Dear Friend,

2013 was a wonderful year for the Gilbert + Tobin Centre, filled with stimulating events, visitors, new projects, an important gift by Sir Anthony Mason AC and the arrival of new Centre members.

In the six months since our last newsletter, the Centre has hosted workshops on Relocation, Land Rights and Governance in the Pacific, Constitutional Amendment and Its Limits, the High Court, the Constitution and Australian Politics, and Comparative Constitutional Law; as well as six seminars and two master-classes.

The centre was fortunate to host two visitors, for an extended period, Professor Janet Hiebert from Queens University (Canada) and Professor Liora Lazarus from Oxford University. It has also benefited from shorter visits by Dr Alexander Williams (Durham University), Dr Elizabeth Ferris (Brookings Institution, Washington DC), Assistant Professor Richard Albert (Boston College Law School), Assistant Professor David Landau (Florida State University), Professor Satvinder Juss (King’s College London), Professor Fiona de Londras (Durham Law School & Human Rights Centre), Dr William Partlett (Columbia Law School), Professor Claudia Geiringer (Victoria University of Wellington) and Professor Richard H. Fallon (Ralph S. Tyler, Jr. Professor of Constitutional Law at Harvard Law School). Many of these visitors also directly contributed to the Centre’s new project, launched this year, on Comparative Constitutional Law. I am delighted to have the privilege of being the inaugural Director of this project, and you will see from the following pages that we have already had several events as part of the Project, and that we also have a new and exciting web presence.

2013 also saw the beginning of another exciting new initiative, this time due to a generous gift by Sir Anthony Mason AC. The gift, together with support from the Centre and Faculty of Law, will allow for the award over the next 5 years of several Sir Anthony Mason PhD awards, to provide partial support to PhD students working in areas related to the Centre at UNSW.

Even more significant for the future of the Centre, in 2013 the Centre welcomed two new members, Dr Kristen Rundle (a leading legal theorist and public law scholar joining us from the London School of Economics) and Dr Jason Varuhas (the Faculty’s new post-doctoral fellow and a rising star in public law and legal remedies from Cambridge University). 2013 was also significant in marking the end (in June) of the term of Professor Andrew Lynch as...
Director of the Centre – and I know I speak for all members and friends of the Centre in congratulating Andrew on his outstanding leadership of the Centre over the last five years. As you will know from reading this newsletter over that period, he achieved an enormous amount as Director, and the Centre has been greatly strengthened by his leadership. The Centre is very fortunate that Andrew has agreed to continue his role as Director of the Centre’s Judiciary Project, and to provide assistance in the Centre’s transition to new leadership.

The end of 2013 also marked certain departures from the Centre, including a move by Tamara Tulich (a member of the Anti-Terror Laws Project) to UWA, and by Professor Jane McAdam (the International Refugee and Migration Law Project) to become the Director of the new Andrew and Renata Kaldor Centre for International Refugee Law. We particularly congratulate Jane on this new role, and thank her for her significant contribution to the Centre over the last few years. While we are sad to see her move formal homes, we look forward to continuing to work closely with her on joint initiatives in the years to come.

As many of you may know, Associate Professor Sean Brennan, a leading scholar of public law and indigenous legal issues, has been appointed as the new Centre Director commencing in March 2013, and we all greatly looking forward to his assuming his position.

Before March, however, we also have our major annual event, the 2014 Constitutional Law Conference and Dinner, to look forward to. We have a terrific line-up of speakers for the event, including Senator George Brandis, Justice Mark Leeming, Professors Adrienne Stone, George Williams, Kath Geiber, A.J. Brown, Associate Professors Joo-Cheong Tham and James Stellios, Dr Amelia Simpson, Mr Stephen McLeish SC and leading junior counsel at the NSW and Victorian Bars, Mr Michael Izzo and Dr Albert Dinelli, and Ms Joanna Davidson from the NSW Solicitor-General’s office.

We very much hope to see you there!

Professor Rosalind Dixon
Acting Director
High Court Workshop

On 7/8 November 2013 the Centre hosted a workshop of leading Australian constitutional lawyers and political scientists on the ‘The High Court, the Constitution & Australian Politics’, as part of the preparation of a collection of essays on this topic co-edited by Acting Centre Director Rosalind Dixon and Professor George Williams, which will be published in 2014 by Cambridge University Press. The workshop involved the presentation and discussion of draft chapters on the 12 distinct eras in the High Court’s history corresponding to the tenure of each Chief Justice, as well as thematic/overview chapters on rates of constitutional invalidation by the High Court across its history, patterns of judicial dissent and processes of constitutional amendment. The Centre was privileged to have the benefit of the insights of Sir Anthony Mason for the event, and also greatly benefited from commentary by Centre Visitors and overseas experts on constitutional law and politics, A/Professor Gerry Rosenberg and Professor Janet Hiebert.

2013 Final Courts Roundup

This event, hosted by the Centre for the third time, provided an outline of recent constitutional developments in three jurisdictions – the United States, Canada and New Zealand – of key interest to Australian constitutional lawyers. This year the event featured three leading international constitutional experts: Professor Richard Fallon (Harvard Law School), Professor Janet Hiebert (Queens University), and Professor Claudia Geiringer (Victoria University of Wellington). These experts discussed cases in their jurisdictions involving voting rights, affirmative action, gay rights (same-sex marriage in the U.S., and anti-gay hate speech in Canada), indigenous/treaty rights, de facto partnerships and disability-care. Professors Hiebert and Geiringer also explained broader controversies over the appointment of a new justice to the Supreme Court in Canada, Charter vetting/compliance and processes of constitutional review in New Zealand. Together with Professor Rosalind Dixon, as Chair, the three panelists also discussed the potential relevance of these comparative developments for current issues in Australian constitutional law.

Comparative Constitutional Law Roundtable

On 11 December, as an adjunct to the Final Courts Roundup, the Centre hosted a small comparative constitutional law roundtable for constitutional scholars. The topics of papers at the workshop included papers on ‘The Meaning of Legal “Meaning” and the Indeterminacy of Interpretive Theories’ (by Professor Richard Fallon), ‘Constitutional Completeness, Specificity & Coherence’ (by Acting Director Rosalind Dixon) and ‘American Ideas Abroad: A Conceptual Map for the Comparative Application of U.S. Supreme Court Decision-Making Models’ (by Professor Theunis Roux, UNSW). Commentary on these papers was also given by Dr Dale Smith (Monash), Professor Claudia Geiringer, Professor Adrienne Stone (Melbourne), Dr William Partlett (Columbia Law School), Professor Janet Hiebert and Professor Helen Irving (Sydney). The Centre was again fortunate to have in attendance Sir Anthony Mason, as well as numerous other scholars and friends of the Centre.
Workshop on Constitutional Amendment and Its Limits

A lunchtime workshop on this topic was held on 21 August with Centre visitors Assistant Professors Richard Albert (Boston College Law School) and David Landau (Florida State University) along with Dr Carlos Bernal-Pulido (Macquarie University) and Acting Centre Director Rosalind Dixon. The workshop explored the comparative experience of constitutional amendment in countries such as India, Germany, the U.S., Colombia, Nicaragua, Venezuela and Hungary, and also considered the potential advantages, and disadvantages, of courts attempting to set limits on the amendment process.

Workshop on Relocation, Land Rights and Governance in the Pacific

This workshop brought together 12 researchers from the disciplines of law, geography and political science working on the relocation of populations in the Pacific linked to environmental change. The purpose of the workshop was to connect researchers from different institutions in Australia, New Zealand and the United States to discuss key issues, gaps, needs and challenges in the research agenda; identify synergies in research and scope for future collaboration; and find ways of better linking research into international and national policy discussions. A full report of the workshop can be found here: http://www.gtcentre.unsw.edu.au/sites/gtcentre.unsw.edu.au/files/relocation_workshop_report_2.pdf.

Centre Seminars/Master-Classes

During the last six months there have been a number of seminars given by Centre visitors:

- Associate Professor Nick Stephanopoulos (University of Chicago) gave a seminar on ‘Elections and Alignment’;
- Dr Alexander Williams (Durham University) spoke on ‘The Scope of Judicial Review’;
- Dr Elizabeth Ferris (Brookings) discussed ‘Syria’s Humanitarian Crisis: Implications for International Law and Global Governance’;
- Professor Liora Lazarus (Oxford) on ‘Positive Obligations and Criminal Justice: Duties to Protect or Coerce’;
- Professor Janet Hiebert (Queens) on ‘Protecting Rights and the Westminster Challenge’;
- Dr William Partlett, Columbia Law School, gave a seminar on ‘Criminal Law & Co-operative Federalism’.

A number of master-classes were given following Centre meetings:

- Dr Liora Lazarus gave a class on ‘Positive Obligations and Criminal Justice: Duties to Protect or Coerce’;
- Professor Gerry Rosenberg gave a class, based on his well known book *The Hollow Hope*, on ‘Constitutional Courts and Social Change’.

Participants at the Workshop on ‘Constitutional Amendment and Its Limits’: Assistant Professor Richard Albert, Dr Carlos Bernal-Pulido, Assistant Professor David Landau and Acting Centre Director Professor Rosalind Dixon

Centre seminar with speaker Associate Professor Nick Stephanopoulos, University of Chicago

Professor Gerry Rosenberg who participated in the High Court Workshop and delivered a Master-class to Centre and Faculty members
How to Solve the Problem of the Senate

There are a number of ways to measure the health of a voting system. For me, the most important is how well that system translates the preferences of voters into electoral outcomes.

Put simply, as far as is possible, the outcome should be determined by whom voters would actually like to see elected.

Unfortunately, the 2013 Senate elections failed this test.

You know you have a problem when voters are issued with a magnifying glass just to read the ballot paper. This was necessary in NSW because there was a record 110 Senate candidates and the ballot paper was 45 columns wide.

The reason for the profusion of parties and candidates was because, based upon the prior NSW upper house experience, people realised they could exploit the voting system to produce outcomes that had little relationship to voters’ actual intentions.

The capacity for exploitation is based upon the following:

• Voters have the option of making the full extent of their preferences known, but this can be an elaborate and complex exercise. Filling in all 110 boxes below the line takes a level of commitment beyond almost every voter, and creates the real prospect that a minor mistake will lead to informality.

• Voters can take the simple option of numbering one box above the line, but in doing so they abandon control over their preferences to the party of their first choice. Overall, over 95% of voters choose this method, meaning that the distribution of preferences in the Senate is determined largely by deals between political parties.

• The above the line preferential system lacks transparency. By and large, voters have no idea of where the party of their first choice will actually allocate their preferences. Parties commonly enter into deals with other parties involving the transfer of votes across hard ideological lines in return for hoped for electoral benefits. It means that a voter can vote for a party only to find that their preferences end up with a different party for which they never would have considered casting a vote. There are many examples of this at the 2013 election, and other prior examples, such as the election of a Family First candidate in Victoria on the back of Labor preferences.

These weaknesses in the Senate voting system enable a profusion of parties with tiny levels of popular support to exploit an unwieldy ballot paper, manipulating preference flows by way of aggregating their preferences.

The result is a lottery in which a micro party securing an infinitesimal first preference vote can win a seat in the Senate.

This is a perversion of Australian democracy. It means that the Senate does not reflect the will of the people. It instead reflects voter confusion and the inability of people to grasp a complex web of preference deals.

The outcome also threatens good governance, and so community well-being. Where a micro party Senator shares the balance of power, they
can hold the government to ransom. Moreover, they can do this without a significant popular constituency of their own to hold them to account.

This introduces an unchecked, maverick element into the Senate that can produce special deals at odds with the national interest. It is hard enough to govern the country as it is, let alone while beholden to such interests.

NSW has already seen too much of this due to the micro parties in its upper house. The compromise forced on the O’Farrell government by the Shooters and Fishers Party, by which hunting is to be introduced into NSW National Parks, is a good example.

When the Senate membership changes over on 1 July next year, what will be the price demanded by Australia’s new micro parties? Will the Motoring Enthusiasts Party for example demand unrestricted four wheel drive access to World Heritage areas managed by the Commonwealth?

This problem needs to be fixed. The voting system to this point has suited the major parties, which have benefited from control over people’s preferences.

It is now in their interest though to reform the system given how it is being used against them. Unless reforms are made, there is a possibility that the ballot paper will be even larger next time round, and that the major parties themselves might need to take on the micro parties by forming their own micro party supporters to channel preferences to themselves.

I would put the following four changes on the table. All would involve changes to the Commonwealth Electoral Act.

I would not say that all of these need to be made, but that all should be considered as part of the reform agenda.

1. **Preferential voting above and below the line**

   Just as voters can express their preferences below the line, so too should they be able to do this above the line.

   Voter should be able to indicate a preference between the listed parties and any independent candidates.

   I would prefer that voters be required to indicate the full extent of their preferences, just as they do in the House of Representatives, but would be open to considering an optional preferential voting model, like that used for the New South Wales upper house.

   If optional preferential voting is allowed above the line, I imagine it should also be permitted below the line.

   The benefit of this reform is that it does not limit new parties from forming, but removes the incentives for micro-parties to form with the intention of harvesting votes through preferences. It encourages smaller like-minded parties to coalesce and grow by attracting votes and building real support in the electorate. Under this system, it is much less likely that candidates would be elected through miniscule first preference votes and high rates of transferred votes.

2. **Robson rotation of candidate names**

   The success of the Liberal Democrat Party in the 2013 federal elections was in part attributed to its strategic position on the ballot paper. To prevent unfair advantage or disadvantage caused by placing on the ballot paper, a process of rotating candidate names within a column, through printing different versions of the ballot paper, would mean that favoured positions are
shared equally between all candidates. The Tasmanian parliament and the ACT legislative assembly have adopted the Robson Rotation.

3. Party registration

We should tighten the regulation of political parties to be in line with New South Wales legislation. Under the Parliamentary Electorates and Elections Act 1912 (NSW), an ‘eligible party’ means a party that has at least 750 (vs 500) members.

4. Threshold Quotas

A party (or independent candidate) should not see its candidates eligible for election to the Senate unless they have collectively attracted at least 4% of the first preference vote. Where they fall under this threshold, their preferences should be allocated to the remaining people and parties.

This minimum threshold is reflected in existing provisions in electoral legislation.

Under the Commonwealth Electoral Act 1918 (Cth), a Senate group as a whole must receive at least 4% of formal first preference votes in the Senate Election in that state or territory in order to be entitled to election funding.

The 4% figure is also significant where it is specified that the $2000 deposits for the Senate are returned only if a candidate gains more than 4% of the total first preference votes or is in a group of Senate candidates which polls at least 4% of the total first preference votes.

Thresholds have been used in party-list proportional representation systems around the world. This stipulates that a party must receive a minimum percentage of votes, either nationally or within a particular district to gain a seat in parliament.

- Under the additional member system in Germany, there is a threshold of 5%, only applicable where the party does not win at least one electoral seat.

- Likewise in New Zealand under the mixed-member proportional electoral system, there is a 5% threshold.

- Israel has a 2% threshold under its nation-wide proportional representation system.

- Turkey has a 10% nationwide threshold under its closed list proportional representation system; and

- Sweden has a 4% nationwide threshold under its party-list proportional representation system.

Conclusion

These changes are a sensible way of eliminating gaming from the system. Voters, and not parties, should choose how preferences are allocated.

There should not be a windfall of votes because of the luck of the draw on the Senate ballot paper.

And if a party cannot attract at least four first preference votes out of every 100, they have no place in controlling the future direction of the country in the Senate.

George Williams
Kristen Rundle joined UNSW Law as a Senior Lecturer in November 2013, following four years as a Lecturer at the Department of Law, London School of Economics and Political Science. Kristen was awarded an SJD from the University of Toronto, where she also held the Doctoral Fellowship in Ethics at the Centre for Ethics. She undertook an LLM (honours) in public law and legal theory from McGill University as the 2001 Australian Lionel Murphy Postgraduate (Overseas) Scholar, and also holds a BA/LLB (first class honours) from the University of Sydney. Her book, *Forms Liberate: Reclaiming the Jurisprudence of Lon L Fuller* (Hart Publishing, 2012) was awarded second prize, Society of Legal Scholars Peter Birks Book Prize for Outstanding Legal Scholarship, 2012.

‘Influenced significantly by the thought of the late American legal philosopher, Lon Fuller, we have long held a fairly settled understanding of what the idea of the rule of law means in formal terms. The laws of a system committed to the rule of law, the idea goes, must be published, prospective, possible to comply with, and so forth. This seems a straightforward prescription, but its underlying ideas are much more subtle. As Fuller saw things, for instance, the formal attributes of the rule of law carry a particular political story about the equality and agency of persons in their interactions with the state. If the state purports to govern through law, its legal arrangements must respect the subject as a subject, and not just an object to be managed or acted upon at the state’s will.

This all sounds good, but how exactly does it translate into practice? This has always been a vexed question, but it is arguably still more so when we consider the complex landscape of contemporary government administration and its increasing reliance on the practice of contracting-out government service delivery to private actors. Here there are questions to confront not only about who wields public power, but also about the forms through which this takes place: the contract is, after all, the quintessential private legal form to which the ‘beneficiaries’ of contracted-out government ‘service delivery’ are rarely direct parties. Moreover, if we are interested in the vulnerability dimensions of the rule of law tradition, there are still further questions to be raised in contexts that implicate a high degree of human vulnerability, such as outsourced prisons or immigration detention and removal ‘services’, or care homes for the elderly, the mentally ill, or children.

My project with the G+T Centre for Public Law seeks to explore these and other issues that arise at the interface between contracting-out, vulnerability, and the rule of law. Combining theoretical reflection on the content, presuppositions, and adaptability of our received ideas about state-subject relationships under the rule of law with empirical investigation into actual outsourcing practices, my research aims to answer questions such as the following. Does the turn to contract reshape relations between the state and its subjects in a manner that is no longer recognisable to our received ideas about the rule of law? If so, do we simply need to rethink our ideas about the rule of law in a way that is more compatible with the contractual mode? Or has something fundamental been altered by the very turn to contract that cannot be redeemed by or remedied within it? Or, indeed, is all of this just a storm in a teacup, with nothing of human significance at stake in the turn to contract, in high-vulnerability settings or otherwise?’
Dr Jason Varuhas

Dr Jason N. E. Varuhas joined UNSW Law in November 2013 as the Dean’s Postdoctoral Research Fellow. He joined the Law Faculty from the University of Cambridge, where he remains a Junior Research Fellow at Christ’s College (intermitting for the term of his UNSW Fellowship) and a member of the Cambridge Faculty of Law’s Centre for Public Law. He also held several other roles in Cambridge including Affiliated Lecturer in the Faculty of Law, co-convening and teaching on the LL.M. Public Law Course, Keeper of the Statutes at Christ’s College, leading major reforms to the College’s statutes, as well as serving as chair and co-convenor of the Centre for Public Law’s external speaker series and as a member of the Centre’s Management Board.

Jason was awarded his Ph.D. in the University of Cambridge in 2011, his studies being supported by a NZ$250,000 grant from the New Zealand Government as well as an honorary scholarship from his College, Sidney Sussex. In the second year of his doctoral studies he spent six months at Yale University as a Fox International Fellow, conducting research towards his thesis. His doctoral thesis, entitled ‘Damages for Breaches of Human Rights: A Tort-Based Approach’, was awarded the prestigious Yorke Prize, for a doctoral thesis of exceptional quality, which makes a substantial contribution to its relevant field of legal knowledge. The thesis formulates a normative theory of human rights damages, the principal argument being that such damages ought to be governed by the same rules and principles that govern damages within the torts actionable per se, which have long afforded strong protection to fundamental human and proprietary interests in English law. The thesis also considers alternative approaches to human rights damages, with a focus on those adopted by courts in England and abroad, as well as the implications of the so-called public law/private law distinction for how courts ought to approach such awards. Jason is currently working on a book based on the thesis, which is forthcoming in 2014 with Hart Publishing, Oxford.

Prior to his doctoral studies Jason completed a LL.M. (Distinction) at University College London with the support of a Commonwealth Scholarship. He was awarded the Derby/Bryce Prize in Law, for first place overall in the University of London LL.M., as well as the Jevons Institute Prize for excellence in competition law and economics. Prior to commencing his graduate studies, among other roles Jason worked as a Junior Lecturer at the Victoria University of Wellington Law Faculty and as Judge’s Clerk to the Honourable Justice O’Regan at the New Zealand Court of Appeal. He completed his undergraduate studies at Victoria University, in his native Wellington, graduating LLB (Hons, First Class) and B.A. (Economics). In 2008 Jason was awarded the New Zealand Law Foundation/New Zealand Law Society Prize for the young barrister or solicitor adjudged as giving the most promise of service to and through the New Zealand legal profession.

‘My interests lie in public law, tort law, remedies, and the public law-private law divide. I have recently completed a number of projects, including an article in the Cambridge Law Journal responding to the claim that English administrative law has been recalibrated around the concept of “rights” and which engages in a conceptual analysis of “rights” across administrative law, a forthcoming article in the Oxford Journal of Legal Studies which considers the concept of “vindication” in the law of torts, with a focus on the interrelationship between the vindicatory function in tort and damages, and a shorter piece in the Law Quarterly Review with Dr P.G. Turner (Cambridge) which considers whether public authorities exercising law enforcement functions ought to be required to proffer an undertaking as to damages in exchange for grant of interim injunctive relief.'
'When one looks around the usual comparator jurisdictions, only the Supreme Court of New Zealand is on a par with the High Court of Australia for near equality of membership according to gender … So in terms of gender representation on our highest Court, the picture in Australia is a remarkable contrast with the all-male Court of a decade ago and it compares favourably with equivalent Courts. Ten years ago the High Court was an anomaly, now it is a leader amongst final Courts.'


In addition to my book I am currently working on a number of projects. My main project during the research fellowship at UNSW is on “mapping” public law. The project seeks to further our understanding of public law by delineating and categorising fields of public law doctrine according to the distinct functions performed by each field, and the different nature of the obligations within each field. Once public law is broken down in this way it becomes apparent that there is no functionally unitary concept of “public law” – rather, different fields of public law doctrine perform fundamentally distinct functions – and that some bodies of public law doctrine perform near-identical functions to bodies of private law doctrine, while the nature of the obligations may also be analogous across public and private law fields. In turn this casts serious doubt on the utility of the public law/private law distinction as an analytical tool; indeed the analysis demonstrates that recourse to this broad distinction may distort our understanding of legal doctrine and the development of the law.

Within the rubric of the Gilbert + Tobin Centre of Public Law’s new Administrative Law initiative I will be working on a project on “Remedies Against Public Authorities” with Dr Greg Weeks, which will include a conference on the topic. I am also writing a chapter on substantive review for an edited collection picking up themes in the late Professor Michael Taggart’s scholarship, a chapter on the House of Lords’ decision in the Fleet Streets Casuals case, significant for its implications for standing in English judicial review proceedings, for an edited collection on Landmark Cases in Administrative Law, as well as continuing work on an ongoing project critically analysing the approach taken by the UK Supreme Court to damages for false imprisonment in its 2011 decision in Lumba, which has – worryingly - been applied in at least one Australian Federal Court decision.

I am also co-convenor, with Professor John Bell and Dr Mark Elliott (both Cambridge), for a major international public law conference to be held at the University of Cambridge Faculty of Law in September 2014. It is envisioned that this will be the first in an ongoing series of biennial conferences on public law, bringing together public lawyers from across common law jurisdictions. The theme of the inaugural conference is “Process and Substance in Public Law”.

Centre Visitors

Janet Hiebert
Queens University

I visited the Centre from September until December. While here, I worked on my current research project investigating how recent Australian political reforms are influencing bureaucratic evaluations and parliamentary scrutiny of legislation from a rights perspective; what I refer to in my work as legislative rights review.

This idea of including legislative rights review in a bill of rights originated in Canada in 1960, and has been subsequently adopted and adapted by New Zealand, the United Kingdom, and in Australia by the Australian Capital Territory and Victoria. The idea is associated with ministerial reporting on whether legislative bills are compatible with protected rights, which is expected to facilitate greater attention to how legislation implicates rights and its justification where rights might be adversely affected. The Commonwealth parliament has also engaged this idea, but without a bill of rights.

This idea of proactive rights engagement is both bold and ambitious. If robustly interpreted, this concept of reporting on consistency and subsequent parliamentary review ensures that more attention will be paid to how legislation implicates rights, which will improve how bills are conceived.
and drafted. Interviews with public officials confirm that a focus on how a legislative bill implicates rights leads to greater attention to compliant ways of achieving a government’s objective. This idea of proactive engagement with rights also suggests that a far greater range of legislative actions will have been subject to a form of rights review and rights-inspired deliberation, than the relatively small fraction of legislation that will be subject to judicial review in more conventional bills of rights. Many also prefer this parliamentary focus on protecting rights over strong-form judicial review, because of democratic concerns about empowering courts to invalidate the legislative decisions of parliament.

However, this idea of legislative rights presents a significant challenge for Westminster-based parliaments. Not only is this task complicated by the contested nature of queries into how rights appropriately guide or constrain specific legislative objectives, it is also complicated by how a Westminster-based parliamentary system impacts on political behaviour. The central role that cohesive political parties play in organizing the parliamentary vote provides government relatively strong confidence in its ability to pass its legislative agenda in majority situations. The centrality of cohesive political parties also has an important effect for how parliamentarians engage with legislative bills. The perpetual role of the opposition to present itself as the alternative to government, and high expectations that members will generally support their party leaders’ legislative agenda or strategies, leads to a parliamentary culture of ‘us vs. them’ where debates often boil down to two viewpoints – in favour or opposed. The use of a parliamentary rights committee with independent legal advice helps mitigate this tension. However, questioning ministers about how and why they believe bills are compatible with Convention rights can cause strains for government members on the committee, particularly when such queries are perceived as criticisms of government policy.

The research project examines how this concept of legislative rights review is functioning in Australia. It also assesses the significance of important variations in the respective approaches taken. Questions asked are: Does the lack of a serious threat of judicial censure impact on how bills are evaluated, reported and scrutinized? How robustly does government report on compatibility and what factors explain variations in the quality or character of reports? What effects do parliamentary scrutiny committees have on legislation and why?

While at the Centre, I presented a staff seminar, ‘Protecting Rights and the Westminster Challenge’, attended the workshop on ‘High Court, the Constitution and Australian Politics’, and participated in the Comparative Constitutional Law – Final Courts Round-Up 2013 and the Comparative Constitutional Law Roundtable.


This is a return visit for me and it was extremely enjoyable and valuable. While here, I benefited from extended conversations with George Williams and Andrew Byrnes, who have firsthand experience with the ideas and implications of legislative rights review, and also with Rosalind Dixon and Fergal Davis whose research interests overlap with mine. I also benefited from the opportunity to meet and discuss research interests in common with other visitors including Liora Lazarus, Gerald Rosenberg, Fiona de Londras and Research Fellow Jason Varuhas. I would like to extend a special thanks to Andrew Lynch and Rosalind Dixon for sponsoring and hosting my visit.
‘It is very difficult to identify precisely where ideas originate in asylum practices and how they cross-pollinate. … However, there exists what might be termed a “plagiaristic dialogue”, in that States borrow heavily from each other but typically without any clear acknowledgement.’


PhD Report: Sangeetha Pillai
Topic: The Public Law Parameters of Australian Citizenship

I joined the Centre in 2011 as a Research Assistant, and commenced my PhD candidature later that year as part of Professor George Williams’ ARC Laureate Fellowship Project ‘Anti-Terror Laws and the Democratic Challenge’. My research is supervised by Professor Williams and Dr Fergal Davis. Prior to joining the Centre, I practised in the Commercial Litigation team at Allens Arthur Robinson.

My thesis examines the legal boundaries of Australian citizenship, a topic I became interested in while completing my undergraduate studies at UNSW. The case law in this area is very limited. In part, this is because the Australian Constitution is silent on the topic of Australian citizenship, but provides for expansive legislative power with respect to ‘aliens’ and ‘immigration’. As a result, High Court authority on this topic focuses overwhelmingly on the legal meaning of ‘alienage’, rather than that of citizenship.

Nonetheless, cases in recent years suggest that there may be potential for a constitutional notion of Australian citizenship to arise implicitly, either from qualification as a ‘non-alien’, or through membership of the class of persons who comprise the ‘people of the Commonwealth’. My research considers the potential for such a concept to be developed, and its likely scope. It also examines the existence of citizenship rights and obligations under legislation and the common law, and analyses the interaction between each of these three legal domains with respect to citizenship.

As my research has progressed, I have found that while the legal rights and obligations of citizenship in Australia are less clearly stated than in a number of other countries, the potential for a relatively rich body of law to develop in this area is greater than appearances may suggest. My aim is to outline some of the ways in which such a body of law may emerge.

I have thoroughly enjoyed my PhD experience so far, and feel very grateful to have had the opportunity to be a part of the Centre and the Laureate Fellowship project. Both teams offer a supportive and collaborative environment, in which I have received invaluable feedback on my research, as well as the opportunity to provide feedback to other researchers. I have also had the opportunity to teach core courses at UNSW, to publish papers in peer reviewed journals, to collaborate with other Centre members on submissions to Parliamentary inquiries and to present my research at conferences in Oxford, Dunedin and around Australia. These experiences have given me insight into the diversity of an academic career, and have greatly contributed to my growth as a scholar.

Social Justice Intern Report
Nesha Bala

Working as an intern at the Gilbert and Tobin Centre for Public Law has been one of the most exciting experiences during my time at university. I am very grateful to have had the opportunity to explore my interest in constitutional law and human rights issues. My experience as an intern has given me a deep and practical insight into the depth and breadth of the Centre’s work and has further inspired me to develop my knowledge and skills in this area.

One of the highlights of the semester was attending the Symposium in Canberra celebrating the 30th anniversary of the Tasmanian Dams Case. I had the opportunity to assist Professor Dixon in her presentation on the Canadian Treaty power as a comparison to Australia’s treaty power. It was fascinating to research and understand the treaty implementation system in Canada as well as contrast that with Australia’s own. Attending the Conference and listening to experts in the field was thoroughly enjoyable.
It gave me a deeper understanding of the impact of the *Tasmanian Dams* Case as well as its consequences for constitutional law, international law on the environment and for human rights in Australia. The conference not only provided me with a ‘big picture’ understanding of the history and evolution of the Constitution in Australia, but was also compelling in that it highlighted how much more work there is to be done in this area of law.

The internship at the Centre also provided me with the unique opportunity to develop and refine my skills in writing opinion pieces. I was able to publish an Opinion piece on the Australian asylum seeker policy debate on the Australian Human Rights Centre website. Being prior to the election, there was vigorous debate surrounding this policy area. I am very grateful for Professor McAdam’s generous assistance in helping me enter this debate in a meaningful way, reviewing and refining my piece as well as assisting me to develop foundational skills in writing opinion pieces. Following from this experience, I was also able to publish an opinion piece on the Tasmanian Dams Symposium. I enjoyed the process of redrafting following from critical reviews from both Shipra Chordia and Professor Williams. This article, published by Online Opinion and the Oxford Human Rights Hub focused on the lack of human rights protections in the Australian Constitution and the need for Indigenous Recognition.

Throughout the semester I took great interest in researching for Professor Lynch on judicial appointments, for Professor Dixon on constitutional law issues as well as Professor Williams on Senate reform. I found the latter task to be particularly thought-provoking as I had a minimal understanding of the complex debates and problems surrounding senate voting prior to this task. Researching this issue allowed me to gain a thorough understanding of contemporary discussion on Senate voting as well as appreciate the urgency and necessity for reform in this area. This task provided me with the knowledge base and interest to publish an article with Online Opinion on this issue.

My internship with the Centre has allowed me to refine my skills in research, writing and analysis. Meeting academics at the Centre, attending research seminars and one of the Centre’s monthly meetings has given me a deep insight into the valuable work that academics in this field engage in. The internship has also impressed on me the value of the Australian Constitution, the importance of its continued evolution and the need for more widespread community engagement with our founding document. I would like to take this opportunity to express my heartfelt thanks to Professor Dixon for teaching me Constitutional Law, and thereby inspiring me to do this internship, as well as for her incredible encouragement and support as my supervisor while at the Centre.
It has been another busy period for the members of the Centre's Australian Research Council Laureate Fellowship: ‘Anti-Terror Laws and the Democratic Challenge Project’. Many of the PhD candidates associated with the project are putting finishing touches to their theses and preparing for life after the Laureate: we have been delighted to see colleagues securing permanent posts and even getting married. The project’s two postdoctoral researchers are working on books which are due to be submitted to publishers in 2014. All in all it has been a busy and productive period.

Fergal Davis, Nicola McGarrity and George Williams saw the publication of *Surveillance, Counter-Terrorism and Comparative Constitutionalism* (Routledge-Cavendish, 2013). That collection came out of the Workshop on Surveillance, Counter-Terrorism and Comparative Constitutionalism hosted by the G+T Centre in December 2012. The collection includes an introductory chapter by the editors and a further substantive chapter by Nicola McGarrity and George Williams, ‘From Covert to Coercive: A New Model of Surveillance for Intelligence Agencies’. It also brings together contributions from leading international scholars from India, Japan, Europe, the US and elsewhere.

Members of the Project have also been busy presenting their research. George Williams delivered the annual Blackshield Lecture at Macquarie University on the 10 October. It was an enjoyable evening and a powerful paper from George, ‘The Legal Legacy of the War on Terror’, provided an excellent overview of the work of the project.


In other news Nicola McGarrity was appointed to an ongoing position as a Lecturer at the University of New South Wales (commencing 14 January 2014). As a result Nicola’s current position became vacant and Rebecca Ananian-Welsh was appointed to that position from January to June 2014. From 1 July 2014 Rebecca will commence as a Lecturer at the TC Beirne School of Law at the University of Queensland. Continuing the employment theme, Tamara Tulich has been appointed as an Assistant Professor at the Faculty of Law UWA. The geographic influence of Project members will, therefore, be significant.

Sangeetha Pillai was awarded the prestigious Bruce Kercher Scholarship to support her attendance at the Australia and New Zealand Legal History Conference at the University of Otago, New Zealand, 25-27 November 2013.

Demonstrating our commitment to teaching excellence Rebecca Ananian-Welsh received the ‘Outstanding Teaching Commitment for Sessional Teachers’ Award, UNSW Law Staff Awards, 2013.
Looking forward, 2014 appears increasingly hectic with theses being completed and 3 sole authored books due for publication. The Project continues to make a significant contribution to the Centre and the debate on counter-terrorism laws in Australia and beyond.

**Comparative Constitutional Law Project**

**Project Director: Rosalind Dixon**

The new Comparative Constitutional Law Project launched this year aims to contribute to increased interest in and knowledge about comparative constitutional developments among constitutional scholars, and particularly, lawyers and legal policy-makers in Australia. The Project builds on the comparative work of the Director, Rosalind Dixon, as well as other Project affiliates, Drs Fergal Davis and Svetlana Tyulkina, and on links with a broader Faculty Working Group on Constitutionalism in New Democracies (co-directed by Rosalind Dixon and Professor Theunis Roux).

There is a website with information on recent and upcoming events hosted by the Project, as well as links to other useful sites on comparative constitutional law, and judicial and legislative developments in certain other jurisdictions, and we would particularly like to thank the Centre’s social justice intern for Semester 1, Lyndon Goddard, for his excellent help in developing this website.

In 2013, the Project also hosted three key events: the Final Courts Roundup, the December Comparative Constitutional Law Roundtable and August workshop on Constitutional Amendments & its Limits.

**Federalism Project**

**Project Director: Shipra Chordia**

The second half of 2013 has seen the Federalism Project continue to focus its analysis on the repercussions of the High Court’s decision in *Williams v Commonwealth* (School Chaplains case). An extended treatment by Shipra Chordia, Andrew Lynch and George Williams was published as a case note in the *Melbourne University Law Review*. Shipra and Andrew authored a further paper considering the implications of the *Williams* decision for constitutional interpretation in Australia. This was presented at an ‘After Williams’ colloquium hosted by the University of Southern Queensland in October.

Andrew was invited to deliver a paper on the High Court’s decision in *Fortescue v Commonwealth* [2013] HCA 34 as part of a series of thematic panels examining different aspects of the Mineral Rent Resources Tax at the Australian Political Studies Association conference. The conference was held at Murdoch University in October.

Andrew and George both spoke at the Sir Samuel Griffith Symposium on Australia’s Federal Future in Brisbane in July. In November, they also participated in a lively roundtable discussion at the Sir Samuel Griffith Discussion Forum on an Australian Federation for the 21st Century. Both events were organised by colleagues working in the field of federal reform at Griffith University.

In the media, Andrew and Shipra published a pre-election article on *The Conversation* considering Tony Abbott’s commitment to undertaking federal-State reform. Against the background of the reignited Gonski funding debate, Shipra also published an article on *The Conversation* discussing the non-binding nature of intergovernmental agreements and the implications for long-term policy making when governments choose to ignore such agreements. In the *Sydney Morning Herald*, George considered the economic and social benefits that could be realised by undertaking federal reform. Most recently, Shipra and Andrew published a longer comment piece on *Inside Story* considering the three legal topics that are...
most likely to dominate the new Attorney General’s agenda: reforms to the Racial Discrimination Act; constitutional recognition for Indigenous people and Commonwealth executive expenditure after Williams.

In October, the new Commonwealth government appointed a National Commission of Audit to look into the scope and efficiency of the Commonwealth government. Andrew, Shipra and George made a submission to the Commission highlighting that very little empirical research had been undertaken into a number of critical areas relating to the Commission’s scope, including the ideal allocation of roles and responsibilities between the Commonwealth and State governments. We urged the Commission to adopt a recommendation by the 2009 Senate Select Committee on the Reform of the Australian Federation that attention be given to better supporting the sustained study of Australian federalism and options for its enhancement.

**Indigenous Legal Issues Project**

**Project Director: Sean Brennan**

Work on the Indigenous Legal Issues Project has focused on two areas: constitutional reform and native title. Project Director Sean Brennan addressed a community forum on constitutional change in the regional town of Parkes in November 2013. It was a welcome chance to engage with Aboriginal and non-Aboriginal people outside the metropolitan area, about the current Constitution, processes for changing it and some of the reform options presently under discussion. With Centre colleague George Williams, Sean also had the opportunity to again work with the National Congress of Australia’s First Peoples on constitutional change, an association that dates back to the first national meeting of the representative body held in June 2011, when the Centre conducted workshops for National Congress delegates in partnership with UNSW’s Indigenous Law Centre.

Sean has also been working with colleagues Megan Davis, Brendan Edgeworth and Leon Terrill on an edited collection of papers from the successful workshop held at UNSW earlier in 2013, Native Title: A Vehicle for Change and Empowerment. As a supervisor of postgraduate research, he has been associated with the successful completion of three PhDs in 2013, dealing with Orang Asli land rights in Malaysia (Yogeswaran Subramaniam), the tax treatment of benefits pursuant to mining agreements under native title and land rights regimes (Fiona Martin) and recent waves of reform affecting Aboriginal land in the Northern Territory (Leon Terrill).

**International Refugee and Migration Law Project**

**Project Director: Jane McAdam**

After seven years, the International Refugee and Migration Law Project has come to an end. This is not because we have exhausted our research on this issue – in fact, quite the opposite. The project will be transformed through a very exciting new initiative: the creation of the Andrew & Renata Kaldor Centre for International Refugee Law.

On 30 October 2013, the Andrew & Renata Kaldor Centre for International Refugee Law was launched at UNSW Law. It is the world’s first research centre dedicated to international refugee law issues, and it aims to bring a principled, human rights-based approach to the issue of refugee law and policy in Australia by feeding high-quality research into public policy debates and legislative reform. Its Founding Director is Professor Jane McAdam.

The Centre has been established through the generosity of Andrew Kaldor AM and Renata Kaldor AO, motivated by their deep concern about Australia’s treatment of refugees and asylum seekers. ‘We were distressed by the policies toward refugees of our two major political parties in the 2013
election. We decided we needed to do something,’ said Andrew Kaldor, who is the Chair of the Centre’s Advisory Committee. He and his wife Renata come from refugee backgrounds in Europe post-WWII.

The research that was being conducted under the auspices of the Gilbert + Tobin Centre’s International Refugee and Migration Law Project will thus continue in a new guise, along with new research projects and new staff. For further information, please see www.kaldorcentre.unsw.edu.au.

In the past semester, the International Refugee and Migration Law Project hosted two research visitors. Dr Elizabeth Ferris from the Brookings Institution in Washington DC spent the month of August with us. Beth is the Co-Director of the Brookings–LSE Project on Internal Displacement and a Senior Fellow in Foreign Policy at Brookings. Her work encompasses a wide range of issues related to internal displacement, humanitarian action, natural disasters and climate change. While at UNSW, she and Jane McAdam were working on an article about the meaning of ‘planned relocations’ in response to climate change (as part of Jane’s ARC Future Fellowship).

Beth also took part in a roundtable on ‘Relocation in the Pacific’ (organised under the auspices of the Future Fellowship; see page 4 for details), and met with other colleagues at UNSW about mutual research interests.

Beth gave a fascinating seminar on ‘Syria’s Humanitarian Crisis: Implications for International Law and Global Governance’, drawing on her recent trip to Lebanon and Jordan with representatives of UNHCR and the US Commission on International Religious Freedom. During the course of that trip, they talked to some 80 UN, NGO, government and civil society representatives and met with nearly 20 refugee families in the two countries.

Professor Satvinder Juss from King’s College London joined us from 19–20 August. He ran a PhD Master-class on ‘Complicity, Exclusion, and the “Unworthy” in Refugee Law’, and presented in the UNSW Law Staff Seminar Series on ‘Refugee Law and the Protection of Children fleeing Conflict and Violence in Afghanistan’.

The Forced Migration Reading and Writing Group continued to meet during the semester. Its activities will now be subsumed within the Andrew & Renata Kaldor Centre for International Refugee Law.

**Referendums Project**

*Project Director: Paul Kildea*

The last few months have been fairly quiet on the referendums front. With the abandonment of the proposed referendum on local government funding, the focus of constitutional change has shifted back towards the constitutional recognition of Aboriginal and Torres Strait Islander peoples. The Abbott government has indicated its support for a referendum on that issue, but has said that it does not want to rush the process. Attorney-General George Brandis announced in November that consultation on the wording of any proposal will continue to the end of 2014, led by the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander People.

The Centre has been active both in reflecting on the failed local government referendum process, and in providing commentary on the state of play on Indigenous constitutional recognition. Paul Kildea delivered a conference paper at the 3rd Biennial Electoral Regulation Workshop (held at the University of Queensland) arguing that the Gillard government’s decision to give unequal campaign funding to the Yes and No campaigns on local government reform (95% of funding was distributed to the former)
damaged the credibility of the process. He argued, however, that equal funding will not always be appropriate, and that governments should retain some flexibility to distribute money unevenly. Paul also discussed the abandoned local government referendum in a post on the UK Constitutional Law Blog, in which he examined the lessons that might be gleaned from that failed process, particularly for supporters of Indigenous constitutional recognition.

Looking ahead to a possible referendum on that issue, George Williams in the *Sydney Morning Herald* urged the Abbott government to establish a visible public process that fosters community input. He also warned that ‘well-meaning symbolism’ will ring hollow if it is not supported by more substantive constitutional change. In November, George addressed the relationship between constitutional recognition and treaty reform in a speech at an Intelligence Squared debate; he also delivered the *George Shipp Memorial Lecture*, speaking on the topic, ‘Is it Time to Write Aboriginal Peoples into the Australian Constitution?’. Also in November, Sean Brennan spoke at a community forum in Parkes where he outlined the substance of possible reforms and discussed the direction that the process might take in the months ahead.
PUBLICATIONS AND PRESENTATIONS

PUBLICATIONS

Joint Publications


Alysia Blackham and George Williams, 'Australian Courts and Social Media' (2013) 38 Alternative Law Journal 170-175;


Shipra Chordia, Andrew Lynch and George Williams, 'Williams v Commonwealth: Commonwealth Executive Power and Australian Federalism' (2013) 37 Melbourne University Law Review 189-231;

Fergal Davis, Nicola McGarrity and George Williams (eds), Surveillance, Counter-Terrorism and Comparative Constitutionalism (Routledge-Cavendish, 2013);

Fergal Davis, Nicola McGarrity and George Williams, 'Mapping the Terrain' in Fergal Davis, Nicola McGarrity and George Williams (eds), Surveillance, Counter-Terrorism and Comparative Constitutionalism (Routledge-Cavendish, 2013);


David Hume and George Williams, Human Rights under the Australian Constitution (Oxford University Press, 2nd ed 2013), 1-388;


Nicola McGarrity and George Williams, 'From Covert to Coercive: A New Model of Surveillance for Intelligence Agencies' in Fergal Davis, Nicola McGarrity and George Williams (eds), Surveillance, Counter-Terrorism and Comparative Constitutionalism (Routledge-Cavendish, 2013);

David Miller, Jessie Blackbourn, Helen Dexter and Rani Dhanda, Critical Terrorism Studies since 11 September 2001: What has been Learned? (Routledge, 2014).
Rebecca Ananian-Welsh

'Understood But Undefined: Why Do Argentina and Brazil Resist Criminalising Terrorism?' (2013) 7(3) Vienna Journal of Comparative Constitutional Law 327-348;

'Anti-Terror Preventive Detention and the Independent Judiciary' in Patrick Keyzer (ed), Preventive Detention: Asking the Fundamental Questions (Intersentia, 2013) 137-156;


Jessie Blackbourn

'Power without Responsibility: There is no Valid Scrutiny of Australia’s Anti-Terrorism Laws’ in D. Baldino (ed), Spooked (University of New South Wales Press, 2013), 264-287.

Rosalind Dixon


Jane McAdam

‘Migrating Laws? The “Plagiaristic Dialogue” between Europe and Australia’ in H Lambert, J McAdam and M Fullerton (eds), The Global Reach of European Refugee Law (Cambridge University Press, 2013);


George Williams


‘The Legal Legacy of the “War On Terror”’ (2013) 12 Macquarie Law Journal 3-16;

‘Tony Blackshield as a Teacher and Author’ (2013) 12 Macquarie Law Journal 17-19;

‘True Reconciliation Requires a Treaty’ Oxford Human Rights Hub Blog (20 November 2013);

‘Australia’s Federal Future’ Sir Samuel Griffith Series (Griffith University, 2013), 1-5;

‘How to Solve the Problem of the Senate’ NSW Labor Lawyers Guest Blog (25 October 2013);

PRESENTATIONS

Joint Presentations

Julian Burnside QC and Jane McAdam, Keynote speakers for Human Rights Day, the International Commission of Jurists and NSW Young Lawyers, Sydney, 12 December 2013;

Shipra Chordia and Andrew Lynch, 'Federalism in Australian Constitutional Interpretation: the Significance of Williams v Commonwealth', After Williams Colloquium, University of Southern Queensland, Toowoomba, 4 October 2013;

Paul Kildea and George Williams, 'The Mason Court', The High Court, the Constitution and Australian Politics Workshop, University of New South Wales, Sydney, 7-8 November 2013.

Jessie Blackbourn

'Independent Reviewers as Alternative; an Empirical Study from Australia and the UK', Bar Association of New South Wales, 21 November 2013.

Sean Brennan

'Should We Change the Australian Constitution?', Constitution Information Night, Parkes Reconciliation Group, Parkes, 27 November 2013.

Fergal Davis


Rosalind Dixon


Comment on 'Panel on Socio-economic Rights in Comparative Perspective', Macquarie University International Symposium on Constitutional Rights, August 2013;

'Treaty Implementation & the Tasmanian Dam Case: A Comparative Perspective', ANU CIPL Conference on the 30th Anniversary of the Dam Case, August 2013;

'Constitutional Interpretation Curves', George Washington School of Law Comparative Constitutional Law Workshop, February 2013;


'Two themes unite the changes under consideration: tackling discrimination and, for the first time, recognising Aboriginal and Torres Strait Islander peoples in positive terms in the words of the Australian Constitution'.

Sean Brennan, 'Should We Change the Australian Constitution?', Constitutional Forum, Parkes, 27 November 2013.
'Since every choice an asylum seeker makes involves risk, it is unsurprising that threats of detention or offshore processing don't necessarily deter in the way policymakers might anticipate.'


Keiran Hardy


Paul Kildea


Andrew Lynch

‘Judicial Dissent, Diversity and Electoral Politics’, The High Court, The Constitution and Australian Politics, Gilbert + Tobin Centre of Public Law, UNSW, 7 November 2013;


‘The MRRT – the Constitutional Context and Challenge’, 2013 Australian Political Studies Association Conference, Murdoch University, Perth, 2 October 2013;

‘Roles and Responsibilities’ Sir Samuel Griffith Symposium – Australia’s Federal Future, ANZSOG and Griffith University, Brisbane, 26 July 2013.

Jane McAdam

‘Australia and Asylum Seekers: Taking the Politics out of Protection’, address to the University of the Third Age, Mittagong, 8 November 2013;

‘The Changing Climate of Climate Change and Migration: The Nansen Initiative on Disaster-Induced Cross-Border Displacement’, NSW Young Lawyers Symposium, 7 November 2013;


Macquarie Group Legal and Governance Mid-Year Function, 8 August 2013.

Nicola McGarrity

‘Terrorists, Bikies and Secret Evidence’, Law, Justice and Secrecy Workshop, Legal Intersections Research Centre, University of Wollongong, 6 November 2013;

Sangeetha Pillai


George Williams

‘Maintaining Momentum in Federal Reform’ Discussion Forum on an Australian Federation for the 21st Century, Sir Samuel Griffith Legacy Series, Griffith University, Brisbane, 20 November 2013;

‘True Reconciliation Requires a Treaty’ Intelligence Squared Debate, Wheeler Centre, Melbourne Town Hall, 12 November 2013;

‘The Mason Court’ The High Court, The Constitution and Australian Politics Workshop, UNSW, 8 November 2013;

‘Is it Time to Write Aboriginal Peoples into the Australian Constitution?’ George Shipp Memorial Lecture, WEA Sydney, 5 November 2013;

‘High Court Challenges and the Limits of Political Finance Law’ 3rd Biennial Electoral Regulation Workshop, University of Queensland, Brisbane, 31 October 2013;

‘The Scope and Constitutionality of the Same Sex Marriage Bill 2013 (NSW)’ NSW Parliament, Sydney, 30 October 2013;

‘How to Solve the Problem of the Senate’ Public Forum, New South Wales Society of Labor Lawyers, Parliament House, Sydney, 24 October 2013;


‘The Legal Legacy of the War on Terror’ Blackshield Lecture, Macquarie University, 10 October 2013;

‘Human Rights Law Reform in Australia’ Public Interest Advocacy Centre, Sydney, 19 September 2013;

‘Same-Same but Difficult?’ Hot Topics Law Reform Event, Law Institute of Victoria Young Lawyers Seminar, Melbourne, 12 September 2013;

‘The State of Play on Aboriginal Constitutional Recognition’ Constitutional Recognition Workshop, National Congress of Australia’s First Peoples, Sydney, 10 September 2013;

‘Recognising Aboriginal Peoples in the Constitution’ Open Seminar, The George Institute for Global Health, Sydney, 4 September 2013;

‘Human Rights and the Tasmanian Dams Case’ 30th Anniversary Symposium on the Tasmanian Dams Case, Australian National University College of Law, Canberra, 22 August 2013;

‘Should Aboriginal Peoples be Recognised in the Australian Constitution?’ Whitlam Institute and University of Western Sydney School of Law, Parramatta, 20 August 2013;

‘The Williams Case and Australian Federalism’ COAG Reform Council Seminar, Sydney, 15 August 2013;

The Strengths and Weaknesses of the Australian Federation: How Do We Maximise the Potential and Diminish the Weaknesses?’ Sir Samuel Griffith Symposium: Australia’s Federal Future, Griffith University, Brisbane, 26 July 2013;


MEDIA PUBLICATIONS

Joint Media Publications

Shipra Chordia and Andrew Lynch, ‘The Brandis Agenda’ Inside Story (4 December 2013);

Shipra Chordia and Andrew Lynch, ‘Federal-State reform: is Abbott offering the real deal?’ The Conversation (21 August 2013);

Mary Crock, Michelle Foster and Jane McAdam, ‘Overheated Carr Takes Aim at Scapegoats in Boats’ The Age (2 July 2013);

Jane McAdam and Ben Saul, ‘Inefficient Coalition Asylum Policy Will Flood the Courts’ The Age (16 August 2013).

Jessie Blackbourn


Shipra Chordia

‘Legally binding or not? Why breaking the Gonski funding deals matters’ The Conversation (27 November 2013).

Fergal Davis

‘A smaller parliament and no upper house is not a good recipe for accountability’ The Irish Times (29 August 2013);

‘Explainer: what are double dissolutions and how do they work?’ The Conversation (16 October 2013);

‘Seanad abolition would not close the issue of bicameralism’ The Irish Times (11 September 2013);

‘Senates and sensibility: how best to reflect the people’s will?’ The Guardian, Comment is Free (11 September 2013).

Rosalind Dixon

‘Referendum Realpolitik’ Uniken (Winter 2013);

‘Referendums Need a Big Idea to Stay Relevant’ Canberra Times (17 May 2013).

Paul Kildea


Jane McAdam

‘Offshore Processing Centres Are No Place for Asylum Seeker Children’ The Conversation (27 November 2013);
Australia’s Draconian Refugee Policy is Built on Myths’ The Guardian (30 October 2013);

‘Are They Illegals? No, and Scott Morrison Should Know Better’ Sydney Morning Herald (23 October 2013);

‘Australian Parties in ‘Race to Bottom’ on Asylum Seeker Policy’ CNN.com (4 September 2013);

‘UN Slams Australia’s Treatment of Refugees’ Lowy Interpreter (27 August 2013);

‘What to do about Climate Migration’ The Interpreter (Lowy Institute) (1 July 2013);

‘Eight Reasons Offshore Processing is a Failure’ Sydney Morning Herald (20 June 2013).

George Williams

‘Tony Abbott Lacks a Road Map for Reforms to Federation – It Could Save Billions’ Sydney Morning Herald (19 November 2013);

‘Treaty with Australia’s Indigenous People Long Overdue’ Sydney Morning Herald (13 November 2013);

‘Lost Senate votes in WA: Time to Consider Electronic Voting’ Sydney Morning Herald (5 November 2013);

‘ACT’s Move Improves Marriage Bill’s Chances’ Sydney Morning Herald (22 October 2013);

‘Right, you Lot, It’s Time we Seceded’ Sydney Morning Herald (8 October 2013);

‘Aboriginal Voices are the Key to Real Change’ Sydney Morning Herald (24 September 2013);

‘Electoral Reform Vital to Halt Micro Problem’ Sydney Morning Herald (10 September 2013);

‘Coalition Would Find Asylum Processing Plan Fails on Two Fronts’ Sydney Morning Herald (27 August 2013);

‘States may Leave PM at the Altar on Gay Marriage’ Sydney Morning Herald (13 August 2013);

‘More than a Legal Issue, PNG Plan Challenges Core Principles’ Sydney Morning Herald (23 July 2013);

‘Nation’s Very Foundation Built on Right to Choose Own God’ Sydney Morning Herald (16 July 2013);


SUBMISSIONS

Joint Submissions

Shipra Chordia and George Williams, Submission to National Commission of Audit on ‘Scope of Government’ (21 November 2013);

Nicola McGarrity and George Williams, Submission to Senate Standing
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