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GILBERT + TOBIN CENTRE OF PUBLIC LAW NEWSLETTER JUNE 2023



Rosalind Dixon
Centre Director

Dear friends and supporters of the Centre,

It has been a busy six months – and the coming months promise to be even busier and more significant for public law in Australia. As you will all be aware, the next six months is likely to see a referendum on a **First Nations Voice** to Parliament and the Executive, and public lawyers at the Centre and around Australia will be focusing on how to support that process.

One important recent initiative by Centre and Faculty colleagues in this context is the creation of a new Twitter account, **@referendumQandA**, which provides answers to a range of questions voters may have about the Voice. My congratulations to Professor Gabrielle Appleby, Sand A/Professors Sean Brennan and Paul Kildea on this initiative.

Another significant recent intervention was the **joint submission** by Centre members on the Voice design, as part of the Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum. This submission was the work of our Dean Professor Andrew Lynch, Professor Gabrielle Appleby, A/Professors Sean Brennan and Paul Kildea, Elisabeth Perham and myself, but led by Gabrielle Appleby and Elisabeth Perham, and my thanks go to them for this leadership.

But there are many other important initiatives in this space, and I encourage you to engage with them all over the coming months.

Since I last wrote, we have hosted our annual Public Law in the Classroom and Constitutional Law **conferences** – the latter hosted for the first time at Gilbert + Tobin's beautiful premises in Barangaroo – and we thank you all for your support for these events.

We have been delighted to continue our Global Book series online this year, and to partner with law schools across Sydney, including the University of Sydney, Western Sydney University, University of Technology Sydney and Macquarie University, to create a **'Greater Sydney Law Schools' Public Law Reading Group'**, which meets in person after the online seminar to discuss the book in more detail and create stronger ties across the Sydney public law community. So far, this group has hosted two very successful sessions at UTS and the University of Sydney, on books by Ruth Rubio-Marin and Paolo Sandro, and we thank our colleagues at both these institutions for their collegiality and support for this joint initiative.

The Centre has been fortunate to welcome several **new colleagues** this year – including Dr Zsofia Korosy and Elisabeth Perham as new full-time members of the Faculty of Law and Justice, and hence Centre members in a new capacity. Lizzy has also recently assumed the role of Deputy Director of the Comparative Constitutional Law Project.

The Centre has also welcomed several **visitors** and new PhD students, including Rupa, Lisa, Surbhi and Shohini. After several years of purely online engagement, it is wonderful to be able to host so many diverse global public law scholars and share with them the work of the Centre in person. We are, however, sad to be farewelling Professor Malcolm Langford, who returns to Oslo later this month after a very successful year-long visit to the Centre. Mal has made an outstanding contribution to our community – and we thank him and wish him well, and look forward to hosting him again in the future.

Professor Gabrielle Appleby is currently enjoying a well-earned sabbatical as a MacCormick fellow at the University of Edinburgh, but prior to that led several high-level workshops and conversations on the future of judicial integrity and appointment reforms, under the auspices of the Judiciary Project.



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**Gilbert + Tobin
Centre of
Public Law**

REGISTRATIONS OPENING SOON

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](#).



Public Law in the Classroom



Constitutional Law Conference



Greater Sydney Public Law Reading
Group

Professor Melissa Crouch continues her leadership of debates on Asian constitutional change and developments, including through the publication of her new collection on *Constitutional Democracy in Indonesia* (OUP), a highly recommended exploration of constitutional developments in one of the world's largest and most important democracies. She will also be visiting Japan later this year as a Visiting Research Fellow at the Center for Southeast Asian Studies, Kyoto University, Japan, and has recently been elected as President of the [Asian Studies Association of Australia](#) (2023-2024). Our warmest congratulations to Melissa on these very well-deserved sources of recognition of her work and leadership in the field of Asian constitutionalism.

Bringing together work by Professors Theunis Roux, Melissa Crouch, myself and our wonderful HDR community, the Comparative Constitutional Law Project continued to host a number of comparative constitutional law seminars and events. This month, we are also very much looking forward to hosting the first-ever winter-summer school of the International Society of Public Law.

Sincerely,
Rosalind Dixon

CENTRE ACTIVITIES

EVENTS

Public Law in the Classroom Workshop 9 February 2023

The ninth annual PLIC Workshop was held in a hybrid format at the UNSW Faculty of Law & Justice on 9 February (the day before the Constitutional Law Conference). Organised by the Gilbert + Tobin Centre in conjunction with 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 workshop was a great success, attracting around 60 public law teachers from across the country and internationally, both in person and online. Session 1 focused on 'Leveraging teaching for impact', with Dr Paul Kildea, Dr Yee-Fui Ng and Eddie Synot on the panel (chaired by Dr Julie Debeljak). Session 2 was on 'Contextualising public law: Indigenisation, Decolonisation and Feminist perspectives', with Dr Becky Batagol, Dr Adil Hasan Khan and Aurora Milroy on the panel (chaired by Dr Laura Grenfell). Keep an eye on your inbox to register for next year's event – we'll send an invitation later in 2023.

Constitutional Law Conference 10 February 2023

The 2023 Constitutional Law Conference (with the support of the Australian Association of Constitutional Law and Federation Press) was held in a hybrid format for the first time this year, with nearly 100 in person attendees joining us at the Gilbert + Tobin offices in Barangaroo, and approximately 150 joining online. The conference featured discussions of important developments in the High Court, Federal Court and state courts and provided an overview of the key public law debates in 2022. It included papers on the separation of powers, the implied freedom of political communication, privacy, protective detention, discrimination law, inconsistency between state and federal legislation, and government powers with respect to citizenship, alienage and deportation. The conference was addressed and attended by leading judges, academics, barristers and government lawyers.

We are pleased to report that the conference was a great success, and given the overwhelmingly positive feedback, we will be holding the event in the same format and in the same location next year – so please mark 9 February 2024 in your diaries (invite coming soon).

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 (USyd), Associate Professor Harry Hobbs (UTS), Shreeya Smith (WSU) and Ashleigh Barnes (Mq).

Global Gender Constitutionalism and Women's Citizenship by Ruth Rubio-Marin 10 May 2023

The first meeting of the Greater Sydney Public Law Reading Group for 2023 took place at the UTS Faculty of Law (and online via Zoom) in early May. Author Professor Ruth Rubio-Marin joined remotely and spoke about her book *Global Gender Constitutionalism and Women's Citizenship* before inviting commentary from Ramona Vijayarasa (UTS) and Rosalind Dixon (UNSW). The event was chaired by Harry Hobbs (UTS). Constitutions around the world have overwhelmingly been the creation of men, but this book asks how far constitutions have affirmed the equal citizenship status of women or failed to do so. Using a wealth of examples from around the world, Ruth Rubio-Marin considers constitutionalism from its inception to the present day and places current debates in their vital historical context. Rubio-Marin adopts an inclusive concept of gender and sexuality, and discusses the constitutional gender order as it has been shaped by debates such those around same-sex marriage and the rights of trans persons.

The Making of Constitutional Democracy: From Creation to Application of Law by Paolo Sandro 31 May 2023

The second meeting of the Greater Sydney Public Law Reading Group took place at the University of Sydney Law School on Wednesday 31 May. The subject of discussion was Dr Paolo Sandro's recently published monograph, *The Making of Constitutional Democracy*. Chaired by Elisa Arcioni, the event involved a fascinating presentation by Dr Sandro (who joined remotely from the UK), followed by a response from commentators Joel Harrison and Lisa Burton Crawford. Subsequent Q&A from both in person and Zoom participants explored a number of ideas flowing from the book's central thesis regarding the distinction between *creation and application* of law within the structure of constitutional democracy. Consistent with the aim of this series, following the formal event discussion continued over morning tea, which provided a wonderful opportunity for participants to share about our own research, and to learn more about the work of public law colleagues at other law schools across Sydney.

UPCOMING EVENTS

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 (held in person in the UNSW Law & Justice Building - Staff Common Room Level 2 - and online via Zoom) we will explore these and other questions, from both a comparative and theoretical perspective, and reflect on the state of freedom of expression in a "digital age". The seminar is a joint initiative with the UNSW Allens Hub for Technology, Law and Innovation, and will be chaired by UNSW Allens Hub Director Professor Lyria Bennett Moses. It will also feature Hub and Centre members Dr Daniel Joyce, Siddharth Narrain and visiting scholar Soorya Balendra. [Register here.](#)

Book Launch: Responsive Judicial Review by Rosalind Dixon 29 June 2023

In December 2022, the Centre hosted a judicial dialogue on Rosalind Dixon's new book *Responsive Judicial Review: Democracy and Dysfunction in the Modern Age* (OUP, 2023). The recording can be accessed [here](#). Later this month, the Centre will join with the Faculty of Law & Justice in hosting an academic panel to mark the launch of the book, drawing in critical reflections from scholars in Latin America and globally. This event will be held in person at the UNSW bookshop. [Register here.](#)

GREATER SYDNEY PUBLIC LAW READING GROUP

The Law as a Conversation Among Equals by Roberto Gargarella 28 June 2023

Join Roberto Gargarella (Professor of Constitutional Theory and Political Philosophy at the Universidad de Buenos Aires and at the Universidad Torcuato Di Tella) and a panel of commentators to discuss his 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



Freedom of Expression in a Digital Age

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'. This hybrid event will be held in person in the UNSW Law & Justice Building (Staff Common Room Level 2) and online via Zoom. [Register here](#).

Allegiance, Citizenship and the Law by Helen Irving 13 September 2023

Join Helen Irving (Professor Emerita, University of Sydney Law School) and a panel of commentators to discuss her book *Allegiance, Citizenship and the Law* (Edward Elgar, 2022). Weaving together theoretical, historical, and legal approaches, this book offers a fresh perspective on the concept of allegiance and its revival in recent times, identifying and contextualising its evolving association with theories of citizenship. The book explores how allegiance was historically owed in return for the sovereign's protection but has been redeployed by modern governments to justify the withdrawal of protection. It examines allegiance from multiple perspectives, including laws for the revocation of citizenship, new ideas of citizenship education, the doctrine of treason, oaths of allegiance, naturalisation tests, and theories of belonging. This hybrid event will be held in person at the WSU City Campus (exact location tbc) and online via Zoom. [Register here](#).

THE AUSPUBLAW BLOG

The Australian Public Law Blog (AUSPUBLAW) has had a very busy, successful start to 2023.

A major focus of the Blog this year has been our posts on the First Nations Voice, and the launch of a section of our website devoted to commentary and explainers on the Voice. Since the blog returned from hiatus at the start of February, we have published a wide range of posts on or relating to the Voice, including: Paul Kildea's explanation of reforms to referendum machinery; Sana Nakata's commentary on the political power of representation; Robert French AC's argument for the Voice as a step forward for Australian nationhood; a series of posts from Gabrielle Appleby, Elisa Arcioni, Sean Brennan, Megan Davis, Stephen McDonald SC and Scott Stephenson on key questions in the drafting of the Voice's constitutional provisions; an analysis by Elisa Arcioni and Andrew Edgar of the implications for the Voice for administrative law; Scott Stephenson's explainer on risks (or lack thereof) arising from the Voice; and Craig Lenehan SC's rebuttal to common criticisms of the Voice. These posts have made significant contributions to public debate.

The Blog has also continued to publish widely on contemporary debates in Australian public law. Posts in 2023 have included Somali Cerise and Prabha Nandagopal's commentary on the *Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Bill 2022* (Cth); critical commentary on the implications of recent High Court cases by Henry Palmerlee (on *Farm Transparency v NSW*), Stephen McDonald SC (on *AJL20 v Commonwealth*); and important explanatory posts on recent decisions of the High Court and the Full Court of the Federal Court by Samuel Naylor (on *Santos v Tipikalippa*), Sanmati Verma (on *Pearson v MHA*) and Josh Gibson (on *Unions NSW v NSW*). We have also posted analyses of legislative complexity and design (William Isdale and Nicholas Simoes da Silva), constitutional restrictions on civil conscription (Fiona McDonald, Stephen Duckett and Emma Campbell), comparative elections of presiding officers (Dane Luo), reforms to political appointments (Kate Griffiths), reforms to political donations (Graeme Orr), the WA Government's ongoing review of its response to COVID (Jess Kerr, Marco Rizzi and Julie Falck) and the relationship between religious freedom and equality (Alex Deagon).

We have also held a successful round of EOIs for AUSPUBLAW's popular book forums promoting the work of emerging scholars in Australian public law. We are now working to bring those forums to fruition at the end of 2023.

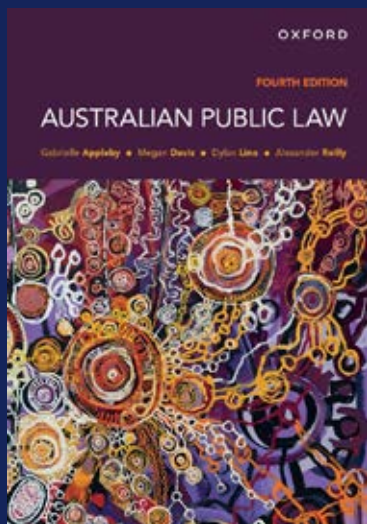
The Australian Public Law Blog remains an important part of Australian legal commentary, particularly in communicating recent legal debates and controversies to a general audience. We are very proud of our progress to date.

As ever, we welcome contact from any friends of the Centre who would be interested in writing for AUSPUBLAW. To subscribe to the blog, please subscribe at www.auspublaw.org, or follow us on Twitter at @auspublawblog or on LinkedIn. To submit a post to our editors, to propose an idea for a post, or to let us know about an upcoming event, please contact us at auspublaw@unsw.edu.au.

Gabrielle Appleby, Douglas McDonald-Norman and Laura Ismay



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Australian Public Law Book

NEW EDITION OF AUSTRALIAN PUBLIC LAW

In September 2023, the fourth edition of *Australian Public Law* will be released. This edition sees some significant changes in the author team, with Laura Grenfell stepping down from the book, and Balnaves Professor of Constitutional Law (UNSW Law & Justice) Megan Davis, and Dr Dylan Lino (University of Queensland and UNSW alumni and Indigenous Law Centre associate) joining the team. Megan brings to the author team a First Nations international human rights and constitutional law perspective, and Dylan has expanded the expertise of the author team in constitutional law, colonialism and legal history.

Australian Public Law is an introductory text for students of public law, providing a critical foundation for understanding the ideas and principles that underpin Australian public law. It develops a concept of public law through analysis of the mechanisms of *empowerment and constraint* and places public law in its historical, social, political, economic and environmental context. This edition has a particular focus on providing a critical introduction to the history of public law in Australia, and situates the system in relation to the place of First Nations. The book draws on examples and case studies throughout to demonstrate how *institutions, values and interests* affect the real-life application and outcomes of public law, and the ongoing contestations of public law that will shape its future development.

The new edition builds on the success of the earlier editions, while also restructuring the content and providing greater contextual background. It has been updated to take into account important public law developments, particularly in relation to responses to the COVID-19 pandemic, the referendum on a First Nations Voice as called for in the Uluru Statement from the Heart, developments towards Treaties in the States and Territories, the impact of technology on the practice of public law, the integrity of democracy, reforms to judicial regulation, and other legislative and judicial developments.

PEOPLE

Mohammad Ibrahim

Mohammad Ibrahim is a first-year PhD student in the Faculty of Law and Justice at UNSW. Previously, he worked as an associate lecturer in the Faculty of Law, Gadjah Mada University, Indonesia. He gained his LLM degree from the University of Melbourne Law School. His interests include Indonesian constitutional law, discrimination law, law and religion as well as comparative constitutional law. His scholarly work has been published in journals such as the *Oxford Journal of Law and Religion*, *International Journal of Discrimination and the Law*, and *Australian Journal of Asian Law*. His doctoral research aims to examine stealth theocracy in contemporary Indonesia.

Surbhi Karwa

Surbhi Karwa is a PhD student at the Faculty of Law and Justice (funded by ARC Future Fellowship on Constitutions and Democratic Resilience) working on feminist constitutionalism and the Indian Constitution. Her work focuses on the claims of women members of the Indian Constituent Assembly and feminist movements broadly on the Indian Constitution. Previously, she completed her BCL from the University of Oxford with Distinction and Law Faculty Prize for the highest score in three out of her five subjects. She is also a gold medalist from National Law University, Delhi and National Law University, Lucknow in her LL.M. and B.A.LL.B.(Hons.) respectively. She has published in the *Indian Law Review*, the *International Journal of Constitutions Law (ICON)* and the forthcoming *Cambridge Companion to the Constitution of India*. She has taught public law courses at the National Law School of India University, Bangalore, National Law University, Delhi and Jindal Global Law School. She has also been a Bonavero Human Rights Institute Fellow at Socio-Economic Rights Institute, South Africa. Apart from her academic writings, she contributes frequently to Indian media publications like the *Indian Express*, the *Hindustan Times*, *EPW-Engage*, *Frontline*, *the Wire*, etc. She has recently joined as Assistant Editor at Indian Law Review Editorial Board.

Lisa Rabeneick

Lisa Rabeneick is a fourth year PhD student at the University of Münster's Faculty of Law and is visiting UNSW Law & Justice for three months. In her doctoral research, she focuses on the German Constitutional Court's powers of rights-based judicial review, examining how the alternative weak-form review developed in the Commonwealth context could fit within the German constitutional order. Thus, she is interested in when the German Constitutional



Mohammad Ibrahim



Surbhi Karwa



Lisa Rabeneick



Rupavardhini Raju

Court should ultimately decide on the meaning of guaranteed rights in relation to the legislature. Currently, Lisa works as a research associate at Münster’s Institute for Public Law and Politics. She completed her First State Examination in Law – the German equivalent to a bachelor’s and master’s degree in this field – likewise at Münster University.

Rupavardhini Raju

Rupavardhini (Rupa) is a PhD candidate at the Faculty of Law at the University of Oxford. Her current research is in the area of constitutional theory studying the links between constitutional identities and nationalism. Rupa is also currently a Lecturer in Public Law at Pembroke College, University of Oxford where she teaches Administrative Law. Her broad research interests lie in the intersection of public law and politics, constitutional democracy, and accountability institutions. During her research visit at the Gilbert + Tobin Centre she is excited to work on the influence of anti-colonial nationalism on constitution-making in India and the impact of colonial continuities on the legitimacy and sovereignty of the Indian constitution. Prior to beginning her PhD, she was a civil servant in the Government of India, and was the Director of the National Academy of Audit and Accounts, India where she trained newly recruited civil servants and taught law, public policy and administration. She holds a Bachelor of Laws from the National University of Juridical Sciences, Kolkata and an LL.M from Harvard Law School, Massachusetts where she was a Fulbright Scholar.

Shohini Sengupta

Shohini is a PhD student at the Faculty of Law & Justice (ARC Laureate PhD Scholarship in ‘The Regulation of the Data Revolution’), working on the digital identity program in India and its implications on financial citizenship, particularly on exclusion and the creation of the ‘other’. She has previously worked in the field of legislative policymaking, focussing on financial stability, bank resolution, and research at the intersection of finance, regulation, and technology law. She has assisted the Ministry of Finance, the Ministry of Corporate Affairs, the Ministry of Petroleum, financial sector regulators, and the Fifteenth Finance Commission in India on several socio-economic and legal matters, including the Companies Amendment Bill, 2016, and the draft Financial Resolution and Deposit Insurance Bill, 2017. She has a Bachelor’s degree in law from the National Law Institute University, Bhopal, and a Master’s degree in Law and Finance from the University of Oxford on the Weidenfeld leadership scholarship. She is on leave from the Jindal School of Banking & Finance, where she is an Associate Professor and ex-Director of the Centre for Research & Analysis in Finance, Technology & Law which she founded. She can be found on the following platforms - [Twitter](#), [Linkedin](#), [SSRN](#).



Shohini Sengupta



Meeting new G+T Centre visitors and PhDs

PROJECT REPORTS

Comparative Constitutional Law Project

Project Director: Rosalind Dixon / Deputy Director: Elisabeth Perham

In April, the CCL project co-hosted a workshop in Tokyo, joint with the University of Tokyo, on the new “comparative political process theory”. The workshop brought together scholars from Asia, the US, Europe, Israel and Australia, to debate the current state of CPPT theory in global constitutional scholarship, and to engage in dialogue with Japanese constitutional scholars on the relevance of these ideas to a Japanese context. The workshop was also preceded by a G+T supported networking event for female law professors, who remain the distinct minority in the Japanese academy.

Later in April, the CCL project also co-hosted a hybrid judicial dialogue in Sri Lanka, with the Supreme Court and Court of Appeal of Sri Lanka, organised with Sri Lankan colleagues at the University of Colombo, the Judges Institute of Sri Lanka and the Max Planck Foundation for International Peace and the Rule of Law. The dialogue was a first of a kind meeting of the senior judiciary in Sri Lanka, and brought them into dialogue with each other and global experts from India, South Africa, the UK and the US, as part of the project’s broader work on constitutions and democratic resilience.

In May, Ayesha Wijayalath (Scientia PhD Candidate, UNSW Law & Justice) participated in the roundtable discussion to commemorate *50 years of Kesavananda Bharathi & Basic Structure Constitutionalism*, organised by the National Law School of India University, Bangalore. The Kesavananda Bharathi case is a landmark judgment in Indian constitutional history that established the doctrine of the Basic Structure of the Constitution, which acts as a safety-valve against the abuse of amending power by the Parliament. The discussion reflected



Symposium - The New Comparative Political Process Theory

on the significance of this judgment, its impact on Indian democracy, and its meaningful contribution to comparative constitutional law.

The project has helped host a number of Centre visitors, and supported a broader range of engagement activities. One example is the recent appointment of Melissa Crouch to the editorial board of *Law & Social Inquiry* and the *Asian Law & Society Journal*. She has also been awarded a Senior Fellowship at The Baldy Centre for Law & Social Policy, the State University of New York, Buffalo (for 2024).

Another is the recent dialogue between Project Director Rosalind Dixon and NYT journalist Emily Bazelon on issues of democratic constitutional resilience. Parts of the conversation are reported in Bazelon's article in the Times magazine, which can be accessed [here](#).

The Indigenous Legal Issues Project

Project Co-Directors: Sean Brennan

Events have moved steadily towards the holding of a referendum in late 2023 on the proposal to enshrine an Aboriginal and Torres Strait Islander Voice in the Constitution. Centre members have continued to play a significant role, often in partnership with the Indigenous Law Centre (ILC) at UNSW led by Professor Megan Davis (a lead figure in the process leading to the Uluru Statement from the Heart).

Foremost amongst the national developments in the first half of 2023 was the introduction of the Constitution Alteration (Aboriginal and Torres Strait Islander Voice) 2023, effectively the Bill which Parliament must pass by absolute majority to initiate a referendum. At the time of writing, the Bill had been passed unchanged by the House of Representatives and was due to be debated by the Senate in the middle of June. Assuming passage before the Winter recess of Parliament, a referendum will be held on the question approved by Parliament between late August and the end of the year. The expected date is a Saturday in October or November.

Centre members Gabrielle Appleby, Lizzy Perham, Sean Brennan, Paul Kildea, Andrew Lynch and Centre Director Rosalind Dixon collaborated in a submission to the parliamentary Joint Select Committee on the Bill in April. That submission endorsed the proposed wording of the constitutional amendment on the basis it was legally sound, advanced human rights and provided appropriate constitutional recognition for First Nations people. Gabrielle and Sean also contributed to a submission by the Indigenous Law Centre that was cited a number of times in the committee's final report. George Williams also gave evidence and made a submission to the committee.

Earlier, in March, Parliament passed amendments to the machinery legislation that supports the holding of referendums in Australia. The report of the Joint Standing Committee on Electoral Matters on those amendments quoted extensively from the oral evidence and individual written submissions by Gabrielle Appleby, Paul Kildea and George Williams.

The AUSBULAW Blog (jointly edited by Gabrielle with Centre colleague Douglas McDonald-Norman) has continued through 2023 to feature posts on the Voice proposal, including from former High Court Chief Justice Robert French, political scientist Sana Nakata, barristers Craig Lenehan SC and Stephen McDonald SC, and a host of legal academics from UNSW and the Universities of Melbourne and Sydney, including Gabrielle and Sean.

In its March edition, Gabrielle Appleby, Sean Brennan and Megan Davis edited a special series of comments in the *Public Law Review*, on various aspects of the Voice constitutional amendment. Gabrielle, Sean and Megan provided an overview comment on the history of the drafting, its objectives and the different factors that have influenced the drafting exercise. Other comments include one on justiciability from A/Prof Scott Stephenson (Melbourne), on membership from A/Prof Elisa Arcioni (Sydney) and on the federal aspects of the Voice (Stephen McDonald SC, Adelaide).

In May, Centre members Gabrielle Appleby and Paul Kildea initiated a new Twitter account VoiceReferendumQ&A (@referendumQandA). Working with a team that includes Sean and other UNSW colleagues, Justine Nolan (Director of the Australian Human Rights Institute) and Professor Lucas Lixinski, the purpose of the Twitter account is to support informed public debate and media coverage about the Voice referendum. The account has posted on a range of topics, including the legal soundness of the constitutional amendment, the Voice's ability to make representations to the Executive, and its relationship with the right of self-determination of Indigenous peoples.

Gabrielle Appleby has continued her work with the Clerk of the House of Representatives, providing them with a briefing update on the relationship between the proposed Voice and the Parliament, drawing on the recent model established with the South Australian First

Nations Voice. Her briefing has been published as Gabrielle Appleby, 'The First Nations Voice and Parliament: A New Constitutional Relationship' (2023) 38(1) *Australasian Parliamentary Review* 18.

The Gilbert + Tobin Centre continued to work with the ILC in its engagement with a large community of public law scholars, who have been active contributors to the debate about Voice and constitutional recognition since the Uluru Statement in 2017. The Centres co-hosted the latest in a series of workshops and briefings in April.

As Australia moves closer to a national vote involving more than 17 million electors, Centre members have also responded to numerous invitations to present on the Voice referendum to community, professional, corporate, regulatory, youth and other audiences.

In May, Gabrielle also presented a comparative seminar on constitutional referendum campaigns in Dublin, hosted at the Trinity Centre for Constitutional Law & Governance at Trinity College Dublin. She spoke about the Australian experience so far in the Voice referendum, and appeared alongside David Kenny from Trinity, reflecting on the more extensive Irish experience, particularly in relation to its abortion, marriage equality and child's rights referendums.

Sean Brennan also continued the Centre's engagement with contemporary native title issues. In April he was moderator in Cairns for the Cape York Institute at the first event of its Think Tank Series in 2023. It focused on compensation for the extinguishment of native title, a topic that saw a major national development in May when the Federal Court rejected the Commonwealth's demurrer in *Yunupingu v Commonwealth*. The Court dismissed constitutional and other arguments that would have blocked progress for a compensation claim, relating to a bauxite mine, that was launched on behalf of the Gumatj clan by the late Yolngu leader Yunupingu.

The Judiciary Project *Project Director: Gabrielle Appleby*

January 2023 started the year for The Judiciary Project with the release of the government's [scoping paper](#) on the design of a federal judicial commission, following the government's commitment to implement the recommendation of the Australian Law Reform Commission in its [report on judicial impartiality](#). In February 2023, The Judiciary Project hosted a national Zoom, bringing together scholars, practitioners and judges from Australia and we were pleased also to be joined by a number of international experts, to discuss the question of the design and operation of judicial discipline systems. Gabrielle Appleby worked with Suzanne Le Mire (University of Adelaide) to make a submission to the government's process.

Extending this work, Gabrielle Appleby attended a conference at the University of Cambridge in April for the *Judging and the Judiciary Research Handbook*, edited by Sophie Turenne (Edward Elgar Routledge, 2024). Gabrielle's chapter will look at the objectives and design of judicial discipline systems. Gabrielle was also invited by David Kosar and Katarína Šípulová to visit the Judicial Studies Institute at Masaryk University (Brno, Czech), in June 2023, to present her work on judicial discipline.

Gabrielle Appleby was invited by the general editor of the *Australian Law Journal* to edit a Special Issue on the Australian Judiciary, to be launched in September at the bicentenary of the New South Wales and Tasmania Supreme Courts conference hosted by the Australian Academy of Law, the Australasian Institute of Judicial Administration and the Australian Law Journal entitled 'Enduring Courts in Changing Times'. (Gabrielle will speak on judicial discipline at that conference.) The Special Issue provides a contemporary snapshot into the position and debates surrounding the Australian judiciary in 2023. It includes pieces on judging and diversity from Tony McAvoy SC, judicial participation and influence in judicial appointments by Andrew Lynch (UNSW), an empirical analysis of the impact of population change on the Australian judiciary by Brian Opeskin (UTS), an analysis of the impact of technology on the judicial role by Tania Sourdin (Newcastle), an analysis of the current state of judicial education and the need to consider competence as a judicial value by Julie Falck and Jessica Kerr (UWA), an overview of the diverse individual, collective and institutional ethical infrastructure that supports good, impartial judging by Sharyn Roach Anleu and Kathy Mack (Flinders), and the design of judicial disciplinary systems by Gabrielle Appleby and Suzanne Le Mire.

Finally, Gabrielle Appleby has been working on two collaborate pieces that form part of Rosalind Dixon and Erin Delaney's Constitutional Heroines project. With Sarah Murray (UWA), Gabrielle is looking at feminist judicial leadership and collegiality, using the tenure and legacy of the Hon. Chief Justice Kiefel AC as a case study as part of her MacCormick Fellowship at the Edinburgh Law School. She presented an early draft of this piece at her MacCormick Lecture to the Law School. The second piece is a collaboration with Heather Roberts (ANU) on sub-national feminine judicial leadership in Australia.

PUBLICATIONS AND PRESENTATIONS

PUBLICATIONS

Co-Authored Publications

Gabrielle Appleby, Sean Brennan and Megan Davis, 'A First Nations Voice and the Exercise of Constitutional Drafting' (2023) 34 *Public Law Review* 3

Gabrielle Appleby

Gabrielle Appleby, Megan Davis, Dylan Lino and Alexander Reilly, *Australian Public Law* (4th edition, Oxford University Press, 2023)

Gabrielle Appleby and Erin Delaney, 'Judicial Legitimacy and Federal Judicial Design: Managing Integrity and Autochthony' (2023) 132 *Yale Law Journal* 2360

Gabrielle Appleby, 'The First Nations Voice and Parliament: A New Constitutional Relationship' (2023) 38(1) *Australasian Parliamentary Review* 18

Gabrielle Appleby and Anne Carter, 'Parliaments and Facts: Deepening Deliberation', in Anne Carter and Joe Tomlinson (eds), *Facts in Public Law Adjudication* (Hart Publishing, 2023) 29

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George Williams

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PRESENTATIONS

Gabrielle Appleby

Gabrielle Appleby and Megan Davis, Keynote Address: First Nations Constitutional Recognition in Australia – Addressing Foundational Failures of Rule of Law, *Fourth Annual Australia & the World Symposium: Constitutional Change in Australia and Beyond*, Australian Studies Institute (ANU) (1 March 2023)

Gabrielle Appleby, 'Judicial Discipline' at the workshop for *Judging and the Judiciary Research Handbook*, University of Cambridge (18-19 April 2023)

Gabrielle Appleby, 'MacCormick Lecture: Collegiality and Feminist Leadership: Susan Kiefel of the High Court of Australia', Edinburgh Law School (2 May 2023)

Gabrielle Appleby and David Kenny, 'Referendums: Comparative Conversation' Seminar at the Trinity Centre for Constitutional Law & Governance at Trinity College Dublin (25 May 2023)

Gabrielle Appleby, 'Judicial Discipline' Seminar at the Judicial Studies Institute, Masaryk University, Brno, Czech Republic (5 June 2023)

Sean Brennan

'Voice Referendum Q&A: Your Questions Answered', Panel Member, UNSW Law & Justice +Justice Festival, Kensington, 21 and 23 June 2023.

'The Voice Referendum', Panel Member, Council of Australasian Tribunals Annual Conference, Sydney, 9 June 2023.

'The Voice Referendum', Panel Member, Citigroup, Sydney, 8 June 2023.

'Constitution Alteration (Aboriginal and Torres Strait Islander Voice) 2023 – Context and Details', National Zoom Forum for Public Law Academics, 4 April 2023.

'Compensation for the Extinguishment of Native Title', Panel Moderator, Cape York Institute Think Tank Series, Cairns, 20 February 2023.

Rosalind Dixon

'Engendering the Legal Academy' (Lecture, UCLA CCL Workshop, 6-7 January 2023).

'Restorative Constitutionalism' (Lecture, UCLA CCL Workshop, 6-7 January 2023).

'Responsive Judicial Review' (Presentation, Supreme and Federal Court Judges' Conference, 25 January 2023).

'Dobbs, Democracy and Dysfunction' (Presentation, State Democracy Research Initiative Roundtable at University of Wisconsin, 27 January 2023).

'Frank Michelman's Constitutional Essentials Seminar Series', (Comment, 15 February 2023) (via Zoom).

'Amendment Reform in American and Abroad, US Constitution Center', (Panel, National Constitution Center, 17 March 2023) (with Wilfred Codrington III and Chief Justice Jeffery Sutton).

'Presentation to Department of Legislative Council (Presentation, 27 March 2023).

'Presentation to Chilean Expert Commission' (Presentation, 15 April 2023) (with International IDEA).

'Responsive Judicial Remedies', (Presentation, University of Tokyo, Transactional Law Center, 24 April 2023).

'Crisis Negotiation Round Table: Prospects for Constitutional Reform in Israel' (Presentation, Harvard Law School, 29 April 2023) (via zoom).

'Judicial Dialogue' (Closing Address, Sri Lankan Judicial Dialogue, 29 April 2023).

'Responsive Judicial Review in Asia' (Webinar, HKU Centre for Comparative and Public Law, 8 May 2023).

'Responsive Judicial Review in New Zealand?' (Presentation, New Zealand Court of Appeal, 23 May 2023).

'Abusing the Rule of Law' (Presentation, Stanford Rule of Law Conference, 26 May 2023) (via zoom).

George Williams

'The Voice to Parliament – The Legal Realities' *The Sydney Institute*, Sydney, 3 April 2023.

MEDIA PUBLICATIONS

Co-Authored

Gabrielle Appleby, Elisa Arcioni, Sean Brennan, Megan Davis, Stephen McDonald and Scott Stephenson, 'Constitutional Drafting: Key Questions' on [AUSPUBLAW](#) (1 March 2023).

Gabrielle Appleby

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Rosalind Dixon

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Paul Kildea

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George Williams

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Submission to Joint Standing Committee on Electoral Matters 'Inquiry into Referendum (Machinery Provisions) Amendment Bill 2022' (2 December 2022).

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