is inappropriate based on claims of institutional expertise, quality of review and democratic principles. On the other are those who argue that counter-terrorist judicial review is a core element of constitutionalism generally and especially in times of terrorist crisis when other limiting mechanisms (including politics) might suffer from structural and socio-political strains. These debates and conundrums repeat themselves across jurisdictions and at the regional and international level. This replication indicates that at heart these debates are essentially concerned with fundamental questions of organising and making accountable the exercise of power in a particularly challenging environment.

This workshop brought together perspectives from domestic and international law, from North America, Europe, and Australasia, and from both practice-based and theoretical perspectives, to consider these debates in the round.

The Workshop was supported by a Small Grants award from the British Academy/Leverhulme and by the ARC Laureate Fellowship: Anti-Terror Laws and the Democratic Challenge based in UNSW's Gilbert + Tobin Centre of Public Law. The workshop will result in a collection, co-edited by Davis and de Londras, entitled *Critical Debates on Counter-Terrorist Judicial Review* to be published in 2014 by Cambridge University Press.

On the day the Workshop gave rise to vigorous and robust debate from a range of highly respected international scholars including Jessie Black-



Centre PhD students and Faculty Nettheim Teaching Fellows Tamara Tulich and Jackie Hartley at the 2013 Constitutional Law Conference



bourne and Fergal Davis of the G+T Centre, Professor Kent Roach of the University of Toronto and Professors Fiona de Londras, Helen Fenwick and Gavin Phillipson of Durham University (all of whom are old friends of the G+T Centre). Professors Mark Tushnet (Harvard Law) and Jules Loebel (University of Pittsburgh) were unable to attend the Workshop but provided papers via YouTube.

In addition to those presenting, the Workshop attracted considerable interest from UK based scholars and was live tweeted during the day which added to the debate. Overall it was a great success and the resulting collection is expected to be of a very high standard.

Students develop education materials for local government referendum

Students in the compulsory LLB and JD course ‘Principles of Public Law’ have shown a knack for civics education, exploring fresh and creative ways for informing Australians about their Constitution.

In the final week of Semester 1, UNSW public law teachers asked their students to work in groups to devise an information campaign in connection with either the Yes or No sides of the upcoming referendum on local government funding. The main objective of the exercise was to deepen students’ understanding both of the constitutional issues raised by the proposed constitutional amendment, and the challenges involved in advancing public education on complex legal issues. The exercise was developed by Centre members Jackie Hartley and Paul Kildea.

With only a weekend to work on the task, the students displayed extraordinary ingenuity. There were several musical pieces (spanning the genres of pop, rap, rock and jazz), pamphlets, posters, poetry, videos, radio and TV segments, and Twitter campaigns. One group even created a video that lent the referendum atmospherics and music reminiscent of the movie *Star Wars* – except this video was called ‘Constitution Wars... Episode XLV’.

The material showed that a bit of energy and creativity can go a long way in providing people with a window into a complex issue. What is more, the students demonstrated that, with humour, ingenuity and hard work, even a proposed amendment to section 96 of the Constitution can be made interesting and worthy of attention.

Examples of the students’ work, along with further discussion of the exercise, can be found in the article ‘The Referendum is Coming: But are we Ready?’, recently published in the online publication *Inside Story* (see <http://inside.org.au/the-referendum-is-coming-but-are-we-ready/>)

National Security Legislation Reform - Now or Never?

On Tuesday 14 May, whilst most of Australia was preparing for the evening's federal budget, members of the Gilbert + Tobin Centre's ARC Laureate project were waiting avidly on two reports to be tabled in the Parliament. The first was the annual report of the Independent National Security Legislation Monitor, Bret Walker SC. The second was the final report of the Council of Australian Governments (COAG) Review of Counter-Terrorism Legislation. Both reports focused on some of the most contentious aspects of Australia's anti-terrorism laws. But while both reports favoured reform of those laws, they did not necessarily agree on what form those changes should take. This is particularly evident in each review's recommendations on Australia's terrorism control order regime.

Control orders were introduced to Australia in the aftermath of the London bombings in 2005. They were considered necessary to fill a niche gap in the existing counter-terrorism framework – to place a variety of controls on a person who had 'provided training to, or received training from a listed terrorist organisation' or simply where those controls would 'substantially assist in preventing a terrorist act'. The core purpose of the control order regime was the protection of the public from terrorism.

In his review of the control order legislation, Walker could find no evidence that the issuing of two control orders (against Joseph Thomas in 2006 and David Hicks in 2007) had 'made Australia appreciably safer' from the threat of terrorism. Nor was he convinced that either control order was 'reasonably necessary for the protection of the public from a terrorist act.' The control order regime simply did not fulfil its base function – the prevention of terrorism. Hence, Walker recommended that the control order legislation should be repealed.

However, the past experience of anti-terrorism review in Australia suggests that the government is unlikely to accept a recommendation for repeal of the law if an alternative review proposes some lesser reform. And that is exactly what the COAG Counter-Terrorism Review Committee has provided. The COAG Committee, headed by retired New South Wales Supreme Court Justice Anthony Whealy QC, was satisfied that the control order regime should be retained because it is 'necessary and, if utilised in an appropriate case, is likely to be effective, at least in the short term, in preventing or disrupting a terrorist act.' In reaching this conclusion, the COAG Committee put forward a number of recommendations to reform, but not repeal, the control order legislation.

The COAG Committee based a number of its recommendations on similar reforms which took place to the United Kingdom's anti-terrorism laws in 2011. The UK government repealed its system of control orders in favour of Terrorism Prevention and Investigation Measures (TPIMs). This recommendation is no great surprise – the report of the COAG Committee appears to have been heavily influenced by the submissions it received. In the control order context, the Committee relied predominantly on a recent report by the UK's Independent Reviewer of Terrorism Legislation, David Anderson QC, as well as consultation with his Special Advisor, Professor Clive Walker, who spoke to the COAG Committee whilst visiting the G+T Centre last December.

For example, the COAG Committee proposed that prior to seeking an interim control order the AFP should provide the Commonwealth DPP with all the material in its possession, for determination of whether a prosecution could be sought. This mirrors the change in the UK's legislation which



Centre Member Jessie Blackbourn

"In his final year on the High Court, Heydon put into practice his view that a commitment to writing alone is the best guard against the impact that dominating judicial personalities exercise upon the independence of their colleagues, the resolution of the parties' dispute and the law's development. That was admirable – but if it catches on then that really would be surprising."

Andrew Lynch, 'Heydon's push for judicial individualism admirable, but will it catch on?'
The Australian (22 March 2013)





Morning Tea at 2013 Constitutional Law Conference

All this serves to reaffirm the perception that winning a referendum is 'mission impossible'. This also reinforces the destructive cycle whereby a strong political aversion to holding a referendum means that referendums are unlikely to be held, and also less likely to succeed, thereby in turn further strengthening the aversion to constitutional change in the first place.

George Williams, 'Mission Impossible? Achieving Social Justice Through Constitutional Change' in Jones, BT, and McKenna, M (eds), *Project Republic: Plans and Arguments for a New Australia* (Black Inc, 2013), 94



now requires the police to keep under constant review whether a controllee could be prosecuted for a criminal offence. The COAG Committee proposed the introduction of a UK-style system of Special Advocates, who would be enabled to see closed material in control order proceedings. It also recommended that – again, as in the UK – there should be a minimum standard of disclosure to a person the subject of a control order. The Committee also rejected some of the UK control order regime's most notorious of controls, including lengthy periods of curfew and forced relocation – again, these were removed by the change to TPIMs in 2011.

The replacement of the control order powers with TPIMs in the UK has, to some extent, improved the situation of those subject to these executive orders. However, it is questionable whether the same would be true if COAG's reforms were adopted by the Australian government. For a start, Walker points out that use of control orders has not even been *considered* as a counter-terrorism measure since David Hicks' order expired in 2008. But more importantly, the UK's control order regime (and its successor system of TPIMs) was designed specifically for the peculiarities of the UK criminal justice system.

The G+T Centre's submission to the COAG review – cited in the report – highlighted three obstacles present in the UK that do not exist in Australia. First, at the time of the UK's control order legislation in 2005, the UK's anti-terrorism framework did not include broad preparatory offences. Second, the UK does not permit the admission of intercept evidence into criminal trial proceedings. Third, the UK is bound by the European Convention on Human Rights, in particular the Article 3 prohibition on deportation to torture or inhuman and degrading treatment.

The COAG review acknowledged these differences, yet essentially set them to one side in order to recommend reform of Australia's control order system along UK lines. This perhaps reveals one of the greatest weaknesses of the COAG Committee's review. It lacked the imagination to look outside of the square. Instead it relied on reforms already proposed and implemented by others. Walker, on the other hand, looked inwards, rather than outwards in his review of the anti-terrorism laws. He assessed the control order regime on its merits, and in concert with all other criminal law measures available to counter terrorism in Australia. He found that control orders were not fit for purpose and should be repealed.

Whether they will be is likely to depend on the next government. It is highly doubtful that the current Labor government will take the politically unpopular position of repealing anti-terrorism laws prior to the Federal election in September this year. However, the next government might opt not to take any action at all; instead waiting until the control order legislation comes up for renewal in 2015 before considering the recommendations of the reports, or even instigating a new review. It could be some time yet before we see even the minimalist reforms recommended by the COAG Committee incorporated into the control order legislation. In the meantime, we must presume that the Australian Federal Police continues to regard use of the control order provisions as unappealing – though this is not a particularly satisfactory or long-term approach to essential anti-terrorism law reform.

Dr Jessie Blackbourn

CENTRE PEOPLE

New Centre Member: Daniel McLoughlin



New Centre Member Daniel McLoughlin

I am currently a Vice-Chancellor's Post-doctoral Fellow in the Faculty of Law at the University of New South Wales. My research examines the nature and history of fundamental public law concepts, such as sovereignty, human rights, and government, by drawing on the insights of contemporary critical theory. I use these conceptual analyses to think through the transformation of law and state over the past century; to consider what moments of political crisis reveal about the nature of a constitutional system, and examine the origins and meaning of contemporary emergency politics.

I completed my thesis on sovereignty, ontology and political crisis in the work of Giorgio Agamben in 2010, and have published on these issues in journals including *Law, Culture and the Humanities*, *Law and Critique*, and the *Griffith Law Review*. My current research project is entitled 'Liberalism, The Politics of Emergency and the Crisis of Law' and draws on Schmitt, Foucault and Marx to theorise the relationship between crisis politics and the neo-liberal state.

PhD Report: Keiran Hardy

Topic: Hard and Soft Power Thinking in Counter-Terrorism and Counter-Insurgency



Centre PhD student Keiran Hardy

I began working in the G+T Centre as a Research Assistant in early 2010 when I was a final year undergraduate student at UNSW Law. In March 2011 I started my PhD on the ARC Laureate Fellowship: Anti-Terror Laws and the Democratic Challenge. My PhD is jointly supervised by Professor George Williams and Dr Ben Golder at UNSW, and co-supervised by Professor Lucia Zedner from Oxford University. In the last 18 months I have been lucky enough to receive support for three trips to the UK, where I have met with Professor Zedner, worked on my PhD in the Centre for Criminology at Oxford, and presented papers in Oxford, Swansea, Birmingham and Durham.

My thesis examines a way of thinking that has influenced recent Western efforts to counter political violence. This way of thinking is characterised by three ideas. The first idea is that political violence can be countered by two distinct approaches – one 'hard', one 'soft'. The second idea is that soft approaches are somehow 'better' or 'friendlier' than hard approaches. The third idea is that combining hard and soft approaches is an effective strategy for countering political violence. I have called these three ideas 'hard and soft power thinking' because they have parallels in the theories of hard and soft power developed by Harvard Professor Joseph Nye.

Hard and soft power thinking has recently had a significant strategic influence in two different but related fields: domestic counter-terrorism and foreign counter-insurgency. Counter-insurgency is an approach to irregular warfare that was revived by the US military in the Iraq and Afghanistan conflicts. It was first developed in the early years of the Cold War when the British and French militaries suppressed uprisings in several of their colonies. The 'thesis' of my thesis is that counter-terrorism and counter-insurgency both suggest that hard and soft power thinking is problematic. Hard and soft approaches are often significantly blurred in practice, soft approaches can create similar problems to hard approaches, and the two approaches are often contradictory rather than complementary.



Of course, these last two paragraphs are the latest in a long series of iterations that began with my first PhD proposal in 2011. The most challenging thing about the PhD process has not been collecting, collating and comprehending material from two different fields – but constantly re-framing and rewriting that material in such a way as to draw valid theoretical conclusions from both. The Laureate team and the G+T Centre have been incredibly supportive over this time, not only with my PhD but also in providing opportunities to collaborate on other tasks – such as teaching, publishing journal articles, giving conference papers, and writing submissions to parliamentary inquiries. I hope to submit my thesis in the first half of 2014, and I feel like these extra opportunities have prepared me extremely well for an academic career.

Social Justice Intern Report: Lyndon Goddard

I remarked to Andrew Lynch on my last day at the Gilbert + Tobin Centre that I would happily continue this internship for the whole year. I was not exaggerating. It has been an enormous pleasure to have been exposed to the work of the Centre – and, thereby, to some of the most topical issues of constitutional reform facing the country – over a short but action-packed period. Particularly is this so given the breadth of matters and media that I covered.

Even before the first day of my internship, I was informed by George Williams of a discussion paper into voluntary euthanasia in Tasmania that required a submission by the Centre, considering its possible inconsistency with s 117 of the Constitution. Work on that submission was quickly followed by another, in response to a federal Bill before the Senate proposing a system labelled (very loosely) as one of citizen-initiated referenda. This time, I collaborated with Shipra Chordia and Sangeetha Pillai to suggest a number of legislative amendments, having offered in-principle support to the proposal. I later sat in on the public hearing via teleconference in which George and Shipra addressed the committee – and I found it especially enlightening to learn something of the intra-committee politics that often colours these hearings.

When the federal government announced the local government referendum, I had been given advance notice and a set of background readings to prepare for my next task, which was to contribute to an op-ed piece that would be published the following day. For a political and current affairs tragic like me, this was beyond exciting. The article, written with Nicola McGarrity, was published on ABC's The Drum and considered some of the benefits of the proposal. This required the distillation of complex academic issues into a non-academic medium with which I had previously had little experience. (Consequently, I was grateful for Nicola's crash-course in sentence shortening and phraseology perfecting.) I then contributed to the Centre's role in public education about law reform by assisting Paul Kildea with FAQ and web resources pages on the Centre's site about the referendum itself.

These larger tasks were accompanied by others such as compiling a long set of resources on comparative constitutional law for Rosalind Dixon and preparing a briefing note for Andrew Lynch on the written submissions in the recent High Court challenge to the 'mining tax'. I am grateful to all the Centre members with whom I worked for their time and guidance, and I particularly thank Andrew for organising such a varied assortment of work – which, after all, reflects the broad interests and influences that the Centre has. The experience has been immensely rewarding, and it has redoubled my desire to participate in similar work in the future.



Centre Social Justice Intern Lyndon Goddard



PROJECT REPORTS

The Constitution of Ireland: Perspectives & Prospects brings together a range of Irish and international commentators to examine some of the most significant issues in Irish constitutional law. Prof Christopher Thornhill of Manchester University and Fergal Davis address the state of exception in the Irish Constitution from the basis of legal history and with a robust theoretical framework.

Fergal Davis 'Article 28.3.3: Terrorism, Democracy, Supra-Legality and the "State of Emergency" in the Irish Constitution' in E Carolan (ed) *The Constitution of Ireland: Perspectives and Prospects* (Bloomsbury Professional, 2012) 355-373.

ARC Laureate Fellowship: Anti-Terror Laws and the Democratic Challenge Project Director: George Williams

The last six months have seen the members of the Laureate Project steadily working on their own research projects. Of particular significance is the conversion of the papers from the International Association of Constitutional Law Conference on Surveillance, Counter-Terrorism and Comparative Constitutionalism Conference into an edited collection to be published by Routledge later this year. This collection is edited by Dr Fergal Davis, Nicola McGarrrity and Professor George Williams.

Several of the Project's PhD students expect to submit their theses by the end of the year. Other activities in which these students have been involved include:

- Monash University Law Review accepted Sangeetha Pillai's first refereed journal article for publication. This article examines the potential for a right to citizenship under the Australian Constitution.
- Keiran Hardy travelled to the United Kingdom to spend some time with his PhD supervisor, Professor Lucia Zedner, at the University of Oxford. Whilst there, he presented papers at the Human Rights Centre at Durham University and the Multidisciplinary Conference on Cyber-Terrorism in Birmingham.

Three other members of the Project also spent some time overseas. Fergal and Professor Fiona de Londras from Durham University in the United Kingdom organised an international conference at that university on critical debates on counter-terrorist judicial review in May. Both Fergal and Dr Jessie Blackburn presented papers at this conference. These papers will be published by Cambridge University Press in 2014.

Jessie then went on a whirlwind conference tour of the United Kingdom. She presented her research on the role of the independent reviewer of terrorism legislation in the United Kingdom and Australia, as well as the process of 'normalising' Northern Ireland. Jessie gave papers at the University of Oxford, University of Manchester, the University of Kent, the Society for Terrorism Research Seventh Annual Conference at the University of East London and the Ninth North South Criminology Conference at University College Cork. Fergal also presented a paper at the last of these conferences.

Dr Svetlana Tyulkina spent May at the Max Planck Institute for Comparative Public Law and International Law in Heidelberg, Germany. She used this time to further develop her research on the concept of militant democracy in the post-9/11 era. Svetlana presented papers at the Max Planck Institute, as well as at the Central European University and the European Convention of Human Rights and Inter-American Convention of Human Rights in Budapest, Hungary. Svetlana then travelled to Vancouver, Canada, to present at the Law on the Edge Conference jointly organised by the Canadian Law and Society Association and the Law and Society Association of Australia and New Zealand.

In May, two reports on Australia's anti-terrorism laws were tabled in the Commonwealth Parliament. These reports – by the COAG Review of Counter-Terrorism Legislation and the Independent National Security Legislation Monitor – recommended substantial changes to the laws. Jes-



Centre Member Svetlana Tyulkina at the Max Planck Institute for Comparative Public Law and International Law, Heidelberg Germany



sie, Nicola and George have all been involved in the public debate about these reports by writing opinion pieces and being interviewed by various media outlets.

Jessie and Fergal have also continued their interest in policy issues relating to Northern Ireland and the Republic of Ireland. They – along with Gilbert + Tobin Centre Intern, Jennifer Goh – wrote a submission to the Secretary of State for Northern Ireland on non-jury trial arrangements in the former. Fergal has also written opinion pieces and been interviewed by the media about voting rights for the Irish diaspora and the peace process.

Federalism Project Project Director: Shipra Chordia

For the first half of 2013, the Federalism Project has been engaged in a number of different exercises. In responding to the High Court's 2012 decision in *Williams v Commonwealth* ('School Chaplains case'), Shipra Chordia, Andrew Lynch and George Williams have an extended case note and analysis appearing soon in the *Melbourne University Law Review* (available now as an advance electronic copy on the MULR's website). The article explores the intricacies of the decision and considers its implications for future uses of section 96 of the Constitution (the grant-making power) and intergovernmental agreements.

Further issues arising from the School Chaplains case continue to form the basis of research conducted by Project members. Additionally, and in a separate workstream, Shipra has been working on a critical evaluation of the High Court's orthodox interpretation of section 96, which has remained largely unchanged since 1957.

In relation to recognition of local government in the Constitution, Shipra, Andrew and George (along with the Centre's Paul Kildea and Nicola McGarrity) made a submission to the inquiry conducted by the Joint Select Committee on Constitutional Recognition of Local Government. The submission was well-received, with the Committee ultimately recommending that the Government hold a referendum on the issue. The referendum was announced in May 2013. In response, members of the Centre have been actively engaging with the community, publishing opinion pieces and explainers and giving radio and television interviews.

Members of the Federalism Project also responded to the call for written submissions on Senate Standing Committee on Finance and Public Administration inquiry into the Citizens Initiated Referendum Bill 2013. In addition, George and Shipra gave oral evidence at a hearing before the inquiry. Once again, the G+T Centre's submission was well received with the Committee noting several of its recommendations and concerns. In particular, the Committee adopted the Centre's view that citizen initiated referendum mechanisms often have the undesirable result of undermining representative democracy. Ultimately, the Committee recommended that the Bill not be passed.

The Centre was a major sponsor of an international workshop titled 'Gender and Intergovernmental Relations: Australian and International Perspectives' and organised by UNSW colleagues in the Faculty of Arts and Social Sciences, Professors Deborah Brennan and Louise Chappell. Andrew delivered a paper co-authored with Paul on the Council of Australian Governments (COAG) in the first session of the workshop, while George was a panellist in a highly enlightening session alongside Anna Bligh, former Queensland Premier, Peter Shergold, formerly of the Department of the Prime Minister and Cabinet, and Mary Ann O'Loughlin, Executive Councillor and Head of the Secretariat of the COAG Reform Council. The session gave attendees a unique insight into the behind-the-scenes



Centre Members Shipra Chordia and Nicola McGarrity

'But while Pacific island countries are some of the most vulnerable to natural disasters and the impacts of climate change, especially in the longer-term, there was a striking focus on 'self-help:' the need to strengthen community resilience, raise awareness and increase preparedness.'

Jane McAdam, 'Pacific Islanders Lead Nansen Initiative Consultation on Cross-Border Displacement from Natural Disasters and Climate Change', *Brookings Web-Ed* (30 May 2013)



workings of COAG and the Council for the Australian Federation (CAF), and will inform the Project's comparative analysis of CAF planned for the latter half of 2013.

Indigenous Legal Issues Project **Project Director: Sean Brennan**

The highlight of this period for the project was co-hosting with the [Indigenous Law Centre](#) (ILC) an invited academic workshop entitled *Native Title: A Vehicle for Change and Empowerment?*. Held over two days in April and 20 years after the introduction of national legislation to address the High Court's *Mabo* decision, the event was a lively and successful gathering of people, many of them with decades of experience in the field.

The workshop featured an appraisal of positive and negative developments from the past 20 years as well as prospects for the next 20, with an eye to some major themes, in particular, the links between native title, Indigenous economic empowerment and Indigenous political empowerment, as well as some of the impact native title has had on wider Australian law and society. Papers had been circulated in advance of the workshop to the 50 or so invited participants, who came from all parts of mainland Australia.

The keys to the event's success were the quality of speakers and the robust and well-informed discussion amongst participants from Indigenous organisations, government, anthropology, public policy, community development, economics and the law. The workshop also featured a healthy number of PhD scholars working in the area. The Hon Paul Finn attended the workshop and gave an excellent dinner address recounting experiences as a Federal Court judge presiding over the Torres Strait Regional Sea Claim, a matter currently reserved before the High Court. The Centre, in conjunction with the ILC, was proud to be part of an event that reinforced UNSW's long-standing reputation for quality scholarship and community engagement in the area of land rights and native title.

International Refugee and Migration Law Project **Project Director: Jane McAdam**

The International Refugee and Migration Law Project has hosted a number of events so far this year. In March we welcomed Frances Webber, a retired barrister from the UK, who spoke about her book *Borderline Justice: The Fight for Refugee and Migrant Rights*. We also hosted the regional conference of the International Association of Refugee Law Judges, which brought together refugee decision-makers from Australia, New Zealand, India, Malaysia and the Pacific and featured a keynote address by Justice Stephen Gageler of the High Court of Australia. Two UNSW Law colleagues, Jill Hunter and Mehera San Roque, along with Zachary Steel from the UNSW School of Psychiatry, spoke about their groundbreaking research on addressing expertise and mental health misunderstandings in refugee decision-making. In May, author and film maker Robin de Crespigny spoke about her book *The People Smuggler*, which won the Queensland Literary Award and the 25th Human Rights Award for Literature.

The Forced Migration Reading and Writing Group continued to hold regular meetings, and was pleased to welcome Professor Mary Crock from Sydney Law School to talk about her research on refugees and disability. It was a nice change to have a live author in the room to discuss their work!

The Project Director, Jane McAdam, made written submissions to the Joint Committee on Human Rights in relation to its review of regional processing legislation, and both written and oral submissions to the Senate Legal



Centre Project Director Jane McAdam with delegates at the Nansen Initiative regional consultation, Cook Islands



"Childcare, healthcare, aged care / Local government is the best / Fighting fires, building bridges / In the referendum vote YES!" – from the student poem 'I Love a Local Government',

Jackie Hartley and Paul Kildea, 'the referendum is coming: but are we ready?' *Inside Story* (26 June 2013)

and Constitutional Affairs Legislation Committee on the Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Bill 2012. The essence of this legislation is to prevent asylum seekers arriving by boat from applying for a protection visa within Australia, even if they arrive on the Australian mainland. She also made written submissions to the Joint Human Rights Committee about the package of regional processing legislation.

Jane attended the first-ever regional consultation of the Nansen Initiative on Disaster-Induced Cross-Border Displacement, an intergovernmental initiative spearheaded by the governments of Norway and Switzerland. Hosted by the Prime Minister of the Cook Islands, the consultation brought together government officials from ten Pacific countries, as well as representatives from regional and international organizations, academia and civil society. The issue of cross-border migration is always a sensitive one, and even more so when the prospective, permanent movement of whole communities is contemplated. While a key message from the meeting was that Pacific peoples wish to remain in their homes for as long as possible, there was recognition that some displacement and migration is inevitable. As the Prime Minister of the Cook Islands observed: 'If we fail to plan, then we plan to fail.' A set of action points was presented to Pacific leaders, who undertook to take them to other regional and international fora and to work towards realizing concrete outcomes. There are links to some blog posts by Jane on this initiative below.

Jane was honoured as a Young Global Leader (YGL) of the World Economic Forum, attending the Annual Summit and World Economic Forum on East Asia in Myanmar in June. While there, the group was privileged to meet with Aung San Suu Kyi, who talked candidly about her life, determination and leadership. The group also met separately with President Thein Sein at the presidential palace. Another highlight was the day spent with urban and rural youth leaders who are part of a leadership programme run by ActionAid Myanmar. This provided a unique opportunity to discuss the issues of key concern to Myanmar's youth, including strategies for raising awareness about human rights, sustainable development, women's rights, and ending ethnic conflict to enable the repatriation of refugees. Jane has assumed the role of Australian Chair of Global Dignity, a YGL initiative designed to introduce secondary school students to the concept of 'dignity'.

Finally, Jane was appointed to the International Bar Association's Climate Change Justice and Human Rights Taskforce. This taskforce is designed to ensure that the voice of the global legal profession is heard in debates on justice and human rights in the context of climate change, and to add to the urgency of the need for steps by governments to deal with this problem and the protection of the less privileged members of the community who are adversely affected. The taskforce is co-chaired by David Estrin, Chair of the IBA Environment, Health and Safety Law Committee and Baroness Helena Kennedy QC, Chair of the IBA Human Rights Institute.



Centre Project Director Jane McAdam with Ian Thorpe at the World Economic Forum on East Asia



Public Law and Legal Theory Project

Project Director: Ben Golder

The most exciting development in the Public Law and Legal Theory project over the last few months has been the addition of a new member, increasing our numbers to two! Dr Daniel McLoughlin has recently joined the Faculty as a Vice Chancellor's Post-Doctoral Fellow and his project is entitled 'Liberalism, the Politics of Emergency, and the Crisis of Law'. One of the exciting early outcomes of Daniel's Fellowship project will be a one day symposium in late 2013 on the recent work of the Italian political philosopher Giorgio Agamben. Stay tuned for further details as they emerge.

In other news, the Project Director was recently accepted to give a paper at the Second Annual Junior Faculty Forum for International Law, a joint initiative of NYU, and the Universities of Nottingham and Melbourne, held in Nottingham (see <http://annualjuniorfacultyforumil.org/>). Ben's paper was entitled 'The Critique of Human Rights in Contemporary International Legal Thought'.

Referendums Project

Project Director: Paul Kildea

On 9 May the federal government announced that it would hold a referendum on local government funding on 14 September, the same day as the federal election. The proposal is to amend section 96 of the Australian Constitution to give the Commonwealth the power to directly fund local government bodies, rather than having to provide such funding indirectly through the States as conduits.

Since the announcement the Centre has been very active in providing information and commentary on the referendum issues. The Centre has produced a comprehensive information and resources page, which will be updated throughout the year as the campaign progresses (see <http://www.gtcentre.unsw.edu.au/resources/referendums>). The site, put together by intern Lyndon Goddard, sets out arguments for and against the proposed amendment, and includes answers to such questions as 'What are the positions of the major parties and the States?' and 'What are the referendum's chances of success?'.

In terms of commentary, several Centre members have contributed to public debate on the referendum issues. Shipra Chordia published an 'explainer' piece on the *Conversation* website in which she considered why the referendum is being held now and addresses arguments both for and against the proposed change. George Williams argued in the *Sydney Morning Herald* that while the amendment would remove doubts about direct funding created by the *Pape* and *Williams* cases, it should be carefully worded so as not to give the Commonwealth new power to wrest control of local government away from the States. In *The Drum*, Nicola McGarrity and Lyndon Goddard agreed that the proposed amendment is a sensible one, but said that it will only succeed if advocates persuade voters that it will help secure the tangible, everyday services benefits that local councils provide. Rosalind Dixon wrote in the *Canberra Times* on the challenges of achieving referendum success on minor constitutional changes. On a slightly different note, Jackie Hartley and Paul Kildea reported in *Inside Story* on the surprising results of a classroom exercise in which they asked public law students to develop campaign materials arguing for or against the proposed changes to local government funding (see Centre Activities).

Centre members have also presented papers and given talks on a range of referendum issues. Paul Kildea gave a paper on the challenges of achieving popular deliberation on modest constitutional amendments at a conference on Law and Deliberative Democracy at King's College, London. Paul also gave a seminar at Gadens Lawyers on the constitutional

Justifications for trial by jury are often based on the claim that there is a 'right' to trial by jury... this rights-based approach facilitates jury trial being set aside if the right to trial by jury and the right to a fair trial conflict. However, such arguments ignore or underestimate the significant non-legal functions of the jury.

Fergal Davis, 'The Jury as a Political Institution in an Age of Counterterrorism' (2013) 33(1), *Politics*, 5-18.



"Since the early 1990s, judicial salaries across the federal and State systems have been closely linked with little variation. In paying their judges, Queensland and Victoria go so far as to stay in perfect lock-step with Federal Court pay rates. This commonality aims to ensure quality across the judicial class of Australia. If New South Wales detaches from this consensus on judicial remuneration it risks appointment to its courts being markedly less attractive to the best and brightest. They may simply prefer to wait for a better offer."

Andrew Lynch, 'Court forces Canberra's hand on super' *The Australian* (12 April 2013)

recognition of Aboriginal and Torres Strait Islander peoples, as part of National Reconciliation Week. George, meanwhile, spoke at an Electoral Regulation Research Network forum on the politics of referendums, and appeared at a constitutional roundtable run by the House of Representatives Social Policy and Legal Affairs Committee, which discussed reforms to practices around referendum campaigns. He also participated in a constitutional roundtable on the referendum hosted by the House of Representatives Social Policy and Legal Affairs Committee on 20 July.

The next major event on the Centre's calendar is an evening community forum on the local government referendum, to be held at UNSW Law School on Thursday, 18 July. It brings together a panel comprising the Mayor of Randwick, Tony Bowen, and Professor Anne Twomey, with George and Paul. The forum will consider the arguments on both sides of the issue and will include ample time for discussion and questions from the audience. People interested in attending this free event can register at the Centre's website: <http://www.gtcentre.unsw.edu.au/events>.



PUBLICATIONS AND PRESENTATIONS

PUBLICATIONS

Joint Publications

Janina Boughey and Greg Weeks, 'Officers of the Commonwealth' in the Private Sector: Can the High Court Review Outsourced Exercises of Power?' (2013) 36 *University of New South Wales Law Journal* 316-357.

Lisa Burton, Nicola McGarrity and George Williams, 'The Extraordinary Questioning and Detention Powers of the Australian Security Intelligence Organisation' (2012) 36(2) *Melbourne University Law Review* 415-469

Lisa Burton and George Williams, 'The Integrity Function and ASIO's Extraordinary Questioning and Detention Powers' (2012) 38 *Monash University Law Review* 1-34

Lisa Burton and George Williams, 'Australia's Exclusive Model of Parliamentary Rights Protection' (2013) 34 *Statute Law Review* 58-94

Rosalind Dixon and Tom Ginsburg, 'The South African Constitutional Court and socio-economic rights as "insurance swaps"' (2013) *Constitutional Court Review* 1-30

Keiran Hardy and George Williams, 'What is "Terrorism"?: Assessing Domestic Legal Definitions' (2011) 16 *UCLA Journal of International Law and Foreign Affairs* 77-162

Jo Lennan and George Williams, 'The Death Penalty in Australian Law' (2012) 34 *Sydney Law Review* 659-694

Andrew Lynch, Tamara Tulich and Rebecca Welsh, 'Secrecy and control orders: the role and vulnerability of constitutional values in the United Kingdom and Australia' in D Cole et al (eds), *Secrecy, National Security and the Vindication of Constitutional Law* (Edward Elgar, 2013) 154-72

Nicola McGarrity, Rishi Gulati and George Williams, 'Sunset Clauses in Australian Anti-Terror Laws' (2012) 33(2) *Adelaide Law Review* 307-333.

Jessie Blackburn

'The UK's Anti-Terrorism Laws: Does their Practical Use Correspond to Legislative Intention?' (2013) 8.1 *Journal of Policing, Intelligence and Counter Terrorism* 19-34.

Fergal Davis

'Article 28.3.3: Terrorism, Democracy, Supra-Legality and the "State of Emergency" in the Irish Constitution' in E Carolan (ed) *The Constitution of Ireland: Perspectives and Prospects* (Bloomsbury Professional, 2012) 355-373;

'The Jury as a Political Institution in an Age of Counterterrorism' (2013) 33(1) *Politics* 5-18.

Rosalind Dixon

'The Supreme Court Of Canada And Constitutional (Equality) Baselines' (2013) 50(3) *Osgoode Hall Law Journal* 637-668.



'The High Court's reluctance to define the scope of its jurisdiction over private sector decision-makers is based, understandably, on the need to wait until a matter arises that requires resolution of this issue. Nonetheless, the Court's continued silence on this point inevitably provokes impatience when one considers the extent to which the Commonwealth Government has outsourced contentious areas of decision-making that directly affect individual rights in recent years.'

Janina Boughey and Greg Weeks, 'Officers of the Commonwealth' in the Private Sector: Can the High Court Review Outsourced Exercises of Power?' (2013) 36 *University of New South Wales Law Journal* 320



'It is essential to listen to what Pacific islanders themselves are calling for, rather than to assume what they need. Too often the 'solutions' thought up by the international community do not match the identified needs on the ground, and if we fail to listen, then we will end up with ill-fitting policies and mechanisms.'

Jane McAdam, 'Pacific Islanders Lead Nansen Initiative Consultation on Cross-Border Displacement from Natural Disasters and Climate Change', Brookings Web-Ed (30 May 2013)



Jane McAdam

'Conceptualizing Climate Change-Related Movement' in American Society of International Law, *Proceedings of the 106th Annual Meeting: Confronting Complexity* (March 28–31 2012, Washington DC) (2013) 433-36;

'Pacific Islanders Lead Nansen Initiative Consultation on Cross-Border Displacement from Natural Disasters and Climate Change', Brookings Web-Ed (30 May 2013);

'New Australian Law: All Asylum Seekers Who Arrive by Boat Will Be Processed Offshore', Human Rights and Democracy blog (22 May 2013);

'Creating New Norms? The Nansen Initiative on Disaster-Induced Cross-Border Displacement' (1 April 2013), Asia-Pacific Environment and Migration Network, Editorial.

Nicola McGarrity

Let the Punishment Match the Offence: Determining Sentences for Australian Terrorists' (2013) 2(1) *International Journal for Crime and Justice* 18-34;

'The Criminalisation of Terrorist Financing in Australia' (2012) 38(3) *Monash University Law Review* 55-86.

Tamara Tulich

'Adversarial Intelligence? Control Orders, TPIMs and Secret Evidence in Australia and the United Kingdom' (2012) 12(2) *Oxford University Commonwealth Law Journal* 341-369.

Svetlana Tyulkina

'Terrorism and Constitutional Change: Lessons from Spain', (2013) 7(2) *International Constitutional Law Journal* 49-74;

'Prohibition of Political Parties: Effective Tool in the Business of Protecting Democracy?' (2013) 94(3) *Comparative Constitutional Law Review* 1-8.

Rebecca Welsh

'Anti-Terror Preventive Detention and the Independent Judiciary' in P Keyzer (ed) *Preventive Detention: Asking the Fundamental Questions* (Intersentia, 2013) 137-158.

George Williams

'Mission Impossible? Achieving Social Justice Through Constitutional Change' in Jones, BT, and McKenna, M (eds), *Project Republic: Plans and Arguments for a New Australia* (Black Inc, 2013), 94-110;

'Can Tasmania Legislate for Same-Sex Marriage?' (2012) 31 *University of Tasmania Law Review* 117-133;

'Does Constitutional Recognition Negate Aboriginal Sovereignty?' *Indigenous Law Bulletin*, Vol 8(3), November/December 2012, 10-11;

'10th Henry Parkes Oration' *The Australia Institute Newsletter* (vol 71, December 2012), 7-9.

Tamara Wood

'Fragile states and protection under the 1969 African Refugee Convention' (2013) 43 *Forced Migration Review* 17-19.

Last week on budget day the federal government released two independent reports on Australia's anti-terror laws. Both come to the same conclusion. In key respects, our anti-terror laws are unnecessary, go too far and lack appropriate safeguards. It is clear from these reports that many of Australia's anti-terror laws need urgent repair, or even repeal.

George Williams, 'Action on Inept Anti-Terror Laws must get Priority' *Sydney Morning Herald* (21 May 2013)



PRESENTATIONS

Joint Presentations

Paul Kildea and Andrew Lynch, 'Australian Intergovernmental relations: Ripe for Reform?' *Gender and Intergovernmental relations: Australian and international Perspectives*, University of New South Wales, Sydney, 16-17 May 2013.

Jessie Blackburn

'Normalising Post-Agreement Northern Ireland', *9th North South Criminology Conference*, University College Cork, 20 June 2013;

'Independent Reviewers of Anti-Terrorism Laws as Effective Oversight Mechanisms: Australia and the UK Compared', *Society for Terrorism Research 7th Annual Conference*, UEL, 27 June 2013;

'Normalising Post-Agreement Northern Ireland', Keynote Address, *Post-graduate Research Workshop*, University of Kent, 17 June 2013;

'Independent Reviewers as Alternative; an Empirical Study from Australia and the UK', *Critical Debates on Counter-Terrorist Judicial Review*, Durham University, 12 June 2013;

'Independent Reviewers of Anti-Terrorism Laws as Effective Oversight Mechanisms: Australia and the UK Compared', *University of Manchester Law School Research Seminar*, 5 June 2013;

'Independent Reviewers of Anti-Terrorism Laws as Effective Oversight Mechanisms: Australia and the UK Compared', *Public Law Discussion Group*, University of Oxford, 30 May 2013.

Sean Brennan

'Thematic Introduction', *Native Title: A Vehicle for Change and Empowerment?*, UNSW Law School, 5 April 2013.

Ben Golder

'The Critique of Human Rights in Contemporary International Legal Thought', *Second Annual Junior Faculty Forum for International Law*, University of Nottingham (29-30 May 2013).

Keiran Hardy

'Ruthlessness and Sympathy: Hard and Soft Power in Counter-Terrorism and Counter-Insurgency', *Human Rights Centre*, Durham University, 16 April 2013;

'What is "Cyber-Terrorism"? Computer and Internet Technology in Legal Definitions of Terrorism', *A Multidisciplinary Conference on Cyber-terrorism*, Birmingham, 11 April 2013.

Jackie Hartley

'Consultation, Consent or a 'Sliding Scale'? New Directions in Securing the Rights of Indigenous Peoples', *Australian and New Zealand Society of International Law, Postgraduate Workshop*, 3 July 2013;

'Welcome to the Human Rights Consultation': Using role plays to stimulate student engagement with human rights issues', *Human Rights Tertiary Teachers' Workshop*, Australian Human Rights Centre, UNSW, 25 February 2013.

'An analysis of the history of section 75(v) of the Australian Constitution reveals that the assumption underlying the provision is that judicial review remedies may be sought in the High Court's original jurisdiction against government entities and not other classes of litigant.'

Janina Boughey and Greg Weeks, "Officers of the Commonwealth' in the Private Sector: Can the High Court Review Outsourced Exercises of Power?' (2013) 36 *University of New South Wales Law Journal* 320



Paul Kildea

'Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples: Where Are We Now?', Gadens Lawyers, Sydney, 29 May 2013;

'Worth Talking About?: Modest Constitutional Amendment and Citizen Deliberation in Australia', *Law and Deliberative Democracy Symposium*, King's College, London, 9 April 2013.

Jane McAdam

Young Global Leaders Annual Summit and World Economic Forum, Myanmar, June 2013;

'Protection Concerns: Lessons from the Past', Pacific Regional Consultation of the Nansen Initiative on Disaster-Induced Cross-Border Displacement, Cook Islands, 21–24 May 2013;

'Complementary Protection in Australia', CLE at Gilbert + Tobin, Sydney, 9 May 2013;

Academy of the Social Sciences in Australia: 'Precarious Migrants and National Migration Systems', Sydney, 4–5 April 2013;

'A Race to the Bottom: Recent Changes to Refugee Law in Australia', CLE for the Human Rights Committee of NSW Young Lawyers, Sydney, 13 March 2013;

'Climate Change and Forced Migration: The Limits of International Law', Australian Meteorological and Oceanographic Society (AMOS) presentation, Sydney, 22 March 2013;

'International Refugee Law' and 'Climate Change and Displacement', University of the Third Age, Bowral, 5 March 2013.

Nicola McGarrity

The human rights challenges of anti-terrorism laws', HSC Legal Studies Study Day, 12 March 2013 and 13 May 2013.

Svetlana Tyulkina

'Militant Democracy and Counterterrorism policies', Max Planck Institute for Comparative Public Law and International Law seminar *Referentenbesprechung*, (Heidelberg, Germany), 27 May 2013;

'Freedom of Association as Related to Political Parties under the International Covenant on Civic and Political Rights', *European Convention of Human Rights and Inter-American Convention of Human Rights* (Budapest, Hungary), 16 May 2013;

'Militant Democracy Concept as the Guardian of Democracy', Legal Studies Department seminar, Central European University (Budapest, Hungary), 15 May 2013.

George Williams

'Letting the People Decide: Local Government, Gay Marriage and the Politics of Referendums' *Electoral Regulation Research Network Public Forum*, NSW Parliament House, Sydney, 25 June 2013;

'Campaigning to Change the Constitution' Constitutional Roundtable, House of Representatives Committee on Social Policy and Legal Affairs, Parliament House, Canberra, 20 June 2013;

'To our surprise and delight, our students not only developed an understanding of local government funding, but also created campaign materials that suggest fresh possibilities for breaking free from the paralysis that has so long plagued referendum education.'

Jackie Hartley and Paul Kildea, 'The Referendum is Coming: But are we Ready?' *Inside Story*, 27 June 2013.

'Human Rights in Government Decision-Making' *Excellence in Government Decision-Making Conference*, Australian Government Solicitor, Canberra, 21 June 2013;

'The Local Government Referendum' *National General Assembly of Local Government*, National Convention Centre, Canberra, 18 June 2013;

'What Needs to be Done to Win a Referendum?' KPMG National Reconciliation Week Forum, Sydney, 12 June 2013;

'Bringing on the Republic' *Project Republic* Book launch, Parliament House, Canberra, 3 June 2013;

'Constitutional Recognition: Sell-out or Stepping Stone for Indigenous Australia?' *Melbourne Conversations*, City of Melbourne and ANTaR, Melbourne Town Hall, Melbourne, 30 May 2012;

'Recognising Aboriginal Australians: What the Constitution Should Say' Public Forum, Reconciliation Victoria, Shepparton Region Reconciliation Group and University of Melbourne, Shepparton, Victoria, 29 May 2013;

'Building your Research Profile: Social Media & Professional Presence' Seminar, UNSW Library and UNSW Researcher Development Unit, UNSW, 28 May 2013;

'Understanding the Politics of Intergovernmental Relations' *Gender and Intergovernmental Relations: Australian and International Perspectives Workshop*, University of New South Wales, 16 May 2013;

'Key Issues Affecting Intergovernmental Relations in Australia' *Forum on Intergovernmental Relations*, COAG Reform Council, Sydney, 15 May 2013;

'Assange and Freedom of Speech' Public Forum, University of Adelaide, 3 April 2013;

'Can NSW Legislate for Marriage Equality?' NSW Fabian Society AGM, Sydney, 13 March 2013;

'Constitutional Recognition of Aboriginal Peoples', Open Forum, Macquarie University Students for Community Legal Engagement, Macquarie University, 12 March 2013;

'Constitutional Recognition of Local Government', Public Forum, Trades Hall, Sydney, 11 March 2013;

'From Covert to Coercive: A New Model of Surveillance by Intelligence Agencies?' *States of Surveillance: Counter-Terrorism and Comparative Constitutionalism*, 2012 International Association of Constitutional Law Research Group on Constitutional Responses to Terrorism Workshop, UNSW, 14 December 2012.

Tamara Wood

'The African war refugee: Using IHL to interpret the 1969 African Refugee Convention's expanded refugee definition', *Refuge from inhumanity: Enriching refugee protection Standards through recourse to international humanitarian law conference*, University of Oxford, 11-12 February 2013.



'Under international law, people have a right to seek asylum from persecution and other serious human rights abuses. In turn, governments have an obligation not to send them to territories where they face a real chance of harm.'

'the drafters of the Refugee Convention recognised that the very nature of refugee flight may mean that people arrive without travel documents. For instance, a government that persecutes you is hardly going to give you a passport to leave, and you will probably be too scared to apply for one.'

Jane McAdam, Opinion, 'Use of Term "Illegal" is Ignorant or Mischievous', *National Times* (23 April 2013)



MEDIA PUBLICATIONS

Joint Media Publications

Jessie Blackbourn and Nicola McGarrity, 'Anti-terror laws and the knowledge gap', *Inside Story*, 23 May 2013;

Jessie Blackbourn and Nicola McGarrity, 'Our excessive anti-terrorism laws must go', *The Drum*, 15 May 2013;

Lyndon Goddard and Nicola McGarrity, 'Constitutional recognition a referendum challenge', *The Drum*, 10 May 2013;

Jackie Hartley and Paul Kildea, 'The Referendum is Coming: But are we Ready?' *Inside Story*, 27 June 2013.

Shipra Chordia

'Explainer: why are we having a referendum on local government?', *The Conversation*, 13 May 2013.

Fergal Davis

Diaspora deserve vote in presidential polls to select who represents them' *The Irish Times*, 22 January 2013.

Rosalind Dixon

'Referendums need a big idea to stay relevant' *Canberra Times* (17 May 2013).

Andrew Lynch

'Court forces Canberra's hand on super' *The Australian* (12 April 2013);

'Heydon's push for judicial individualism admirable, but will it catch on?' *The Australian* (22 March 2013).

Jane McAdam

'Use of Term "Illegal" is Ignorant or Mischievous', *National Times*, 23 April 2013;

'Kiribati: A Nation Going Under' *The Global Mail*, 15 April 2013;

'Caught between Homelands', *Inside Story*, 13 March 2013;

George Williams

'Chances of Return to Death Penalty Remain Almost Nil' *Sydney Morning Herald* (18 June 2013);

'Action on Inept Anti-Terror Laws must get Priority' *Sydney Morning Herald* (21 May 2013);

'Constitutional Change Makes Sense' *Sydney Morning Herald* (9 May 2013);

'Windsor Vote Push Could Open Can of Worms' *Sydney Morning Herald* (30 April 2013);

'Come Clean on Role We Played in Abetting Torture' *Sydney Morning Herald* (22 April 2013);

'Once a media organisation is classified as a constitutional corporation, it can be the subject of almost any form of federal media regulation that is desired.'

Paul Kildea and George Williams, 'The Constitution and Commonwealth Proposals for New Media Regulation' (2013) 18 *Media & Arts Law Rev* 2-16.



'Even Heroes Must Comply with the Laws of the Land' *Sydney Morning Herald* (8 April 2013);

'Privacy: The Fix Should not be Left to Judges' *Sydney Morning Herald* (26 March 2013);

'States' Grip on Gang Laws could Scupper Federal Clampdown' *Sydney Morning Herald* (12 March 2013);

'Tasmania Leads Way on Voluntary Euthanasia' *Sydney Morning Herald* (27 February 2013);

'Broad Support for Fixed-Term Elections Should be Catalyst for Action' *Sydney Morning Herald* (12 February 2013);

'Eleventh Hour for Action to Change Federal Funding to Local Councils' *Sydney Morning Herald* (29 January 2013);

'Clock Ticks on Urgent Reform' *Sydney Morning Herald* (22 December 2012);

'Lost Change of \$20b a Year is Falling Through Federal-State Divide' *Sydney Morning Herald* (5 December 2012).

SUBMISSIONS

Joint Submissions

Shipra Chordia, Sangeetha Pillai, Lyndon Goddard and George Williams, Submission to Senate Standing Committee on Finance and Public Administration on 'Inquiry into Citizen Initiated Referendum Bill 2013' (22 April 2013);

Jessie Blackbourn, Fergal Davis and Jennifer Goh, Submission to the Secretary of State for Northern Ireland: Non-Jury Trial Arrangements for Northern Ireland (11 March 2013);

Lyndon Goddard and George Williams, Submission to Premier of Tasmania on 'Consultation Paper on Voluntary Assisted Dying' (14 March 2013).

Jane McAdam

Submission No 6 to the Parliamentary Joint Committee on Human Rights on Migration Legislation (Regional Processing and Other Measures) Act 2012 and Related Bills and Instruments (11 January 2013);

Submission No 11 to the Senate Legal and Constitutional Affairs Legislation Committee on the Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Bill 2012 (14 December 2012) and oral evidence (31 January 2013).

George Williams

Submission to Expert Reference Group on the Size of the Assembly 'Review into the Size of the ACT Legislative Assembly' (18 February 2013);

Submission to Standing Committee on Social Issues of the New South Wales Parliament 'Inquiry into the Same Sex Marriage Law in NSW' (31 January 2013).

CENTRE PERSONNEL



Centre Director Andrew Lynch's 'Farewell Dinner' with Centre members

DIRECTOR

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Belinda McDonald, BA UNSW

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

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

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

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

Mitchell Landrigan, BA LLB UNSW, SJD Syd

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

Soula Papadopoulos, BEc LLB Syd, LLM UNSW

Sangeetha Pillai, B Laws (Hons 1) UNSW



Tamara Tulich, BA BCom LLB (Hons) Syd, LLM ANU
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Tamara Wood, AmusA, BA Grad Dip Ed LLB (Hons 1) Melb

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