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GILBERT + TOBIN CENTRE OF PUBLIC LAW NEWSLETTER DECEMBER 2023



Rosalind Dixon
Centre Director

Dear Friends of the Centre,

The last few months have not been easy for many in our community – with conflict in the Middle East, and defeat in October of the Voice referendum.

I want to begin by paying tribute to the role many in the Centre community played in supporting the referendum process and ensuring that Australians were informed about the nature of the constitutional choice they were asked to make on 14 October.

Danny Gilbert played an outsized role in this context. And many UNSW, Indigenous Law Centre (ILC) and Gilbert + Tobin Centre colleagues were pivotal in providing expert advice and information in the lead up to the referendum – indeed from the very start of the regional dialogue process. Special mention here must go to Professors Megan Davis, Gabrielle Appleby and A/Professor Sean Brennan, but so many other colleagues were involved throughout – including Gemma McKinnon, Eddie Synot, Paul Kildea and Jason O’Neill.

The Centre was proud to support this work at various stages, including through co-hosting workshops with the ILC on constitutional drafting, and supporting the work of the ILC and Professor Appleby in providing training materials to UNSW colleagues and other law schools about how they too could support and inform the referendum process.

The Centre also continues its commitment to public engagement and supporting positive democratic change in a wide variety of other contexts, including the Pathways to Politics for Women Program NSW. The program ran again this year from August to September 2023, and included an extremely culturally diverse range of participants from across the political spectrum and NSW – including former Centre colleague and Barkindji woman, Gemma McKinnon.

One positive development over the last few months has been the return of a great deal more in-person exchanges between members of the Centre and scholars around Australia and globally. June saw the Centre co-host the inaugural International Society of Public Law (ICON•S) winter-summer school for junior scholars – featuring early career scholars from 28 countries, and a series of method workshops and work-in-progress seminars. The event was so successful that ICON•S has asked the Centre to continue to host the program in coming years, and we have managed to secure renewed philanthropic funding from the Manos Foundation to support the program. I am very grateful to Centre colleagues who helped support the event, including Professors Theunis Roux and Melissa Crouch, and Elisabeth Perham, as well as to Professors Oran Doyle, Malcolm Langford, William Partlett for their role in the methods training. Amal Sethi and Irene Parra provided outstanding additional support from the ICON•S side.

We were fortunate to host a number of international visitors during this period, including Professor Langford, and junior scholars from Germany, Spain, India and Mexico. August and October also saw visits from Professors Amanda Tyler and James Weinstein co-hosted by the Comparative Constitutional Law project.

In addition, several new PhD students joined UNSW and the Centre – and have already brought new ideas and energy and contributed a great deal to the Centre’s PhD reading group and series of internal seminars and discussions. Details of their profiles and research can be found in the section on visitors and new members. Other members of our Centre are very close to finishing their PhDs – and we wish them our very best for this final completion phase of their research.



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**Gilbert + Tobin
Centre of
Public Law**

REGISTER NOW
9 FEBRUARY 2024

Constitutional Law
Conference – Hybrid
(in-person at the
Gilbert + Tobin office in
Barangaroo, Sydney and
online via Zoom).

For details of Centre
events, publications,
submissions and so on
please either go to our
website:
gtcentre.unsw.edu.au,
or join our mailing list by
clicking [here](#).

Another welcome new development was the launch of a new collaboration with the NSW Supreme Court and other Sydney law schools, to create a new “Judges and the Public Law Academy” seminar open to Judges from the Supreme Court and a range of NSW law schools. The first seminar was held at the Supreme Court on 3 November on the topic of “judicial federalism” and featured papers by Professor Appleby, Dr Jeff Gordon (University of Sydney) and commentary from Chief Judge Sutton of the US Court of Appeals for the 6th Circuit and Justice Anna Mitchelmore. The seminar would not have been possible without the support of Chief Justice Andrew Bell and Centre Advisory board chair Acting Justice John Basten, as well as Professors Lisa Burton Crawford and Peter Gerangelos from the University of Sydney. We also thank Justice Mitchelmore for her role in helping convene and chair the seminar, and for recently joining our advisory board – along with Mr Craig Lenehan SC.

Our advisory board now happily includes a member of the High Court of Australia, and we extend a very warm congratulations on behalf of all members of the Centre community to Justice Beech-Jones on his well-deserved appointment. We likewise thank outgoing members of our UNSW Steering Committee for their service, including A/Professor Catherine Bond and Professor Natalie Klein who is stepping down as Chair, though continues as an ordinary member of the committee, with Scientia Professor Jane McAdam generously agreeing to take on the role of chair and Professor Michael Legg joining as an ordinary member.

On the topic of our advisory and steering committee, congratulations are also due to Mr Lenehan and his bar colleagues for their recent success in the High Court in *NZYQ* – a landmark public law win that will shape our jurisprudence for many years to come, and which we hope to learn more about from Mr Lenehan at our upcoming Constitutional Law conference on Friday 9 February 2024.

Details of the conference program have just been released and can be found [here](#). We do very much hope you can join us for what promises to be a very stimulating day of presentations and discussion.

We are also looking forward to new and continued opportunities to engage with the judiciary and the profession in 2024. We hope to have several new seminar and initiatives to share with you in this context in the coming months.

We will miss several colleagues as they go off on sabbatical, long service and parental leave early in 2024 – but wish them all the very best for this period of well-deserved leave. Special good wishes and thanks to Gabrielle Appleby in this context, who is stepping down as editor of *AUSPUBLAW* as she commences parental leave. As you will see from the summary of their activity, in 2023 as in prior years, Gabrielle and her co-editors – Douglas McDonald Norman and Laura Ismay – have done a wonderful job maintaining the blog as a key source of analysis and debate on contemporary public law issues in Australia. We are also grateful that A/Professor Janina Boughey has agreed to take on the role of editor as she returns to the Centre from her own parental leave.

For the rest of us, 2024 is already shaping up to be a busy year – with a series of new global book talks planned, in conjunction with the Greater Sydney Law Schools’ Public Law reading group. This group has met several times this year, and been extremely well received, and we are looking forward to continuing it next year.

Registration is now open for the first two global book series seminars, featuring two leading global public law thinkers – Professor Cass Sunstein from Harvard Law School, speaking on his new book *How to Interpret the Constitution* and Professor Aileen Kavanagh from Trinity College Dublin on her book *The Collaborative Constitution*.

As we anticipate these various events, I am especially grateful that my colleague Elisabeth Perham has agreed to assume the role of Deputy Director of the Centre for 2024-2025. Lizzy is already a much-valued colleague and member of the Centre teaching in public and federal constitutional law, who has previously served as an editor of *AUPUBLAW* and Deputy Director of the Comparative Constitutional Law project, and I am very much looking forward to working with her in this new capacity.

Lizzy and I both look forward to seeing you at our many events in the new year, but in the meantime wish you a happy and healthy holiday period, and better times for the world in 2024.

Rosalind Dixon
Director & Scientia Professor of Law

CENTRE ACTIVITIES

EVENTS

2023 ICON•S Winter-Summer School for Junior Scholars 21-30 June 2023

The First Edition of the Winter/Summer School was convened by Rosalind Dixon and jointly organised by ICON•S through its Committee on Community and Engagement, the UNSW Gilbert + Tobin Centre of Public Law, the NUS Law Centre for Asian Legal Studies, the University of Hamburg and ICON•S Aus-NZ. The program was held at UNSW Law & Justice from 21 to 30 June 2023. In this first edition, 42 junior scholars from 21 different nationalities participated.

During the first week, participants engaged in introductory sessions covering methodologies, writing and publishing, select skills, and career planning. A significant aspect of the program involved focus groups and networking opportunities. Participants, grouped based on their regions, discussed challenges and potential collaborations. A dedicated women's meeting also addressed gender gap challenges in academia, fostering a supportive environment for female-identifying scholars.

Another key feature was the skill development segment of the program. Participants presented their work in a simulated conference, facilitating in-depth feedback and constructive comments from peers and instructors. The Winter/Summer School also featured a Mentorship Program, whereby senior scholars participating in the Comparative Constitutional Law Conference at the end of the Winter/Summer School voluntarily mentored junior scholars by offering insights, advice, and expertise. This mentorship aimed to guide the participants through the challenges and opportunities in the field, providing career guidance, constructive feedback on research projects, and assistance in identifying relevant conferences and publications.

Overall, the program sought to create a comprehensive and enriching experience for participants, fostering collaboration, skill development, and mentorship within the public law academic community. Many of the participants then went on to attend the ICON•S Annual Conference hosted by Te Herenga Waka - Victoria University of Wellington, as did many Centre members.



Image 1: Winter/Summer School participants soaking up the sun in Sydney



Image 2: Junior and senior scholars sharing a panel



Image 3: Centre Director and newly appointed Deputy Director Elisabeth Perham



Image 4: Group shot!



Image 5: There was plenty of time for the junior scholars to network



Image 6: Many scholars flew across to New Zealand for the ICON•S Annual Conference in Wellington



Image 7: 'External Influences in Constitution Making', Panel at ICON•S Conference, Wellington, 4 July 2023. L-R: Ayaka Doyle, Maartje de Visser, and Centre members Dr Svetlana Tyulkina and Elisabeth Perham



Image 8: UNSW was well represented

Freedom of Expression in a Digital Age

26 June 2023

What does freedom of expression mean when ChatGPT can often speak more eloquently and faster than humans? How does social media and online speech distort the kind of speech we see in a democracy? And can this distortion be “fixed” by regulators? Or is the medicine often worse than the cure – especially in countries undergoing processes of democratic erosion. In this hybrid seminar, our expert panel explored these and other questions (from both a comparative and theoretical perspective) and reflected on the state of freedom of expression in a “digital age.” Jointly hosted by the UNSW Allens Hub for Technology, Law and Innovation and the Gilbert + Tobin Centre, the seminar was chaired by Allens Hub Director Professor Lyria Bennett Moses, with A/ Prof Daniel Joyce, Siddharth Narrain and visiting scholar Soorya Balendra on the panel.

UNSW Law & Justice Book Forum: Responsive Judicial Review by Rosalind Dixon

29 June 2023

UNSW Law & Justice and the Gilbert + Tobin Centre co-hosted the launch of Professor Rosalind Dixon’s book *Responsive Judicial Review: Democracy and Dysfunction in the Modern Age*. Held at the UNSW Bookshop, the launch was well attended by ICON•S junior and senior delegates as well as colleagues of Professor Dixon in the Law & Justice Faculty. Roberto Gargarella (Professor of Constitutional Theory and Political Philosophy at the Universidad de Buenos Aires and at the Universidad Torcuato Di Tella) commented on the book and the session was chaired by Elisabeth Perham from the Centre.

Race, Education and the US Supreme Court

17 August 2023

The US Supreme Court handed down a number of controversial decisions in 2023. Perhaps the most notable was the decision in *Students for Fair Admissions v Harvard*, which effectively ended race-conscious admissions by higher education institutions receiving federal or state funding. In this special hybrid seminar, the Gilbert + Tobin Centre of Public Law hosted Professor Amanda L. Tyler (Shannon Cecil Turner Professor of Law at the University of California, Berkeley School of Law) in conversation with Centre Director Professor Rosalind Dixon, to discuss this case and its significance for constitutional law and higher education policy in the United States.

Freedom of Expression and Fake News

9 October 2023

Fake news poses a fundamental threat to the proper functioning of any system of representative government. Yet attempts to regulate it, by government or platforms, also pose clear risks from a democratic perspective. How should we respond to this dilemma? In this hybrid seminar – co-hosted by the UNSW Allens Hub for Technology, Law and Innovation and the Gilbert + Tobin Centre – Professor James Weinstein (Arizona State University) explored these questions in the context of recent debates in the United States and elsewhere, before an illuminating Q&A session fielding questions from both in-person and online attendees.

Greater Sydney Public Law Reading Group and Global Book Series

The GSPL Reading Group and Global Book Series brings together public law academics from across greater Sydney to discuss global books in the field of public law. In 2023, we have shifted the series to a hybrid format, allowing for a formal discussion of the book with international and remote guests followed by a more informal discussion by public law scholars attending in person. It is convened by Professor Rosalind Dixon (UNSW), Professor Lisa Burton Crawford (University of Sydney), Associate Professor Harry Hobbs (UTS), Shreeya Smith (WSU) and Ashleigh Barnes (Macquarie).

The Law as a Conversation Among Equals by Roberto Gargarella

28 June 2023

Hosted as part of Professor Roberto Gargarella’s visit to UNSW to attend the Comparative Constitutional Law Conference in the second part of the ICON•S Junior Scholar & Winter-Summer School, this hybrid event was held at the UNSW Law & Justice Faculty. Chaired by former Centre Deputy Director Lisa Burton Crawford (University of Sydney), Professors Rosalind Dixon and Theunis Roux commented on Gargarella’s book *The Law as a Conversation Among Equals* (CUP, 2022). In a time of disenchantment with democracy, massive social protests and the ‘erosion’ of the system of checks and balances, this book proposes to reflect upon the main problems of our constitutional democracies from a particular regulative ideal: that of the conversation among equals. It examines the structural character of the current democratic crisis, and the way in which, from its origins, constitutions were built around a ‘discomfort with democracy’. In this sense, the book critically explores the creation of different restraints upon majority rule and collective debate: constitutional rights that are presented as limits to (and not, fundamentally, as a product of) democratic debate; an elitist system of judicial review; a checks and balances scheme that discourages, rather than promotes, dialogue between the different branches of power; etc.



Race, Education and the Supreme Court event

UPCOMING EVENTS

Public Law in the Classroom Workshop 2024 8 February 2024

The tenth annual Public Law in the Classroom workshop will be held at the Faculty of Law and Justice, UNSW Sydney on Thursday 8 February 2024.

The workshop is organised by the Gilbert + Tobin Centre of Public Law at UNSW, the Public Law and Policy Research Unit at the University of Adelaide, the Castan Centre for Human Rights Law at Monash University and the School of Law at Western Sydney University. The past nine workshops have been a great success, each attracting around 70 public law teachers from across the country and internationally.

The workshop will open with a discussion and opportunity to debrief on the ways recent changes in technology have impacted on teaching and assessment, before turning to two panel sessions. The first panel session will focus on Change and Public Law Teaching, and explore the role for public law teaching in encouraging civic participation and reform. The second panel will focus on Critical and Comparative Approaches to Public Law Teaching, and will explore how public law teachers have included different perspectives, including comparative perspectives, in their teaching.

Registration is free, and public law teachers are invited to register [here](#).

2024 Constitutional Law Conference 9 February 2024

We invite you to register for a major conference on constitutional law to be held in a hybrid format on Friday 9 February 2024, organised by the Gilbert + Tobin Centre of Public Law with the support of the Australian Association of Constitutional Law and Federation Press.

The conference will feature discussions of important developments in the High Court, Federal Court and state courts and provide an overview of the key public law debates in 2023. The conference will include papers on the separation of powers, public finance, public law and migration, and future directions for human rights and Voice in Australia.

The conference will be held in hybrid format, with attendees able to register in person (100 pax capacity) or online via Zoom. The in-person element of the conference will be held at the offices of Gilbert + Tobin in Barangaroo, Sydney. There will be multiple opportunities for informal interaction throughout the day. A cocktail party will be hosted for those attending in person at Gilbert + Tobin. Zoom details will be forwarded to online attendees closer to the date.

Ticketing Information

- IN-PERSON - Full conference: \$275 (100 pax capacity; first come, first served)
- ONLINE - Full conference: \$220 | Individual sessions: \$55 each | Organisation ticket: \$1100 (registration for attending remotely as a group in one location)
- Academics and NGO lawyers will receive a 50% discount when using code ACADEMIC50 at checkout. If you are experiencing financial hardship and unable to purchase a ticket, please contact gtcentre@unsw.edu.au

Find out more and register for the 2024 conference [here](#).

Greater Sydney Public Law Reading Group and Global Book Series

How to Interpret the Constitution by Cass Sunstein

In his provocative new book, *How to Interpret the Constitution*, Cass Sunstein (Robert Walmsley University Professor at Harvard) argues for a new form of constitutional pragmatism in the US – but a pragmatism cabined by a commitment to upholding or acting consistently with various constitutional “fixed points”. What is the relevance of these ideas to an Australian context? Could a legalist High Court ever contemplate pragmatism of this kind – and indeed should it? And what would be the “fixed points” of Australian constitutional law and construction?

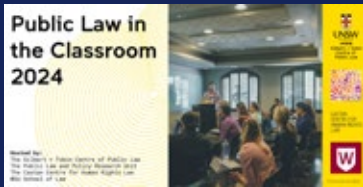
In this seminar, Professor Sunstein will introduce the book and Gilbert + Tobin Centre Director Professor Rosalind Dixon will offer commentary. The seminar will be chaired by Professor Lisa Burton Crawford (University of Sydney).

Time and location: 1pm Friday 16 February – University of Sydney/online

[Register here.](#)

The Collaborative Constitution by Aileen Kavanagh

The separation of powers is one of the most defining ideas in constitutional law. Yet ‘separation’ is a question of degree. How do courts, legislatures and executive actors interact within the context of a constitutional separation of powers? In this seminar, Professor Aileen Kavanagh (Trinity College Dublin) discusses her important new book, *The Collaborative*



Public Law in the Classroom Workshop



Constitutional Law Conference



Greater Sydney Public Law Reading Group

Constitution (CUP 2023), and its vision of relationship between branches based on norms of comity, reciprocity and comparative advantage.

The seminar will feature commentary on the book by Laureate Professor Adrienne Stone (Melbourne Law) and a response from Professor Kavanagh, and be chaired by Gilbert + Tobin Centre Director Professor Rosalind Dixon.

Time and location: 9am Friday 15 March – UNSW Faculty of Law and Justice/online

[Register here.](#)

THE AUSPUBLAW BLOG

The Australian Public Law Blog (AUSPUBLAW) has had a very successful second half to 2023. We continued our detailed coverage of the proposed First Nations Voice, including posts on South Australia's First Nations Voice (Anna Olijnyk and Cornelia Koch); the potential impact of the Voice on government decision-making and practical outcomes for First Nations peoples (Narelle Bedford); and the potential lessons to be learned from international 'Voice' models for the Australian proposal (Jane Hall). We also hosted a forum on the potential interaction between s 116 of the Constitution and the Voice, featuring contributions from Michael Douglas, Luke Beck and Lucas Lixinski.

The Blog has also continued to publish detailed coverage of contemporary debates in Australian public law. In November 2023, we hosted a book forum on Kristen Rundle's monograph *Revisiting the Rule of Law* (2023), featuring contributions from Dylan Lino, Alex Reilly, Gabrielle Appleby, Megan Davis, Paul Burgess and Justice Angus Stewart. Following the Final Report of the Robodebt Royal Commission, Darren O'Donovan analysed the report and its implications; following the ACT Board of Inquiry into Criminal Justice (the Sofronoff Report), Matthew Groves examined potential public law issues arising from the conduct of the inquiry. We have published commentary on recent judgments of the High Court and Full Federal Court, including *Davis v MICMSMA* (Maria O'Sullivan), *Yunupingu v Commonwealth* (Aaron Moss), *QYFM v MICMSMA* (Sarah Fulton and Geneviève Murray), *ENT19 v MHA* (Douglas McDonald-Norman), *Attorney-General (Cth) v Huynh* (Jack Zhou), *Zurich Insurance Co Ltd v Koper* (Harry Sanderson), *Vunilagi v The Queen* (Bharan Narula), *AZC20 v MICMSMA* (Joe McIntyre) and *CCC v Carne* (Neil Laurie).

We have also published analyses of whether mandamus may be available to compel federal judges to exercise jurisdiction (Jerry To), lay-person membership of the proposed federal judicial commission (Henry Palmerlee), the constitutional validity of state 'protest bans' (Brenda Tronson), the constitutional 'protection' of Sydney Water in the NSW Constitution (Dane Luo), the future of proportionality in Australian constitutional law (Guy Baldwin) and Chevron deference in Australian public law (Janina Boughey).

Professor Gabrielle Appleby will step down as a joint editor of AUSPUBLAW at the end of 2023; we are exceptionally grateful for her invaluable contributions to the blog over many years. However, we are excited to welcome Associate Professor Janina Boughey as a joint editor and faculty advisor to the blog, and we look forward to working with her next year!

Gabrielle Appleby, Douglas McDonald-Norman and Laura Ismay

PEOPLE

Irene Parra Prieto

Irene is an LLM Candidate at Instituto Autonomo de México (ITAM), where she also completed her BA with Honors. Previously, she worked as an internal legal researcher at Global Freedom of Expression at the University of Columbia. Irene is currently part of the Communications Team for the International Society of Public Law (ICON-S) and is the Associate Editor of the IACL Blog. Irene's work centres on examining the dialogical relationship between the Inter-American Court of Human Rights decisions regarding freedom of expression and the state's normative conception of this right. Particularly, she seeks to explore how the regional understanding and the state's conception of freedom of expression have evolved since the creation of the Inter-American System.

Daniel Bogéa

Daniel Bogéa is a comparative constitutional lawyer and political scientist born and raised in Brasília, Brazil. He holds a UNSW PhD Scholarship from Professor Rosalind Dixon's ARC Future Fellowship in Constitutions and Democratic Resilience, and is also PhD candidate in political science at the University of São Paulo. He holds bachelor's and master's degrees in law and political science from Brazilian universities and has been awarded prizes for best master's dissertation and Honors research thesis. He also has experience as a research assistant in projects at the University of Brasília, the University of São Paulo, the Getulio Vargas Foundation, and Georgetown University. He has published one book, 17 book chapters,



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Irene Parra Prieto



Daniel Bogéa

13 articles, and 30 newspaper op-eds. Beyond academia, Daniel practiced public law & regulation for 13 years and has also served as a legal expert for a Committee of the Brazilian Federal Senate. His research interests encompass the fields of constitutional politics, electoral governance, gender & judging, regulation, and political theory.



Luis Alejandro Ramirez Alvarez



Neil Modi



Suhail Rashid Bhat

Luis Alejandro Ramirez Alvarez

Luis is a doctoral candidate at Universitat Pompeu Fabra in Barcelona. He earned his Bachelor's degree from the University of the Andes, complemented by a Master's in Public Law from the same institution. Additionally, Luis holds a master's degree in Advanced Legal Studies from Pompeu Fabra University. Luis previously served as a clerk at the Constitutional Court of Colombia and worked as an advisor to the Legal Secretary of the President. Luis's work examines the evolving concept of constitutional dialogue in the global context and Latin America and argues that the use of this theory has failed to adequately understand the functioning and impact of the regional apex role in the past decades. As a result, he suggests a shift to a responsive approach to help develop a sharper understanding of the nuanced role courts play in building and defending democratic capacity.

Neil Modi

Neil Modi is currently a doctoral candidate at the Georgetown University Law Center, Washington DC, and is visiting UNSW Law & Justice for a period of one month. His dissertation explores certain specific facets of transformative constitutionalism from the perspective of India, South Africa and Sri Lanka. While the project is centred around its application in the Indian context, a particular focus includes examining the effect of this doctrine on the separation of powers, the fourth branch and institutional legitimacy. Neil's scholarly interests traverse constitutional theory, Indian constitutional law, comparative constitutional law, and human rights law. He gained an LLM from the University of Virginia School of Law (2017) where he finished in the top 5% of the class, and Bachelor of Laws from the University of Mumbai with Second Class Honours (2016). Prior to beginning the SJD program, Neil assisted two judges at the Bombay High Court, and thereafter a judge at the Supreme Court of India for an extended period of time.

Suhail Rashid Bhat

Suhail Rashid Bhat is a PhD Candidate in the Faculty of Law and Justice (UIPA Scholarship), UNSW. He is working on international law and the role of the people's tribunal. He completed his LLM at SOAS with distinction and best performance award. Suhail, a Kashmiri lawyer, has practised law in India and Kashmir, primarily in the areas of civil and political rights. His landmark case in 2019 led to the decriminalisation of begging in Kashmir. He has also taught human rights and constitutional and administrative law in India and Australia. He has worked with various non-governmental organisations working on the prevention of mass atrocities. His work has been used to train on-ground practitioners in South Sudan, Sudan, and Cameroon in identifying hate speech and bringing claims. He is a 2019 recipient of the UK Government's Chevening Scholarship and is currently an Associate at the Australian Human Rights Institute.

PROJECT REPORTS

The Administrative Law Project

Project Director: Janina Boughey

On 7 July 2023, the Royal Commission into the Robodebt Scheme tabled its final report, outlining significant failings across the government – and those mechanisms designed to hold government to account – in the course of the administration of this scheme. One key set of actors involved in the administration and oversight of the scheme were government lawyers. Drawing on her previous research on the Solicitor-General and government lawyers, in July 2023, Gabrielle Appleby presented at the Australian Institute of Administrative Law annual conference in Adelaide on a panel with Mike Wait SC (Solicitor-General, South Australia), discussing the model litigant rules, and the lessons that could be taken from the government's conduct of litigation during the Robodebt scheme. In August, she participated in a workshop convened by Yee-Fui Ng and Maria O'Sullivan (Monash University and Deakin University) on the many issues that arose from the Royal Commission. Gabrielle presented a piece on the role of government lawyers, and the ethical and structural issues raised by the findings and recommendations of the Royal Commission. In October, Gabrielle participated in a panel with Joshua Thomson SC (Solicitor-General, WA) and Vivien Holmes (ANU) on 'The Rule of Law in Government Post-Robodebt: Ethics, Advice and the Model Litigant', as part of the ANU Public Law Annual Conference. Her article, 'Robodebt and Government Lawyers: Ethical and Structural Challenges', is forthcoming in the Australian Journal of Administrative Law.

Comparative Constitutional Law Project

Project Director: Rosalind Dixon / Deputy Director: Elisabeth Perham

The CCL project has hosted a number of events over the last few months – starting with the ICON•S winter-summer school in June-July, and then in New Zealand adjacent to ICON•S's global conference in Wellington.

The day before ICON•S, the project hosted a small roundtable for scholars working on the role of chief justices in times of democratic stress. The project is a joint initiative with Professors David Kosar (Masaryk, Czechia) and Erin Delaney (Northwestern, USA) and oriented toward producing a special issue of the International Journal of Constitutional Law on the topic, and features several Centre members – including Professor Theunis Roux and PhD candidates Surbhi Kharwa and Daniel Boguea.

After ICON•S, the project also hosted another conference (again in New Zealand) on the theme of judicial leadership, this time focusing on the role of female chief justices and court presidents in comparative perspective. The conference generated extremely interesting insights on what it means to be an effective judicial leader, from both a democratic constitutional and feminist perspective, and on the determinants of effective leadership in this context. Centre colleagues and alumnae again featured prominently in the line-up of speakers, with contributions from Professor Gabrielle Appleby (writing separately both with Professor Sarah Murray of UWA and A/Professor Heather Roberts of ANU), A/Professor Janina Boughey (with Centre alum Dr Lynsey Blayden) and Elisabeth Perham (with Jess Kerr of UWA), and commentary from Surbhi Kharwa and Daniel Boguea, among others.

In August, the project helped organize a special seminar with return Centre visitor, Professor Amanda Tyler of Berkeley Law. The hybrid seminar featured a discussion between Professor Tyler and Rosalind Dixon on the topic of race, affirmative action and the US Constitution, following the decision of the US Supreme Court in *Students for Fair Admissions v Harvard*.

In October, the project worked with the Allens Law + Technology Hub to host Professor James Weinstein of Arizona State University and leading free speech expert, for a seminar on freedom of expression and fake news. The seminar highlighted the challenges to democracy of fake news as a phenomenon, but also the challenges in any effective regulatory response. It is a topic that will no doubt continue to occupy much attention in the months and years ahead, and especially in the lead up to November 2024 (or indeed January 2025).

The project hosted several early career scholars as visitors, but as the wrap-up for the Global South project notes, members of the project also visited partner institutions elsewhere.

Project Director Rosalind Dixon engaged in some interesting virtual travel – including presenting to experts responsible for drafting the second attempt at constitutional reform in Chile, and a highly level roundtable to advise the President of Israel on proposed changes to the appointment of the Supreme Court of Israel.

She was also joined by colleagues in the region in convening a virtual two-part seminar for female justices in the region – with representatives of ultimate appellate courts in Australia, New Zealand, Nepal, Pakistan, Sri Lanka and the Philippines in attendance. Special thanks go to Centre fellow, Amelia Loughland, for her help in organizing the event.

As is customary, the project will end the year by hosting its annual Comparative Constitutional Law roundtable, featuring scholars from around Australia and the region.

In addition, it will host a workshop joint with the UNSW Institute for Global Development and International IDEA on “culturally rooted constitutionalism” and on constitutionalism in small states, led by Elisabeth Perham in conjunction with Associate Professor Maartje de Visser (Singapore Management University) and Rosalind Dixon. The small states workshop is supported by the Centre, the Faculty and also the Konrad Adenauer Stiftung.

Constitutionalism in the Global South Project

Project Co-Directors: Theunis Roux and Melissa Crouch

We recently welcomed Mohammad Ibrahim to the PhD program. Mohammad is a constitutional law scholar from Indonesia working on issues of law and religion.

Melissa was recently a visiting fellow at the Centre for Southeast Asian Studies at Kyoto University in Japan. In late 2023, Melissa participated in a roundtable in Thailand on the prospects of constitutional amendment, organised by International IDEA. At UNSW, Melissa chaired a talk with Professor Sean Turnell about his new book based on his experience of being arbitrarily detained in Myanmar, an event hosted by the Centre for Ideas. In part due to advocacy efforts by academics from UNSW and elsewhere, the Australian government finally confirmed that Burmese students on Australia Awards scholarships at the time of the coup (2021) can obtain longer term visas in Australia without having to pay back their debt. It was encouraging to see the Australian government doing justice for Burmese students affected by the military coup, including one of UNSW's former researchers.

In 2023, Melissa's article on 'Judicial Loyalty to the Military in Authoritarian Regimes' (Law & Social Inquiry) was awarded an Honourable Mention for the Distinguished Article Award 2023 of the Asian Law & Society Association. In other scholarship, the book *Women and the Judiciary in the Asia-Pacific* was the subject of a symposium including contributions by Justice Susan Glazebrook of the Supreme Court of New Zealand, Justice Ayesha Malik of the Supreme Court of Pakistan, and scholars Wen-Chen Chang of National Taiwan University, and Surbhi Karwa of UNSW (ICON Vol 21(1) 2023). Separately, the book has also been positively reviewed in the Oxford Frontiers of Socio-legal Studies blog.

The Judiciary Project

Project Director: Gabrielle Appleby

The second half of the year saw the publication of the Special Issue on Judges in the Australian Law Journal, edited by Gabrielle Appleby, which provided a contemporary snapshot on the position and debates surrounding the Australian judiciary in 2023. The Special Issue includes contributions from The Judiciary Project's Andrew Lynch (titled 'Judicial Influence on Judicial Appointments') and Gabrielle and Suzanne Le Mire (University of Adelaide) (titled 'Opportunity Knocks: Designing Judicial Discipline Systems in Australia'). The special issue was launched in September at the Conference 'Enduring Courts in Changing Times', a conference to celebrate the bicentenary of the New South Wales and Tasmania Supreme Courts, hosted by the Australian Academy of Law, the Australasian Institute of Judicial Administration and the Australian Law Journal. Gabrielle introduced the special issue at that conference, as well as providing a paper on judicial discipline.

Gabrielle was also invited to present at the inaugural New South Wales Judges and the Public Law Academy seminar series on her recently published paper from the Yale Law Journal (co-authored with Erin Delaney), 'Judicial Legitimacy and Federal Judicial Design: Managing Integrity and Autochthony' (132(8) Yale Law Journal 2419). She presented alongside Jeffrey Gordon (University of Sydney), with commentary provided by the Hon Jeffrey Sutton (US Court of Appeals Sixth Circuit).

Indigenous Legal Issues Project

Project Co-Directors: Sean Brennan and Gabrielle Appleby

The proposal to recognise First Nations people through an Aboriginal and Torres Strait Islander Voice in the Constitution was defeated in a 40/60 vote by the Australian people at a referendum held on 14 October.

Many First Nations individuals and organisations who had supported a Yes vote marked a week of silence following the outcome and then released an [open letter to the Prime Minister](#) and members of the federal Parliament. The letter expressed the grief and acute sense of repudiation felt by people who had offered the Uluru Statement from the Heart in good faith and had sought to be heard on matters affecting them. It re-committed to the vision of the Uluru Statement and the outcomes of the deliberative process that preceded it and concluded: 'We will regather in due course and develop a plan for our future direction ... We will continue to fight to seek justice for our peoples.'

Leading up to the referendum, the work of Centre colleagues on Indigenous issues focused on support for the deliberative process overseen by the Referendum Council in 2016-17 and the implementation of the reform agenda spelt out in the Uluru Statement. That work was carried out over several years, in conjunction with the Indigenous Law Centre at UNSW and in support of the Uluru Dialogues led by UNSW Pro Vice-Chancellor Professor Megan Davis and Pat Anderson AO. It built on the G+T Centre's commitment since its inception to having Indigenous issues in the foreground of its work in contemporary Australian public law.

In the second half of 2023, those activities naturally focused on community engagement during the referendum campaign and took on a variety of forms. Centre colleagues Gabrielle Appleby, Sean Brennan and Paul Kildea published a detailed analysis of the claims made in the official Yes/No pamphlet that was distributed to Australian households by the Electoral Commission. The content of that lengthy analysis was also summarised and widely distributed through a piece in *The Conversation* in late August. Gabrielle also worked with Madelaine Chiam at La Trobe University to organise an open letter signed by over 80 public law academics and addressed to the public, in preparation for the referendum.

In September, Gabrielle gave a keynote address to the Western Australian Bar Association at its symposium on the Voice in September. This drew on an article she contributed to a special issue on the Voice in the *Journal of Australian Indigenous Issues*. Also in September, she delivered a seminar in Townsville hosted by Associate Professor Sana Nakata at the James Cook University Indigenous Research and Education Centre. Gabrielle appeared in a televised question and answer segment on A Current Affair, did many TV and radio interviews and ABC talkback radio, spoke at numerous community events, and worked with journalists in an ongoing way on fact checking, including ABC Factcheck and RMIT Factcheck.

Paul Kildea also responded to a number of media inquiries and fact checks, did radio and podcast interviews, and wrote a piece on referendum vote counting in the Territories for *The Conversation* in September. As well as doorknocking, media fact-checking and polling booth conversations, Sean Brennan did a variety of radio spots including talkback on a commercial AM station in Adelaide, an ABC interview in Townsville and a live debate on a community station in Sydney. He spoke at many community events and workplaces around Sydney, participated in campus forums and debates, and published a UNSW Newsroom piece about the Voice proposal in the final week before the referendum. In the run-up to 14 October, many other Centre colleagues also put their time and effort into media work and engaged with the community in a variety of ways about civics, the referendum process and the Voice proposal.

PUBLICATIONS AND PRESENTATIONS

PUBLICATIONS

Co-Authored Publications

Gabrielle Appleby, Sean Brennan and Paul Kildea, *Expert analysis of the 'Official Yes/No Cases' published by the Australian Electoral Commission: Constitution Alteration (Aboriginal and Torres Strait Islander Voice) 2023*, August 2023.

Gabrielle Appleby

'Studying judges: the role of the Chief Justice, and other institutional actors' (2023) *Oñati Socio-Legal Series* DOI: 10.35295/osls.iisl.1713

'The Aboriginal and Torres Strait Islander Voice: A Modest, Yet Transformative Proposal' (2023) 26 *Journal of Australian Indigenous Issues* 3

'Introduction to Special Issue on the Judiciary' (2023) 97(9) *Australian Law Journal* 600

'Opportunity Knocks: Designing Judicial Disciplinary Systems in Australia' (2023) *Australian Law Journal* 678

Melissa Crouch and Samuel Hmung

Melissa Crouch and Samuel Hmung (2023) *Concurrent Emergencies in Authoritarian Regimes: The Use of Law and Emergency Powers during COVID-19 in Myanmar*. International Centre for Ethnic Studies, Sri Lanka.

Rosalind Dixon

'The New Responsive Constitutionalism', *Modern Law Review* 1 (2023).

'Unsexed Citation: Closing the Gender Gap in Global Public Law', 21 *International Journal of Constitutional Law* 407 (2023) (With Mila Versteeg)

'Utopian Constitutionalism in Chile', *Global Constitutionalism* 1 (2023) (with David Landau).

'Legislative Constitutional Duties and the Judicial Role', *Public Law* 311 (2023) (with Lael K. Weis).

'The High Court and Judicial Appointment Reform Comparatively Recast', 34 *Public Law Review* 61 (2023) (with John Lidbetter).

'Commissioning Economic Equality? Lessons from Scotland', 51 *Federal Law Review* 315 (2023) (with Joseph Lavery).

'Responsive Judicial Review in Asia', 53 *Hong Kong Law Review* 489 (2023).

Paul Kildea

'Australia' in Luis Roberto Barroso and Richard Albert (eds), *The International Review of Constitutional Reform* (2023) 32, 32-35.

Andrew Lynch

'Judicial Influence on Judicial Appointments' (2023) 97 *Australian Law Journal* 607-621

George Williams

Everything You Need to Know about the Voice (UNSW Press, 2023), 1-217 (with Megan Davis)

PRESENTATIONS

Co-Presentations

Gabrielle Appleby, Sean Brennan and Megan Davis, 'A First Nations Voice and the Exercise of Constitutional Drafting' (Conference presentation at the ICON-S (International Society of Public Law) Conference, Wellington, July 2023)

Gabrielle Appleby and Megan Davis, 'Relationship between Parliament and the Voice: law-making and the scrutiny of delegated legislation and government action' (Paper presented at the Australasian PCC and CALC Regional Drafting Conference 2023 in Sydney, August 2023)

Gabrielle Appleby

G Appleby with Sarah Murray, 'Collegiality and Feminist Judicial Leadership: The Hon Susan Kiefel AC, Chief Justice of the High Court of Australia' (Paper presented at the Constitutional Heroines(?) workshop in Queenstown, July 2023)

G Appleby with Heather Roberts, 'State Constitutional Heroines' (Paper presented at the Constitutional Heroines(?) workshop in Queenstown, July 2023)

'Robodebt and Government Lawyers', (Paper presented at the Robodebt Workshop co-hosted by Monash University and Deakin University, Melbourne, August 2023)

'The Voice: A Modest yet Transformative Proposal' (Keynote address at the Western Australian Bar Association Symposium on the Voice, Perth, September 2023)

'The Voice to Parliament' (Seminar hosted by the Indigenous Education and Research Centre's Indigenous Research Support Network, James Cook University, September 2023)

'The Rule of Law in Government Post Robodebt: Ethics, Advice and the Model Litigant' (Paper presented at the Public Law Weekend Conference, Canberra, October 2023)

'*Crime and Corruption Commission v Carne*: a blow for greater transparency and publicity in government?' (House of Representatives parliamentary briefing, November 2023)

Sean Brennan

'The Voice Referendum', Kensington Park Community Centre, Kensington, 10 October 2023.

'Voice Panel Discussion', JLL ANZ, Sydney, 9 October 2023.

'The Voice Referendum: Part 2', Citigroup, Sydney, 5 October 2023.

'The Warrane Lecture 2023: A Discussion of Indigenous Affairs in the Context of the Voice Referendum', Warrane College, UNSW, 26 September 2023.

'Voice Information Session and Q&A', Sydney Fish Markets, 21 September 2023.

'The Voice Referendum Information Session', Randwick Community Centre, 20 September 2023.

'The Voice Referendum', Energy and Water Ombudsman New South Wales, Connections staff day, Sydney, 5 September 2023.

'Finding a Centred Ground. The Voice to Parliament Debate@UNSW', Student-Organised Debate, UNSW, 25 August 2023.

'Uluru Statement and the Voice Referendum', Australia and New Zealand Ombudsman Association webinar, Online, 4 August, 2023.

'Aboriginal and Torres Strait Islander Voice Referendum', NAIDOC Week Panel, Hall & Wilcox, Online, 4 July 2023.

Rosalind Dixon

'The Superior Courts: Global Perspectives', presentation at Estadão Talks, 14 November 2023 (zoom)

'Enduring Courts in Changing Times Conference', presentation at Supreme Court of New South Wales, 8 September 2023

'Constitutional Court and Judicial Independence', presentation at Indonesian Constitutional Court International Symposium, 10 August 2023

'Responsive Judicial Review: Author meets Reader', Australasian Society of Legal Philosophy', presentation at University of Auckland, 7 July 2023

'Female Chief Justices and Constitutional Court Presidents in Comparative Perspective' presentation at Queenstown New Zealand, 8 July 2023 (with Erin Delaney)

'Book Roundtable Responsive Judicial Review' presentation at International Society of Public Law Conference, Wellington, 4 July 2023

'Constitutional (non)reform in Chile: lessons for global constitutionalism', presentation at International Society of Public Law Conference, Wellington, 4 July 2023

Angela Saini and Rosalind Dixon, 'Angela Saini: How Men Came to Rule', presentation at University of New South Wales, 5 September 2023

Elisabeth Perham

'Modes of External Constitutional Advice-giving' at the ICON-S Conference, Te Herenga Waka – Victoria University of Wellington (4 July 2023)

'Sian Elias and "small c" constitutional heroism' at the Constitutional Heroines Conference, Queenstown (9 July 2023) (with Jessica Kerr)

George Williams

'The Future of Referendums' NSW Society of Labor Lawyers Annual Dinner, Sydney, 16 November 2023.

'Everything You Need to Know about the Voice', The Wheeler Centre, Melbourne, 8 August 2023.

'Everything You Need to Know about the Voice' Meet the Author, ANU and Canberra Times, Canberra, 7 August 2023.

'Australian Parliaments and the Pandemic' Senate Lecture Series, Parliament House, Canberra, 28 July 2023.

'Seeking to be heard: The Voice and our Constitution' Bird & Bird, Sydney, 22 June 2023.

MEDIA PUBLICATIONS

Co-Publications

Gabrielle Appleby, Paul Kildea and Sean Brennan, 'How do the "yes" and "no" cases stack up? Constitutional law experts take a look' *The Conversation* (30 August 2023)

Gabrielle Appleby

Gabrielle Appleby, 'Explainer: what is executive government and what does it have to do with the Voice to Parliament' *The Conversation* (14 September 2023)

G Appleby with Geoffrey Lindell and Hannah McGlade, '10 questions about the Voice to Parliament – answered by the experts' *The Conversation* (19 June 2023)

Sean Brennan

'A sensible reform that conservatives, moderates and progressives can support', *UNSW Newsroom*, 12 October 2023.

Rosalind Dixon

Rosalind Dixon, '[Civics Education Would Help Referenda: Law Expert](#)', *the Australian Broadcasting Corporation* (online, 16 October 2023).

Paul Kildea

Author interview: Law Society Journal Online, 'LSJ Explains: Referendums and the process of changing the Constitution', 18 August 2023.

Podcast interview: The Tally Room, 'A history of Australian referendums', 8 September 2023.

Paul Kildea, 'State and territory ballots will be counted differently at the Voice referendum – is that fair?', *The Conversation*, 19 September 2023.

Andrew Lynch

'Inform yourself; vote with reason, not in ignorance', *The Australian* (18 September 2023).

George Williams

'High Court Decision on Indefinite Detention Right One' *The Australian* (14 November 2023).

'Stripping Terrorists of Citizenship will Likely Increase Risks' *The Australian* (8 November 2023).

'For Referendums to Work, Voice Failure Must Drive Reform' *The Australian* (23 October 2023).

'Racial Divide has Always Been Part of our Constitution' *The Australian* (9 October 2023).

'Voting Rights for ACT, NT Must Change Post-Referendum' *The Australian* (19 September 2023).

'Claims on 'Rigged' Voice Vote Must be Called Out' *The Australian* (4 September 2023).

'Albanese Right to Stare Down Calls to Delay Referendum' *The Australian* (21 August 2023). 'A

Voice Isn't an Outlier – It's a Way to be Heard' *The Australian* (29 July 2023).

'No Case Goes for the Jugular, While Yes Fails on Presentation' *The Australian* (19 July 2023).

'Tassie an Uphill Battle for Yes in Voice Referendum' *The Australian* (6 July 2023).

'Voters Should Beware Perils of Referendum Pamphlets' *The Australian* (26 June 2023).

'Indigenous Voice to Parliament Can Complete the Unfinished Business of the 1967

Referendum' *The Australian* (12 June 2023).

SUBMISSIONS

George Williams

Submission (with Harry Hobbs) to Commonwealth Government COVID-19 Response Inquiry (15 November 2023).

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