

Dear Friend,

Welcome to this newsletter updating you on the activities, people and publications of the Gilbert + Tobin Centre of Public Law over the last six months.

As always, it has been a highly productive period across our many projects, perhaps even more so than usual with the Centre's ARC Laureate Project on Anti-Terrorism Laws holding a major international two day conference just before the University of New South Wales closed for the Christmas break. You will find details of that event inside. It suffices to say here merely that it capped off a great year for the Centre and congratulations for the success of that event are due to Professor George Williams, Dr Fergal Davis and Nicola McGarrrity.

This newsletter really makes clear, if it had not been so already, the enormous contribution that is made to the Centre by the student body of the University. Quite simply the Centre would not be the vibrant and productive place it manages to be without our enthusiastic and committed postgraduate research students and our hard-working, resourceful and clever Social Justice interns who are drawn from the undergraduate or Juris Doctor programs. In this newsletter we feature, for the first time, two reports each from students belonging to both groups.

The postgraduate student reports are filed by Tamara Wood (supervised by Professor Jane McAdam) and Kelvin

2013 Constitutional Law Conference and Dinner

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

Our special guest speaker for the Conference Dinner is the Hon Justice Virginia Bell AC of the High Court of Australia

Widdows (supervised by Professor George Williams and me). Their respective doctoral theses could hardly be more different with Tamara having recently spent several months in Africa doing fieldwork for her study of the definition of 'refugee' under that continent's 1969 Refugee Convention while Kelvin continues his journey into the life and mind of Sir John Latham as he seeks to assess the latter's contribution to High Court jurisprudence on national security questions. These are incredibly diverse but equally fascinating research projects. They are simply representative of the wealth of stimulating research being carried on by our many postgraduate students. The Centre prides itself on the way in which postgraduates are able to participate in all its activities and the academic staff members benefit hugely from the energy and intellectual curiosity that the students bring to our community and the work the Centre does in the field of public law. >>>



'Unlike the policies of Stanley Bruce, Australia's role in the Asian Century must be about more than Men, Money and Markets: it must be about more than asylum seekers and commercial trade. It must be about defining values – and promoting them.'

Fergal Davis, '1920's Australia's lesson for Gillard in the Asian Century' *thePunch* 3 November 2012



Since its inception, the Centre has hosted student interns through the Faculty's Social Justice Internship Program. This past semester, uniquely, we had two – Jennifer Goh and Errin Walker. Reports from each detail the work they carried out and while it is pleasing to hear that they both felt they got a lot out of the experience, myself and the directors of those Centre projects on which they worked unquestionably got even more in return. Invariably, the quality of the UNSW student body ensures that the Centre receives applications from brilliant students and selecting just one – or even two – can be difficult. The interns really do assist us to do research or engagement activities that might otherwise be left undone.

Lastly, I conclude with a reminder that our twelfth annual Constitutional Law conference is not far away. This year's is on Friday 15 February and features a great range of speakers on developments in the recent cases decided by the High Court. We are honoured to have Justice Virginia Bell AC as our conference dinner speaker. I look forward to seeing many of you there.

Professor Andrew Lynch
Director



Centre Director, Professor Andrew Lynch with participants at the Postgraduate Workshop in Public Law

Centre Activities

Postgraduate Workshop in Public Law



Dr Ben Golder, Professors Jeffrey Goldsworthy and Andrew Lynch at the Postgraduate Workshop in Public Law

In mid-July 2012, the Centre hosted its second workshop especially for postgraduate research students from across Australia working on theses in the field of public law. The inaugural workshop held back in 2010 convinced us of the value of providing doctoral and masters research students with the opportunity to discuss their projects with their peers. Not only do the students further develop the skill of presenting academic papers, but they receive constructive feedback and criticism from others working in the area who are engaged in essentially the same process. It also provides a valuable networking opportunity for the emergent group of public law academics.

The 2012 workshop more than lived up to these aspirations. It brought together 24 postgraduate students from various institutions including the Universities of Adelaide and Melbourne, Monash University, Macquarie University, Swinburne University of Technology and, of course, our own students working under the supervision of members of the Centre. The sessions covered a range of topics within the Centre's broad concerns – federalism, national security, rights protection under domestic and international law, legal theory and indigenous legal issues.

We were delighted that Professor Jeffrey Goldsworthy from Monash University was able to open the event with a keynote address on the role of theory in public law. Jeff's remarks struck a strong chord with the audience and were frequently referred back to in the extensive discussions following presentations. He stayed for the remainder of the first day and the workshop dinner, giving students the chance to talk further with him about his address and their own work.

Thanks are also due to the many members of the Centre, and especially Professor Rosemary Rayfuse of the Faculty who stepped in at the last minute, for chairing various sessions and commenting on the papers presented therein. Members who assisted with planning for the event included Dr Ben Golder, Dr Jessie Blackbourn, Keiran Hardy and Rebecca Welsh. Belinda McDonald, as ever, ensured that everything ran smoothly across the two days.

Contemporary Critical Approaches to Human Rights Workshop



On 17-18 August 2012 the Centre hosted, in collaboration with partners from other Faculties and from the University of Sydney, the signature event in the Public Law and Legal Theory Project. The purpose of the project is to foster a critical and interdisciplinary engagement with the foundational concerns of the Centre (such as rights, democracy, constitutionalism, and



Dr Daniel McLoughlin, Professor Miguel Vatter and Dr Marco Duranti at the Contemporary Critical Approaches to Human Rights Workshop

so forth), specifically by bringing to bear the insights of contemporary continental philosophy, political theory and critical legal theory on these questions. Reflecting this goal, the event, entitled *Contemporary Critical Approaches to Human Rights*, featured both local and international scholars (the latter from Columbia, the LSE, Kansas University and the EUJ) in an interdisciplinary dialogue across two days.

Recent contentious historical engagements with the origin of human rights – particularly Samuel Moyn’s 2010 book, *The Last Utopia: Human Rights in History*, which argues that human rights emerged only in the late 1970s as a moralistic and anti-political movement – have raised with fresh urgency political and philosophical questions concerning the status and function of the universal discourse of human rights. *Contemporary Critical Approaches to Human Rights* presented an opportunity to engage with these questions directly (Professor Moyn was one of the presenters) by bringing historians, political theorists, philosophers and legal theorists into a productive and wide-ranging dialogue over two days. The event was structured around four separate, but interconnected, panels: ‘The History of Human Rights’, ‘The Politics of Human Rights’, ‘The Philosophy of Human Rights’ and ‘The Political Economy of Human Rights’.

Comparative Constitutional Law – Final Courts Round-Up

On 11 December 2012 the Centre co-hosted its second ‘Final Courts Round-up’ seminar with the New South Wales Chapter of the Australian Association of Constitutional Law.

This event aims to provide the audience with an outline of recent constitutional developments in three jurisdictions – the United Kingdom, Canada and the United States – that are of key interest to Australian public lawyers. Leading academic commentators from each jurisdiction are invited to report on two or three major constitutional cases argued or decided over the last year; consider the implications of any changes in the composition and politics of their country’s highest court; and flag the state of debate over constitutional reform. Together, and guided through Professor Rosalind Dixon in her role as Chair, the panellists also discuss the potential relevance of these comparative developments for current issues in Australian constitutional law.

The high standard set by the 2011 event was certainly matched with this year’s participants who were Professor David Cole (Georgetown University), Professor Fiona de Londras (Durham University) and Assistant Professor Vanessa McDonnell (University of Ottawa). It was marvellous for an Australian audience, drawn from the judiciary, legal practice and academia, to hear from this distinguished trio.

We thank Dr Christos Mantziaris, of the New South Wales bar and the organiser of the AACL’s seminar series, for his ongoing enthusiasm for co-hosting this event as part of that program.



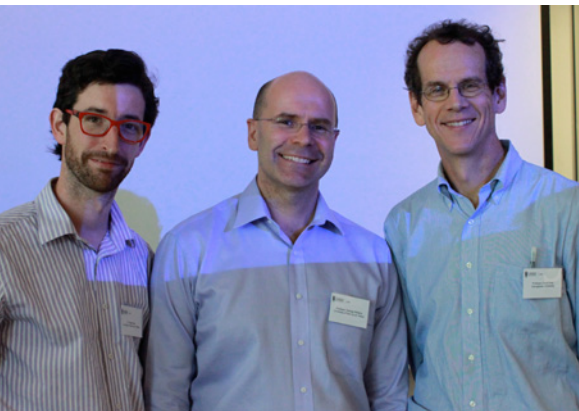
'States of Surveillance: Counter-Terrorism and Comparative Constitutionalism'

On 13-14 December 2012, the Centre's Laureate Project held a major international conference: 'States of Surveillance: Counter-Terrorism and Comparative Constitutionalism'. This conference was co-hosted by the International Association of Constitutional Law (IACL) Constitutional Responses to Terrorism Research Group.

The event brought together an impressive array of international experts to discuss the growth of surveillance after 9/11 and its implications for constitutionalism and the rule of law. Speakers included Professor David Cole (Georgetown University); Professor Clive Walker (University of Leeds); Professor Fu Hualing (University of Hong Kong); Professor Fiona de Londras (Durham University); Dr Cian Murphy (King's College London); Dr David Scharia (Legal Coordinator, Counter-Terrorism Executive Directorate, United Nations Security Council); Professor Ujjwal Singh (University of Delhi); and Justice Anthony Whealy (formerly of the New South Wales Supreme Court and Court of Appeal).

Centre members, Nicola McGarrrity and Professor George Williams, also presented a paper at the conference entitled 'From Covert to Coercive: A New Model of Surveillance by Intelligence Agencies?'. Dr Fergal Davis, Nicola McGarrrity and Professor George Williams are currently editing the papers from the conference for an volume that will be published by Routledge in late 2013/early 2014.

On the evening before the workshop, the Centre co-hosted with the NSW Bar Association a seminar titled 'The reshaping of Control Orders in the United Kingdom: Time for a Fairer Go Australia!'. The main presenter was Professor Clive Walker, the UK's pre-eminent terrorism law expert, with contributions from Australia's Independent National Security Legislation Monitor, Mr Bret Walker SC, and the Hon Anthony Whealy QC, who is currently conducting the COAG review on control order legislation. The event was chaired by Mr Phillip Boulten SC, rounding out a highly knowledgeable and experienced panel on this topic. We thank all participants and the Bar Association for their support of the seminar.



Dr Fergal Davis, Professors George Williams and David Cole at the IACL States of Surveillance Workshop



Bret Walker SC, Phillip Boulten SC, Professor Clive Walker (speaking) and the Hon Anthony Whealy QC at the 'Reshaping of control orders' event



Centre Seminars

Over the last six months the Centre has held occasional seminars at which visiting scholars have presented their research. These seminars provide opportunities for Centre staff and students, as well as interested members of the Faculty, to engage with visitors and discuss their work at some length.

We were very fortunate to host a presentation on 27 July by Professor Grant Huscroft from the Public Law and Legal Philosophy Research Group, University of Western Ontario on 'Proportionality in Human Rights Law: Paradoxes and Prospects'. Grant's reputation in the field of Charters of Rights is very well-known and he gave a lively and challenging presentation on this topic, drawing on his extensive knowledge of the 'Commonwealth model' of rights protection.

On 9 November, Grant Hoole from the PhD program at the University of Ottawa presented the culmination of his work while visiting the Centre over much of the second half of 2012 as the recipient of an Endeavour Research Fellowship. His paper was titled 'The Forms and Limits of Judicial Inquiry: Judges as Inquiry Commissioners in Canada and Australia' and Grant amply demonstrated the extent to which his comparative knowledge on this topic had benefitted from the many conversations he had had with members of the UNSW community and also external experts who had generously given him their time. You can read a report from Grant on his visit to the Centre elsewhere in these pages.

Lastly, Assistant Professor Federico Fabbrini, of the Department of Public Law, Jurisprudence and Legal History at the University of Tilburg Law School completed the year's seminars with a presentation on 3 December titled 'The European multilevel architecture for the protection of fundamental rights: a comparative federal perspective' that drew upon his recently awarded doctoral thesis.



Assistant Professor Federico Fabbrini delivers a Centre seminar

'While saving lives at sea is of utmost importance, a liberal human rights approach recognizes that this cannot be done at the expense of blocking refugees' access to international protection.'

Jane McAdam and other refugee law academics,
Submission to Expert Panel on Asylum Seekers



Centre Comment

Reforming Australia's federation: The people lead the way

Dr Paul Kildea



Centre Project Director Paul Kildea

As another fractious year in politics comes to an end, Griffith University has released the results of its third biennial survey on how Australians view their federal system. It reveals a public that is losing faith in both the current structure of the federation and the ability of different tiers of government to work together to solve national problems. But the poll also reveals a public appetite for reform to which political leaders should pay close attention.

The survey finds that 38 per cent of Australians believe that the current three-tiered federal system – made up of federal, state and local government – does not work well. This is up from 30 per cent of respondents when the poll was first taken in 2008.

State governments are seen to be the worst performers. While their rating has improved slightly since 2010, it is apparent that the recent move to conservative rule in Victoria, New South Wales and Queensland has not altered many people's dim view of state government. Indeed, a mere 14 per cent of Queensland residents view state government as the most effective level – just months after the Liberal National Party's landslide victory in the March election.

Local government is now rated as the most effective level. This is in large part due to a massive collapse of faith in the national level of government, which until this year had been rated as the most effective level by a handsome margin. Four years ago it was viewed as the best performer by half of Australians, but fewer than a third of people (29 per cent) now hold this view. The deep unpopularity of Prime Minister Julia Gillard and Opposition Leader Tony Abbott, and the fierce partisanship of the hung parliament, have no doubt played a part here.

But if many Australians are unhappy with individual levels of government, they also feel that the federal system is suffering due to a lack of cooperation between the federal, state and local tiers. Australians overwhelmingly see intergovernmental collaboration as a desirable feature of a federal system – more than 90 per cent have said as much in successive surveys. But fewer and fewer people think that the system actually delivers on this – only a third feel that it does collaboration well, down eight points since 2008. Perhaps more worryingly, two-thirds of Australians feel that the federal and state governments are not working well together. On this measure, Australians are less satisfied with their federal system than their counterparts in the United States, Canada and Germany.



The strong evidence of pre-colonisation inter-island trade provided a solid basis for native title recognition of the commercial right to fish. Two Federal Court judges have agreed that, applying High Court authority, fisheries legislation did no more than regulate that right.

Sean Brennan, 'Commercial Native Title Fishing Rights in the Torres Strait and the Question of Regulation versus Extinguishment' (2012) 8 *Indigenous Law Bulletin* 17.



This last finding is concerning because intergovernmental cooperation is arguably *more* important in the Australian federal system than in these other federations. This is because the division of legislative and financial powers, while favouring the central government, gives rise to a high degree of overlap between the federal and state governments. As a result, some of Australia's most pressing problems – whether in health, education, water management, disability or Indigenous wellbeing – cannot be addressed in the absence of effective collaboration across different tiers of government.

The last year has seen a number of public spats between Canberra and the states that have no doubt shaped people's views about the amount of cooperation taking place in the federation. Disagreements about the collection of state mining royalties, the distribution of GST revenue and the funding of major national initiatives (such as the National Disability Insurance Scheme and Gonks education reforms) have all escalated over the last several months. These conflicts have been sharpened by partisan divisions – the days of 'wall-to-wall' Labor governments are long behind us, with Australia's four largest states now governed by conservative Coalition parties.

But it would be a mistake to dismiss the public's dissatisfaction with federal-state collaboration as a superficial response to passing quarrels. The better view is that public opinion is responding to very real problems in Australia's federal system that prevent effective cooperation occurring – and that the time has come to address them.

For some years now there has been a steady stream of reports and commentary pointing to the need to strengthen intergovernmental institutions so that they better foster federal-state collaboration. In particular, there is an emerging consensus on the need to reform the Council of Australian Governments (COAG). Despite being the hub of intergovernmental relations in Australia for over 20 years, COAG still has no formal legal status and remains in the grip of the Prime Minister – meaning that is vulnerable to being ignored when it does not suit the federal government.

Building institutional structures through which different levels of government can cooperate is not only an Australian problem. Similar challenges arise in Canada where its First Ministers' Conference also lacks a permanent institutional base. Reform ideas floated in both Canada and Australia range from forging political agreements on improved processes, through to constitutional recognition of key intergovernmental bodies. The South African constitution goes some way towards the latter by recognising several principles of 'cooperative government and intergovernmental relations'. The need for constitutional change along similar lines has been discussed in Australia, particularly in light of a view expressed in the High Court's 1999 *Re Wakim* decision that 'cooperative federalism' is no more than a 'political slogan' with no part to play in constitutional interpretation.

Not surprisingly, increasing the GST has been ruled out by both sides of federal politics, and was even excluded from the 'root and branch' Henry tax review. The problem is that no federal politician will take the political fallout when the states and not the Commonwealth will receive the financial benefit.

George Williams, 'Fatal Flaw in GST Design Dooms us to State-Federal Funding Stalemate' *Sydney Morning Herald* (31 July 2012).

Giving COAG formal legal status, with improved processes, would go a long way to enhancing federal-state cooperation. But for many members of the public, the Australian federation needs to undergo more fundamental reform. Indeed, a full two-thirds of Australians would like to see the federal system being structurally different in 20 years' time, with the strongest preference being for a stronger system of regional government.

With their stomach for major federal reform, Australians are way out ahead of their political representatives. In recent years governments have shown themselves reluctant to consider minor changes to cooperative arrangements, let alone the much larger task of structural reform.

It is time for the political elites to start taking seriously the views of Australians on the shape of their federation. As the lead researcher on the federalism survey, Professor AJ Brown, wrote in *The Australian* in November, national and state leaders need 'to show more tangible commitment to charting the future of the federal system'. And with a federal election looming later this year, there is no better time for them to start.



Centre members Dr Svetlana Tyulkina, Rebecca Welsh, Jackie Hartley and Sangeetha Pillai at the ANU Public Law Weekend, Canberra



Centre People

Centre Visitors



Centre Visitor Grant Hoole

Grant Hoole, University of Ottawa

From July to November 2012 I visited the Centre as an Endeavour Visiting Fellow sponsored by the Australian Government. The aim of my visit was to complete research toward my PhD thesis on commissions of inquiry, which I am pursuing at the Faculty of Law, University of Ottawa in Canada. Like Australia, Canada makes extensive use of public inquiries, and my particular interest is in clarifying basic principles for their governance, drawing from constitutional and administrative law. An important feature of many Canadian public inquiries is their use of active judges as commissioners. The existence of a relatively strict separation of powers in Australia, together with a rich body of jurisprudence and academic writing on the propriety of judges assuming extra-judicial office – including as inquiry commissioners – has given me the opportunity to scrutinize this Canadian practice in a new light. My hope is that this research lends guidance to judges in deciding whether or not to accept an inquiry commission, and helps illuminate core constitutional values that shape the exercise of official power in both Australia and Canada, despite formal differences in their constitutional texts. I was very pleased to have the opportunity to present my work at a Centre seminar near the end of my stay, and at a postgraduate conference at the University of Sydney.

From my first day at the Centre, I felt a remarkable amount of encouragement and support from its members. The tricky task of getting my head around the Australian doctrine of separation of powers was made much easier by resident experts among the postgraduate students, notably Rebecca Welsh and Grant Hooper, who pointed me toward good sources and shared their own valuable work. I benefitted greatly from the accessibility of staff who were happy to make time for coffees and lunches over which they patiently listened to my ideas and invariably offered helpful feedback and introductions to further colleagues. Most of all, I was impressed by the Centre's incredibly collegial atmosphere and the degree of collaboration between academics and postgraduate students. There is a true sense of mutual support and common purpose at the Centre, which should be a model for the postgraduate student experience. It certainly provided me with added motivation for my own work, and led to new and lasting friendships.

I would like to express my special thanks to Andrew Lynch, for supporting my original interest in visiting Australia and providing me with all the resources and help I could have asked for during my stay. Jessie Blackburn was an excellent ambassador for the Centre long before I left Canada, and I'm very grateful for her generosity and friendship.

'The bikie control order laws make significant intrusions into fundamental human rights. The declaration of organisations unashamedly targets the freedoms of speech and association.'

Nicola McGarrrity, 'From Terrorism to Bikies: Control Orders in Australia' (2012) 37(3) *Alternative Law Journal* 166





PhD Student Kelvin Widdows

Kelvin Widdows

The working title of my thesis is: 'Sir John Latham: Judicial Reasoning in Defence of the Commonwealth' and I started work on it early in 2010. Latham (1877-1964) is probably best remembered by lawyers as Chief Justice of the High Court from 1935 to 1952. However, he came to the Court with a particularly rich past: in academia, law, intelligence, politics and government. In his early days he taught logic and law at Melbourne University and maintained a highly successful practice at the Melbourne bar. During the First World War, however, he was handed a top job in Naval Intelligence and then appointed to the small Australian delegation led by Prime Minister Hughes to the Versailles Peace Conference.

After returning to Australia and the Melbourne bar, Latham gradually moved to a career in conservative politics and in 1922 won the federal seat of Kooyong as an independent. He was appointed Attorney-General on joining the governing Nationalists in 1925 and subsequently added External Affairs to a growing list of portfolios. On the party's defeat to Labor in 1929, Latham became Leader of the Opposition but following manoeuvres by a group of Nationalist party organisers, including Robert Menzies, then a Melbourne barrister and State MP, resigned as leader in favour of the more popular ex-Labor Minister, Joseph Lyons, before the 1931 election which his Party won. Latham became Deputy Prime Minister and again, Attorney-General and Minister for External Affairs but seemed to weary of politics. He retired from Parliament in 1934 to re-establish his practice at the Melbourne bar. Prior to entering the Ministry Latham had been an active member of Round Table, a conservative 'think tank' largely devoted to British Empire security and was involved with manifold circles and movements often of conservative orientation, but including Rationalism and anti-clericalism.

Latham's early background in intelligence and as a negotiator for Australia at Versailles had already displayed on his part a serious and professional interest in national security. This was consolidated by his later performance as Attorney-General in which capacity he introduced extensive legislation to curb the activities of so-called 'unlawful associations' (communist affiliated groups and militant trades unions) and oversaw the operations of the Commonwealth's intelligence agency. In time, there arose a perception of Latham as an authoritarian nationalist firmly against political radicalism, notwithstanding his earlier commitment to Rationalism.

On Latham's appointment to the Court, this reputation led to scepticism, particularly by members of the Labor Party, that as Chief Justice he would be an objective and impartial judge when issues of security were before the Court. And despite frequent public claims of keeping out of politics and applying only a complete legalism in judicial reasoning, the question of Latham's independence as a judge has been aired on more than one occasion, and was not assuaged by his insistence on accepting appointment as Australia's first envoy to Japan in 1940 without resigning from the court, instead taking leave under special legislation.



'All criminal trials are about much more than declarations of guilt or innocence. They are about a process of public justification and often they are about public spectacle; theatre.'

Fergal Davis and Svetlana Tyulkinam 'Russia has already made Pussy Riot martyrs' *the Punch* 16 August 2012



Centre PhD Student Tamara Wood inside the African Union Headquarters, Addis Ababa



The purpose of my enquiry is to ascertain the extent, if any, to which Sir John Latham's nationalist ideology and conservative outlook are discernible influences in his judicial reasoning in national security cases. Having researched Latham's personal papers (over 200 boxes) which he donated to the National Library and the available governmental files from his time in Government, I have gained some idea of what Latham stood for and of his character and fundamental beliefs and ideology in 1935 when he became Chief Justice. I am now in the midst of analysing his judicial reasoning in the relevant cases and comparing it with the reasoning of other judges to ascertain to what extent, if at all, Latham CJ differed from them, and whether any such variance might be attributed to these core beliefs and ideology.

The thesis combines doctrinal legal analysis with elements of judicial biography and may give rise to conclusions touching upon legal theory. The thesis is supervised by Professors Andrew Lynch and George Williams, both of whom share an interest in Latham, as well of course, as having a substantial background in the whole area of national security law.

Tamara Wood

I joined the Centre in 2011, commencing a PhD in international refugee law under the primary supervision of Professor Jane McAdam (Project Director, International Refugee and Migration Law Project). My thesis, entitled 'Does expanded scope equal expanded protection? Article I(2) of the Convention Governing the Specific Aspects of Refugee Problems in Africa' investigates the scope of the African 'expanded refugee definition' contained in Article I(2) of the 1969 Organisation of African Union *Convention Governing the Specific Aspects of Refugee Problems in Africa* (the African Refugee Convention). While the African Refugee Convention's definition of the term 'refugee' is generally understood to extend protection beyond that provided by the international refugee definition (contained in the 1951 *Convention relating to the Status of Refugees*), remarkably little is known or understood about its precise scope or the meaning of its terms. Not a single book and only two articles have dedicated themselves to the question: who is a refugee in Africa? Because of the lack of literature on the African refugee definition, as well as the limited availability of information on African refugee status determination in practice, researching my PhD solely from Sydney was never going to be an option.

Between August and November this year, I travelled through South Africa and Kenya, interviewing legal representatives, government and UNHCR officials working in refugee protection. Interviewees in both countries spoke about the legal significance of the expanded refugee definition, its poor implementation in practice and some of the interpretative challenges it presents. They revealed that the interpretative issues surrounding the African expanded refugee definition are not of academic interest only – they also constitute a serious impediment to the definition's implementation in practice. Lack of clarity in the definition's meaning makes refugee status decision-makers from both government and UNHCR reluctant to apply it in the grant of refugee protection, with the result that many displaced persons in Africa who might benefit from the definition's protection are having such protection denied.

Since commencing my PhD, it has been my hope that I might make some small contribution to African refugee protection in practice. After four months in Africa, I feel confident that this hope will be realised. A clear understanding of the scope of Africa's expanded refugee definition presents both a significant knowledge gap in the field of international refugee law and a genuine need for African refugee law practitioners on the ground. Combined, these factors make researching the definition both challenging and rewarding. As a PhD student, they also provide a huge source of motivation. Despite being warned that writing up my African field research will not quite match the excitement of doing it, I am really looking forward to getting all the information and ideas I have collected in the last few months out of my head and on to paper. Knowing that they have the potential to make a difference to refugee protection in practice will definitely make that process easier.

In just a few days my time in Africa will end and I will travel to the UK to present some of my findings at conferences in London and Oxford. After that, it is back to UNSW where I look forward to discussing my research and findings with my supervisor, colleagues and students.

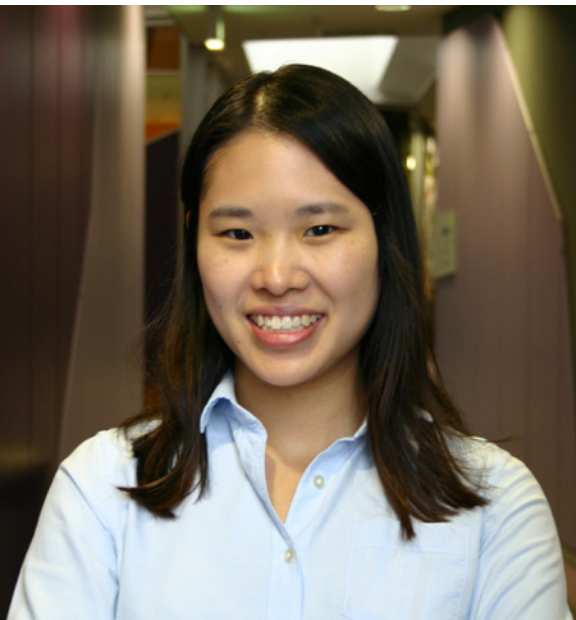
Social Justice Intern Reports

Jennifer Goh

It is no exaggeration to say that my internship at the Gilbert + Tobin Centre of Public Law has been one of the most interesting and worthwhile experiences of my time at UNSW Law School. In my time at the Centre I have had the opportunity to get involved in a range of projects and activities, from assisting Nicola McGarrrity with the Centre's submission to the Joint Parliamentary Committee on Intelligence and Security, to writing opinion pieces on the national security reforms and indigenous referendum with Nicola and Andrew Lynch respectively, to helping Fergal Davis with an academic paper on the importance of the jury trial in terrorism cases. I was also engaged in a number of miscellaneous research tasks, on subjects ranging from the increasing use by government of expert panels and advisory committees, to the original intentions of the US framers in the *US v Butler* case, and to the Banabas Island system of governance.

One of my main interest areas is refugee policy, so one of the highlights of my internship was working with Professor Jane McAdam on a project on statelessness for UNHCR, which involved updating the UN database on statelessness laws in Australia, New Zealand and Pacific Island countries, and then analysing these laws for compliance with international treaties. Coinciding with the release of the Houston Report, the project was a great opportunity to engage in comparative studies of refugee policy and an excellent complement to my concurrent studies in Public International Law.

Interning at the Centre has not only broadened my understanding of current public law issues in Australia, but has been invaluable in improving my analytical and research skills and in challenging me to develop ones that I would never have had an opportunity to acquire otherwise – most notably those required for the writing of opinion pieces. Over this semester I also gained a better understanding of the rewards of a life in academia – the



Centre Social Justice Intern Jennifer Goh





Centre Social Justice Intern Errin Walker



wide variety of activities engaged in by academics, the sense of collegiality and the satisfaction of knowing that your work is contributing to the achievement of social justice in Australia.

I would like to thank Andrew Lynch, Nicola McGarrity, Jane McAdam and Fergal Davis for providing such interesting work and much-appreciated support over the course of this semester, and for making the internship experience the immensely enjoyable and rewarding experience it has been.

Errin Walker

To break the law school routine of classes, assignments, and exams, I eagerly undertook my internship at the Gilbert + Tobin Centre of Public Law during semester 2 of 2012. A large part of my time at the Centre was spent working on a joint venture between the Centre's Indigenous Legal Issues Project and the Indigenous Law Centre looking at alcohol regulation in the Northern Territory, under the ever helpful guidance of Sean Brennan and Leon Terrill. I was immediately immersed in legal research, reading legislation, Senate submissions, and media and academic commentary, learning about the interesting and controversial issues of dry towns and alcohol restrictions, the Northern Territory Intervention, and the recently enacted *Stronger Futures in the Northern Territory Act 2012*. The change of government in the Northern Territory half way through my internship brought additional relevance to the project as the incoming Country Liberal Party planned to relax the Territory's alcohol restrictions. This project culminated in writing an opinion piece on the *Stronger Futures* alcohol regulations. This was a great opportunity to write with a freedom beyond that normally possible in conventional university study, and receive detailed and constructive feedback from the Centre's supportive academic staff every step of the way.

The second aspect of my internship was spent assisting in the Referendums Project under the friendly supervision of Paul Kildea. I was able to delve into the unfamiliar and surprisingly challenging domain of writing web content for public consumption on the process of holding a referendum and the timely issue of constitutional recognition of Aboriginal and Torres Strait Islander Peoples. Not only did this expand my skills in conveying complex legal concepts to a general audience, but was great preparation for Federal Constitutional Law next semester!

My internship proved far more valuable than a mere change in university routine; genuinely enabling me to translate theory into practice, sharpening my legal research, academic writing, and editing skills, as well as more acutely appreciating the importance of the Centre's work engaging the community, academics, and professionals in public law. I was able to see firsthand how I may utilise the skills gained in my law studies to contribute to public debate on important issues faced in the community. I am sincerely thankful to the Centre for this rewarding and enjoyable experience.

Project Reports

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

Project Director: George Williams



George Williams speaking at the 'Constitutional Recognition of Local Government': 100th Local Government Conference: *Treasuring the Past, Transforming the Future*

The last six months has been extremely busy for the Laureate Project. Members of the Project have published academic articles in the following Australian and international law journals: *Adelaide Law Review*, *Alternative Law Journal*, *Federal Law Review*, *Griffith Law Review*, *Melbourne University Law Review*, *Monash University Law Review*, *International Journal of Crime and Justice*, *Journal of Commonwealth Criminal Law*, *Parliamentary Affairs*, *Politics and Statute Law Review*. They have also written opinion pieces for hard copy and online media. The expertise of the members of the Project has been recognised through invitations to write chapters for forthcoming edited collections, present conference papers and give interviews on both radio and television.

The Project has maintained its commitment to engaging with the law reform process by preparing four very substantial submissions to parliamentary and independent inquiries. First, a submission was made to the Parliamentary Joint Committee on Intelligence and Security Inquiry into National Security Reforms. This inquiry is considering more than 40 proposals to modernise and streamline the surveillance powers of law enforcement and intelligence agencies. Dr Fergal Davis and Nicola McGarrity were invited to give oral evidence before the Joint Committee in September 2012. Second, two submissions – one on ASIO's questioning and detention powers and the other on the control order and preventative detention order regimes – were delivered to the Independent Monitor of National Security Legislation (Bret Walker SC). These are amongst the most controversial aspects of Australia's anti-terrorism regime. The Monitor's second annual report is due to be provided to the Prime Minister in December 2012, and must be tabled in the Parliament by early March 2013. Finally, a submission was also made to the COAG Counter-Terrorism Review (chaired by retired Supreme Court judge, the Hon Anthony Whealy QC). The purpose of this Review is to consider the amendments made to Australia's anti-terrorism legislation in 2005, including, once again, the control order and preventative detention order regimes. It is due to provide a written report to COAG by February 2013. Nicola McGarrity and Professor George Williams made oral presentations to the Review in October 2012.

In the 'Centre Activities' section of this newsletter, we give details of the major international conference convened by the Laureate Project with the International Association of Constitutional Law (IACL) Constitutional Responses to Terrorism Research Group in mid-December 2012. The title of the event, and thus the focus of the uniformly excellent presentations from a truly global gathering of experts, was 'States of Surveillance: Counter-Terrorism and Comparative Constitutionalism'.





Professor Akiko Ejima at the IACL States of Surveillance Workshop

'Since the events of 11 September 2001, the extent of legal scholarship in the field of counter-terrorism has bordered on the overwhelming. In the face of a global convulsion of lawmaking and extraordinary executive action under the since discarded slogan of the 'war on terror', the legal academy in many jurisdictions rushed to respond. That such an outpouring of research in the space of just a few years should be so variable in quality was hardly surprising. Quite a lot of what was produced was pedestrian, repetitive and forgettable. But there was also much of great value from which those working in this burgeoning area could draw sharp insights, methodological cues and comparative perspectives.'

Andrew Lynch, *'The 9/11 Effect – Comparative Counter-Terrorism'* by Kent Roach, Cambridge University Press, 2012. Reviewed in (2012) 32 *Legal Studies* 673-80.



The papers from the previous conference held by the IACL Research Group, on 'Secrecy and the vindication of constitutional rights' in Milan in December 2011 are in the process of being published by Edward Elgar Publishing. This collection includes a chapter by Andrew Lynch, Tamara Tulich and Rebecca Welsh on control orders in Australia and the United Kingdom.

Other highlights from the last six months include:

- Two members of the Laureate Project – Dr Jessie Blackburn and Keiran Hardy – travelled to the United Kingdom for several weeks in September 2012. Jessie presented a paper, 'Reviewing the Reviewers: Independent Review and the United Kingdom's Counter-Terrorism Policy' at the Conflict Analysis Research Centre & BISA Critical Studies on Terrorism Working Group Conference 2012 'Terrorism, Peace and Conflict Studies: Investigating the Crossroad' at the University of Kent. Keiran presented a paper, 'What is "Cyber-Terrorism"? Computer Technology and Counter-Terrorism Laws' at a workshop at Swansea University. Both Jessie and Keiran also attended the Prevent Strategy Conference at King's College London;
- The Project's Research Associate, Lisa Burton, presented a paper at the Australian Institute of Administrative Law National Conference in July 2012 entitled 'The Role of the Integrity Branch in the National Security Context';
- Tamara Tulich saw her name in print for the first time, with the publication of two articles in leading Australian and international journals;
- Four of the Project's PhD Candidates presented papers at Australian postgraduate conferences, including the Gilbert + Tobin Centre's Postgraduate Workshop in Public Law, the ANU College of Law National Graduate Conference and the Sydney University Postgraduate Conference;
- Dr Svetlana Tyulkina presented papers at the Annual Public Law Weekend at the ANU College of Law and the Australian Political Studies Association Conference in Hobart. The first paper was on the potential role for 'militant democracy' under Australia's constitutional system. The other was entitled: 'Prohibition of Political Parties: Effective Tool to Square the Circle in the Business of Protecting Democracy';
- Many members of the Project gave guest lectures in the National Security Law and Human Rights undergraduate course convened by Keiran Hardy and Nicola McGarrrity;
- In October, Professor George Williams launched a campaign by the New South Wales Council for Civil Liberties to wind back the disproportionate powers of the Australian Security Intelligence Organisation. The coercive questioning and detention powers granted to the Organisation in 2003 have been a key focus of the Project's research and law reform efforts over the last six months.

Federalism Project

Project Director: Shipra Chordia



Federalism Project Director Shipra Chordia

In September 2012, the Federalism Project welcomed its new project director, Shipra Chordia, who takes over from Dr Paul Kildea in the role. Shipra joins the Centre from the UK, where she was Judicial Assistant to Lord Justice Mummery in the Court of Appeal of England and Wales and also practised in the Litigation & Arbitration department of Linklaters LLP. She holds Honours degrees in Science and Law from UNSW and the University of Sydney respectively.

For the second half of 2012, the Federalism Project has been busy responding to the High Court's landmark June decision in *Williams v Commonwealth* (popularly known as the 'Chaplains case'). In the media, Professors George Williams and Andrew Lynch have both reflected on the decision's immediate implications for Commonwealth spending. Andrew also delivered a paper in August at the 2012 Australian Government Solicitor's Conference examining the case. Project members have been considering the wider ramifications of the decision for co-operative federalism in Australia and been working on a number of academic publications to this end.

In other news, Shipra wrote for *The Conversation* on co-operative federalism in the context of negotiations between the Commonwealth and the States over the Murray-Darling Basin Plan. George and Andrew were also both interviewed by *The Australian* regarding the findings of the 2012 Australian Constitutional Values Survey conducted once more by Professor AJ Brown of the Centre for Governance & Public Policy. This polling has been undertaken in 2008 and 2010 previously. On this most recent occasion, the Gilbert + Tobin Centre of Public Law was very pleased to be able to contribute to the support of this important project which provides invaluable data about contemporary public attitudes towards federalism in Australia. Paul Kildea also wrote a major piece for the United Kingdom Constitutional Law blog on the reform of the Australian federation in light of the Values Survey results. Paul's analysis is included in these pages as this newsletter's 'Centre Comment'.

Early in 2013, the Project will turn its attention to a comparative study of federalism in Canada and Australia, with particular consideration given to institutions of co-operative federalism.

Indigenous Legal Issues

Project director: Sean Brennan



The Centre's Indigenous Legal Issues Project maintained a focus on constitutional issues with media work and presentations on constitutional reform as well as a published article on the relevance of the federal just terms guarantee to native title extinguishment by the States and Territories. Project Director Sean Brennan also wrote for the *Indigenous Law Bulletin* on the Torres Strait regional sea claim, a native title appeal granted special leave by the High Court and due to be heard in 2013.

The Centre also made a written submission on the Low Aromatic Fuel Bill 2012 and Sean appeared by teleconference before the Alice Springs

The extinguishment and impairment of native title under State law is complex and situation-specific. However, the conclusion from this paper is that the just terms guarantee can apply to State extinguishment of native title.

Sean Brennan, 'Section 51(xxxi) and the Acquisition of Property under Commonwealth-State Arrangements: The Relevance to Native Title Extinguishment on Just Terms' (2011) 15 *AILR* 74.

hearing of the Senate Community Affairs Committee in July. The Private Senator's Bill, introduced by Greens Senator Rachel Siewert, gives the Federal government power to mandate the stocking of low aromatic fuel in a designated area, to minimise harm from petrol sniffing. The Bill is the result of assiduous lobbying work by Aboriginal community organisations, in particular the Central Australian Youth Linkup Service (CAYLUS), and follows years of conscientious work from Senators on the Committee from all parties and the roll-out of Opal fuel on a voluntary basis in Central Australia and beyond. Building on work done for an earlier Senate inquiry in 2008, the Centre's submission focused on constitutional validity and recommended expanding the powers upon which the Bill relied. Ultimately, in November the Government unexpectedly reversed its position on the Bill, moving amendments to expand its constitutional basis and voting with the Greens to secure its passage through the Senate. The Bill now moves to the House of Representatives.

In conjunction with his colleague and Indigenous Law Centre Fellow, Leon Terrill, Sean has also worked this semester with Centre Social Justice Intern Errin Walker on alcohol regulation in the Northern Territory (see Errin's report earlier in this newsletter). Errin has greatly assisted our understanding of recent developments in this area, assembling a new website resource page for the Centre, in addition to producing an article on the *Stronger Futures* legislation.

International Refugee and Migration Law Project

Project Director: Jane McAdam

In the last newsletter, we reported on the research that some of our members had undertaken for the United Nations High Commissioner for Refugees (UNHCR) – an outcome of our Memorandum of Understanding with UNHCR. We were pleased to be invited this semester to assist on another project, this time on statelessness. Eleanor Browne and Centre intern Jennifer Goh worked with UNHCR's Statelessness Unit in Geneva as part of an international project to build a database on nationality laws around the world. The database will eventually be accessible by the public and will be of great assistance to advocates, researchers and NGOs working on statelessness issues. Eleanor and Jennifer's task involved identifying and analysing the nationality laws of 18 Pacific countries and assessing their compliance with relevant international legal standards on statelessness.

In August, the Project led a joint submission by 17 refugee law academics to the Expert Panel on Asylum Seekers, established by the government in an attempt to break the impasse on boat arrivals. The submission argued that:

If Australia is serious about doing more than simply sparing itself the discomfort of being witness to, or even complicit in, the suffering and death of those who seek our protection – whether at sea or more generally – then it needs to consider a multi-dimensional response that positions the asylum seeker at the centre of its sphere of concern. This calls not only for a significant expansion of Australia's resettlement intake, but also for an approach that strengthens the quality of protection in regions/countries of asylum or transit other than as a self-interested quid pro quo for receiving transferred





Centre Project Director Jane McAdam with interviewees, Rabi Island, Fiji, October 2012

'It will be exciting to be part of such a challenging and novel initiative that tackles some of the most significant displacement issues of the coming century.'

Jane McAdam, on her appointment to the Consultative Committee of the Nansen Initiative



asylum seekers. It also calls for a meaningful review of the practical and legislative impediments to asylum seekers travelling to Australia safely, including carrier sanctions and the refusal of visas to people regarded as an 'asylum risk'.

The submission was endorsed by leading refugee law scholars in the UK, US, Canada and the Netherlands.

Also in August, Gleebooks and the Sydney Centre for International Law hosted the launch of *Climate Change and Australia: Warming to the Global Challenge* (Federation Press, Sydney, 2012), co-authored by Jane McAdam, Centre Associate Ben Saul, and Steven Sherwood, Tim Stephens and James Slezak.

Throughout the year, research assistant Fiona Chong provided invaluable help to the Project Director, Jane McAdam – in particular with weekly updates for the online database of Australian and NZ decisions on complementary protection (<http://www.gtcentre.unsw.edu.au/resources/international-refugee-and-migration-law-project>). This database provides lawyers and decision-makers with a current guide to the case law in this area, with summaries of all relevant judgments and RRT decisions.

In the past six months, the Project Director undertook a number of research trips to Oxford, The Hague, Vienna, Washington DC, Geneva and Fiji. Jane was a keynote speaker at the 'Human Rights, Environmental Change, Migration and Displacement Conference' at the Ludwig Boltzmann Institute in Vienna; a speaker at a Brookings Institution roundtable on 'What Research on Climate Change and Human Mobility Can/Should Provide for Practitioners and Policy Makers'; and a participant at an interdisciplinary research workshop at Georgetown University on 'Crisis Migration'. In October, Jane visited the outer islands of Rabi and Kioa in Fiji to interview communities who were relocated there in the 1940s from Kiribati and Tuvalu (respectively). The lessons of Rabi and Kioa provide insights into the potential ramifications of any future resettlement of Pacific populations (in the context of climate change), and provide some of the best evidence we have about the conceptual and pragmatic challenges of relocation.

Jane was also honoured to take up a number of external appointments. She was appointed to the Consultative Committee of the Nansen Initiative – an intergovernmental process established by Norway and Switzerland to address the displacement of people across borders by disasters, particularly in the context of climate change. She was invited to be an inaugural member of the Advisory Board of the Asia-Pacific Migration and Environment Network (APMEN) – an initiative of the International Organization for Migration and the Asian Development Bank to promote research and discussion about the relationship between migration and the environment in a region increasingly plagued by natural disasters. Jane was appointed Co-Rapporteur of the International Law Association's newly-created International Committee on International Law and Sea-level Rise, which will study the possible impacts of sea-level rise and the implications under international law of the partial and complete inundation of State territory, including the impacts on statehood, nationality and human rights. Finally, Jane was appointed to the Refugee Law Initiative Network of Senior Research Associates, University of London.



Re-reading Foucault: On Law, Power and Rights

Edited by Ben Golder



Public Law and Legal Theory Project

Project Director: Ben Golder

Ben has been on sabbatical for the second half of the year, spending the months of October and November pursuing research activities as a Visiting Scholar at the Center for the Study of Law and Society at the University of California, Berkeley. During this time Ben has worked on a number of projects, the central ones being a manuscript entitled *Foucault and Politics of Rights*, which develops some of his work on this topic of the last 2-3 years, and a paper that he has been selected to present to the Second Annual Junior Faculty Forum for International Law (held in 2013 in Nottingham) on the critique of human rights in international legal thought.

A major output of this project, an edited collection titled *Re-reading Foucault: On Law, Power and Rights*, was published by Routledge just before the end of 2012.

Referendums Project

Project Director: Paul Kildea

Centre staff associated with its Referendums Project have had plenty to do in recent months, due largely to political developments affecting the future of the federal government's proposed referendums. In late September the Minister for Indigenous Affairs, Jenny Macklin, announced that the government was postponing the referendum on Indigenous constitutional recognition for two years due to a lack of community awareness and support. As an interim measure, it pledged to introduce into Parliament an 'Act of Recognition'. Responding to this news, George Williams argued in the *Sydney Morning Herald* that the government's priority should instead be on establishing a referendum timetable and process that fosters bipartisanship and genuine community involvement. In *The Conversation*, Andrew Lynch criticised the government's failure to show political leadership on the issue, suggesting that 'complaining about a lack of community leadership is a bit rich when the ball is in your court'.

In November the federal government announced that it was appointing a joint select parliamentary committee on the constitutional recognition of local government. As Paul Kildea wrote in *Inside Story*, this has raised speculation that the government may be looking to push back the timing of any referendum on this issue as well. Paul argued that postponing one or both referendums would provide breathing space to refine options and build consensus around change. However, he warned that the government's plans for improving public awareness and understanding of the issues remained vague, and that serious consideration should be given to holding a popularly elected constitutional convention early in the next parliamentary term.



'The Gillard government's plans for public engagement are vague and fall well short of providing a clear roadmap for change. It is unclear how an Act of Recognition will build campaign momentum or raise public awareness – it might just as easily sink without a trace after a day's news coverage.'

Paul Kildea, 'Time for a referendum roadmap' *Inside Story*, 9 November 2012

Project members have also been active in presenting their referendum research at a variety of conferences and public events. For example, Paul attended the Australasian Study of Parliament Group conference in Darwin and presented an analysis of the ways in which the two 'expert panels' on constitutional recognition engaged the general public. At the same conference, George gave a paper examining proposals to amend the Constitution to remove the concept of 'race' and to ensure stronger protection against racial discrimination. In September, George spoke about constitutional recognition and Aboriginal sovereignty at a widely publicised forum held at the Sydney Opera House. Paul recently spoke at a forum on 'Ideas for Engaging Citizens at Constitutional Referendums', organised by the Electoral Regulation Research Network.

The last few months has also seen the publication of various research papers on constitutional reform. A recent edition of the *Australian Indigenous Law Review*, devoted to the issue of Indigenous constitutional recognition, contains contributions from Paul (on preamble reform), Sean Brennan (on native title and property acquisition on just terms) and George Williams (on referendum processes). The *Alternative Law Journal's* third issue for 2012 also featured articles by George (on race) and Paul (on youth engagement in referendums).



Sangeetha Pillai takes aim at the Centre's Croquet Christmas Party

Publications and Presentations

Publications

Joint Publications

Tanja Aalberts and Ben Golder, 'Symposium on Foucault', a Symposium Section ('International Legal Theory') (2012) 25(3) *Leiden Journal of International Law* 603-608;

Jessie Blackbourn and Nicola McGarrity, 'Listening and Hearings: Intercept Evidence in the Courtroom', (2012) *Journal of Commonwealth Criminal Law* 257-282;

Alysia Blackham and George Williams, 'The Appointment of Ministers External to Parliament in Australia' (2012) 40 *Federal Law Review* 253-285;

Andrew Lynch and George Williams, 'The High Court on Constitutional Law – the 2011 Statistics' (2012) 35(3) *University of New South Wales Law Journal* 846-66;

Ben Saul, Steven Sherwood, Jane McAdam, Tim Stephens and James Slezak, 'Warming to a Global Challenge', Future Justice Issues Paper (2012).

Sean Brennan

'Commercial Native Title Fishing Rights in the Torres Strait and the Question of Regulation versus Extinguishment' (2012) 8(2) *Indigenous Law Bulletin* 17-19;

'Section 51(xxxi) and the Acquisition of Property under Commonwealth-State Arrangements: The Relevance to Native Title Extinguishment on Just Terms' (2011) 15 *Australian Indigenous Law Review* 74-86.

Rosalind Dixon

'Weak-Form Review & American Exceptionalism', (2012) 32(3) *Oxford Journal of Legal Studies* 487-506.

Ben Golder

Re-reading Foucault: On Law, Power and Rights (Routledge, Abingdon 2012).

Paul Kildea

'Towards Youth Engagement in the Referendum on Indigenous Recognition' (2012) 37(3) *Alternative Law Journal* 161-65;

'Balancing Symbolism and Function in Constitutional Preambles: A Reply to Twomey' (2011) 15(2) *Australian Indigenous Law Reporter* 23-5.



Nicola McGarrity at the IACL States of Surveillance Workshop



'The government is presenting its Malaysia Arrangement and the Coalition is presenting its Pacific Solution as the answer to saving asylum seekers' lives, when, in fact, both are policies designed simply to "stop the boats."

Jane McAdam and other refugee law academics,
Submission to Expert Panel on Asylum Seekers



Andrew Lynch

Book review: 'The 9/11 Effect – Comparative Counter-Terrorism' by Kent Roach' (2012) 32 *Legal Studies* 673-80.

Jane McAdam

Book review: *Law of Asylum in the United States: 2011 Edition* by Deborah E Anker', (2012) 24 *International Journal of Refugee Law* 656–57.

Nicola McGarrrity

'From Terrorism to Bikies: Control Orders in Australia' (2012) 37(3) *Alternative Law Journal* 166-170.

Tamara Tulich

'Prevention and Pre-emption in Australia's Domestic Anti-Terrorism Legislation' (2012) 1(1) *International Journal of Crime and Justice* 52-64;

'A View Inside the Preventive State: Reflections on a Decade of Anti-Terror Law' (2012) 21(1) *Griffith Law Review* 209-244.

George Williams

'Removing Racism from Australia's Constitutional DNA' (2012) 37 *Alternative Law Journal* 151-155;

'A Decade of Australian Anti-Terror Laws' (2011) 35 *Melbourne University Law Review* 1136-1176;

'Recognising Australia's Indigenous Peoples in the Constitution' *Court of Conscience* (UNSW Law Society, Issue 6, 2012) 1-5;

'Ten Years of Anti-Terror Law' *Precedent* September / October 2012, Vol 112, 9-14;

'Winning the Referendum to Recognise Aboriginal Peoples in the Constitution' *Australia Law Students' Association Reporter* (Winter 2012) 40-45;

'Breaches of Privacy by Large Corporations the Real Problem' in J Healey (ed), *Privacy and Information Rights* (Issues in Society, Vol 341, Spinney Press, 2012) 45.

Presentations

Joint Presentations

Nicola McGarrrity and George Williams, '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.

'There is no doubt the public has to be informed and appreciative of the reasons underlying any proposed change to the constitution. But it is hard not to see political leadership – the other essential prerequisite for success – as pivotal in this regard.'

Andrew Lynch and Jennifer Goh, 'Failure to launch: what happened to indigenous recognition', *The Conversation* (21 September 2012)



Jessie Blackbourn

'Reviewing the Reviewers: Independent Review and the UK's Counter-Terrorism Policy', *BISA Critical Studies on Terrorism Working Group Conference*, University of Kent, 10-11 September 2012.

Sean Brennan

'The Significance of a Racial Non-Discrimination Clause in the Constitution', Public Forum on Constitutional Reform and Recognition of Australia's First Peoples, Lane Cove Residents for Reconciliation, Sydney, 20 September 2012.

Rosalind Dixon

'The Supreme Court of Canada and Constitutional (Equality) Baselines' Osgoode Hall School of Law, 14 October 2012;

'Transnational Constitutional Anchoring' at ANU Centre for International and Public Law's *Public Law Weekend*, Canberra, 20-22 September 2012.

Keiran Hardy

'What is "Cyber-Terrorism?" Computer Technology and Counter-Terrorism Laws' at the *Cyber-Terrorism Workshop*, Swansea University, Wales, 13-14 September 2012.

Paul Kildea

'Ideas for Engaging Citizens in Constitutional Referendums', *Electoral Regulation Research Network Forum*, Parliament House, Sydney, 18 October 2012;

'Expert Panels and Constitutional Recognition', *Conference of the Australian Study of Parliament Group* (ASPG), Darwin, 4 October 2012;

'Expert Panels, Citizen Engagement and Constitutional Reform', *Conference of the Australian Political Studies Association* (APSA), Hobart, 24 September 2012;

'Expert Panels as a Mechanism of Constitutional Reform' at ANU Centre for International and Public Law's *Public Law Weekend*, Canberra, 20-22 September 2012.

Andrew Lynch

'*Williams v Commonwealth*', 2012 Government Solicitors Conference, Law Society of New South Wales, Sydney, 28 August 2012.

Jane McAdam

'Conceptualizing Crisis Migration', *Workshop on 'Crisis Migration'*, Institute for the Study of International Migration, Georgetown University, Washington DC, 26-28 September 2012;

'Any transfer agreement must, at a minimum, ensure that the asylum seeker will be admitted, enjoy effective protection against refoulement, have access to a fair and effective asylum procedure, and be treated in accordance with international refugee and human rights law and standards.'

Jane McAdam and other refugee law academics,
Submission to Expert Panel on Asylum Seekers



'What Research on Climate Change and Human Mobility Can/Should Provide for Practitioners and Policy Makers', *Research Roundtable*, The Brookings Institution, Washington DC, 26 September 2012;

'Legal Solutions: If a Treaty Is Not the Answer, Then What Is?', *Human Rights, Environmental Change, Migration and Displacement Conference* (Ludwig Boltzmann Institute, Vienna, 20–21 September 2012;

'A Career as a Legal Academic', *NSW Supreme Court's Tipstaves and Researchers Conference*, Sydney, 7 September 2012.

Nicola McGarrity

'The New National Security Inquiry', *Politics in the Pub*, Sydney, 26 October 2012;

'The Constitutional Recognition of Local Government', University of the 3rd Age, Redlands, 9 July 2012.

Tamara Tulich

'The Rise of the Preventive State? Prevention and Pre-emption in Mental Health, Serious Sex Offender and Anti-Terror Laws: notes on a case study of NSW mental health law', *Gilbert + Tobin Centre of Public Law 2012 Postgraduate Workshop in Public Law*, University of New South Wales, Sydney, 12-13 July 2012.

Rebecca Welsh

'Interpreting Chapter III', *Sydney Law School Postgraduate Conference*, University of Sydney, 1-2 November 2012;

'Interpreting the Separation of Judicial Power: Fusing Form with Function', *National Graduate Law Conference*, Australian National University, Canberra, 18 October 2012;

'Interpreting Chapter III: The Case for Purposive Formalism', *Gilbert + Tobin Centre of Public Law 2012 Postgraduate Workshop in Public Law*, University of New South Wales, Sydney, 12-13 July 2012.

Svetlana Tyulkina

'Militant Democracy: an Alien Concept for Australian Constitutional Law?' at ANU Centre for International and Public Law's *Public Law Weekend*, Canberra, 20-22 September 2012;

'Prohibition of Political Parties: Effective Tool to Square the Circle in the Business of Protecting Democracy?' *Conference of the Australian Political Studies Association (APSA)*, Hobart, 24 September 2012.

George Williams

'Privacy and Freedom of Speech' *Privacy in the 21st Century Symposium*, University of Technology Sydney, 7 December 2012;



George Williams giving the 10th Henry Parkes Oration at Old Parliament House in Canberra



'The Constitution and Electoral Funding in NSW' *Election Funding Forum*, Sydney, 29 November 2012;

'The Constitutionality of Compulsory Voting: The Implications of *Holmdahl* for Australian Democracy' *Electoral Regulation Research Network Public Forum*, University of Sydney, 26 November 2012;

'Building your Research Profile' *Public Law Research Forum*, Adelaide Law School, 23 November 2012;

'Can South Australia Legislate for Marriage Equality?' *2012 Dean Jaensch Lecture*, Flinders University, Adelaide, 22 November 2012;

'Race and the Australian Constitution: A Historical Perspective' *Blackheath History Forum*, Blue Mountains, 27 October 2012;

'Mission Impossible? Achieving Social Justice Through Constitutional Change' *10th Henry Parkes Oration*, Old Parliament House, Canberra, 24 October 2012;

'ASIO's Extraordinary Powers' *NSW Council for Civil Liberties Annual Dinner*, Sydney, 19 October 2012;

'Should Same-Sex Marriage be Legalised?' Catholic Society of St Paul and Secular Society, University of New South Wales, Sydney, 9 October 2012;

'Australia's Exclusive Model of Parliamentary Rights Protection' *Conference of the Australian Political Studies Association (APSA)*, Hobart, 24 September 2012;

'Australia's New Approach to Human Rights Protection: Can Parliament go it Alone?' *13th International Criminal Law Congress*, Queenstown, New Zealand, 16 September 2012;

'Does Constitutional Recognition Negate Aboriginal Sovereignty?' YouMeUnity, *National Congress of Australia's First Peoples and UNSW Indigenous Law Centre Open Forum*, Sydney Opera House, 13 September 2012;

'Australia's Exclusive Model of Parliamentary Rights Protection' UNSW Law School Seminar, Sydney, 11 September 2012;

'Can Tasmania Legislate for Marriage Equality?' Faculty of Law Seminar, University of Tasmania, Hobart, 29 August 2012;

'Indigenous Rights and Constitutional Recognition' *The Politics of Citizenship in an Era of Human Rights: An International Research Workshop*, Whitlam Institute, University of Western Sydney, 28 August 2012;

'Constitutional Recognition of Local Government' *100th Local Government Conference: Treasuring the Past, Transforming the Future*, Local Government Association of Tasmania, Hobart, 13 July 2012;

'Legal research and the Work of Courts and the Legal Profession' *Australasian Law Teachers Association Conference*, Sydney, 3 July 2012.

Joint Media Publications

Fergal Davis and Nicola McGarrity, 'There aren't many votes in supporting Hicks', *The Drum Opinion*, ABC Online (18 October 2012);

Andrew Lynch and Jennifer Goh, 'Failure to launch: what happened to indigenous recognition', *The Conversation* (21 September 2012);

Fergal Davis and Svetlana Tyulkina, 'Russia has already made Pussy Riot martyrs', *The Punch* (16 August 2012);

Mary Crock, Daniel Ghezelbash and Jane McAdam, 'Pacific Solution #2 Sparks Humanitarian Concerns', *Crikey* (14 August 2012);

Jennifer Goh and Nicola McGarrity, 'Just the beginning of a national security debate', *Inside Story* (2 August 2012).

Fergal Davis

'1920's Australia's lesson for Gillard in the Asian Century', *The Punch* (3 November 2012);

'Fearing for the Future' *Australian Jewish News* (2 November 2012).

Paul Kildea

'Time for a referendum roadmap' *Inside Story* (9 November 2012).

Andrew Lynch

'Gageler appointment welcome, but far from cage-rattling', *The Drum - Unleashed*, ABC Online (22 August 2012).

George Williams

'Dismissal Looms Large for a New Political Generation' *Sydney Morning Herald* (20 November 2012);

'Time to Give People Say in How Governor-General is Chosen' *Sydney Morning Herald* (6 November 2012);

'Law Letting ASIO Detain in Secret Belongs in a Police State' *Sydney Morning Herald* (23 October 2012);

'Time to Get Serious on Recognising Aboriginal Rights in the Constitution' *Sydney Morning Herald* (9 October 2012);

'States Leave Canberra Behind in Rush to Same-Sex Marriage' *Sydney Morning Herald* (20 September 2012);

'MP's Aim to Become Mayor Runs a Legal Risk' *Sydney Morning Herald* (7 September 2012);

'Here's Something Even Gillard and Abbott Might Agree On' *Sydney Morning Herald* (28 August 2012);

'Some of Our Anti-Terrorism Laws are Well Past Their Use-By Date' *Sydney Morning Herald* (14 August 2012);

'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'

Fergal Davis, *Politics* (2013) Vol. 33, No. 1



"In the decade from 11 September 2001 to 11 September 2011, the Commonwealth Parliament enacted 54 pieces of anti-terror legislation. From 11 September 2001 to the fall of the Howard Liberal-National Coalition government at the federal election held on 24 November 2007, the federal Parliament enacted 48 of these laws ... On average, a new anti-terror statute was passed every 6.7 weeks during the post-9/11 life of the Howard government."

George Williams, 'A Decade of Australian Anti-Terror Laws' (2011) 35 *Melbourne University Law Review* 1136



'Fatal Flaw in GST Design Dooms us to State-Federal Funding Stalemate' *Sydney Morning Herald* (31 July 2012);

'Challenge to Print Media Regulation Would Almost Certainly Fail' *Sydney Morning Herald* (17 July 2012).

Submissions

Joint Submissions

Shipra Chordia, Paul Kildea, Andrew Lynch, Nicola McGarrity and George Williams, Submission to the Joint Select Committee on Constitutional Recognition of Local Government (19 December 2012);

Sean Brennan, Paul Kildea, Andrew Lynch, and George Williams, Submission to the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples (19 December 2012);

Rafe Andrews, Keiran Hardy and Andrew Lynch, Submission to the Legal and Constitutional Affairs Legislation Committee Inquiry into the Migration and Security Legislation Amendment (Review of Security Assessments) Bill 2012 (14 December 2012);

Lisa Burton, Fergal Davis, Andrew Lynch, Nicola McGarrity, Tamara Tulich, Rebecca Welsh and George Williams, Submission to the COAG Review of Counter-Terrorism Legislation (21 September 2012);

Lisa Burton, Andrew Lynch, Tamara Tulich, Rebecca Welsh and George Williams; Submission to the Independent National Security Legislation Monitor on Control Orders and Preventative Detention Orders under the *Criminal Code Act 1995* (Cth) (10 September 2012);

Lisa Burton, Nicola McGarrity and George Williams, Submission to Independent National Security Legislation Monitor on ASIO Powers (3 September 2012);

Liam Boyle, Timothy Boyle, Patrick Gardener and Rebecca Welsh, Submission to the Parliamentary Joint Committee on Intelligence and Security, Inquiry into Potential Reforms of National Security Legislation (13 August 2012);

Jessie Blackbourn, Fergal Davis, Jennifer Goh, Keiran Hardy, Nicola McGarrity and George Williams, Submission to the Parliamentary Joint Committee on Intelligence and Security, Inquiry into Potential Reforms of National Security Legislation (1 August 2012);

Jane McAdam and 16 refugee law academics, Submission to Expert Panel on Asylum Seekers on transport of asylum seekers (11 July 2012).

Sean Brennan

Submission to Senate Community Affairs Committee Inquiry into Low Aromatic Fuel Bill 2012 (24 July 2012).

George Williams

Submission to House of Representatives Social Policy and Legal Affairs Committee Inquiry into Do Not Knock Register Bill 2012 (19 July 2012).



Centre members at visitor Grant Hoole's farewell

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