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University

GILBERT + TOBIN CENTRE OF PUBLIC LAW NEWSLETTER JULY 2022



Rosalind Dixon
Centre Director



Lisa Burton Crawford
Centre Deputy Director

Dear Centre supporters and friends,

The last six months have been a busy time for the Centre and its members, with the return to (mostly) face-to-face teaching, and a mix of hybrid, online and in-person events. The chance to reconnect with friends and supporters in person has been extremely rewarding – and we are excited to be welcoming new members and launching a new series of events and programs in 2022.

In February, we hosted our annual Constitutional Law conference, again online, but with satellite ‘pod’ drinks for attendees in Sydney and Melbourne. Regrettably, our plans to host pods in other states and territories were interrupted by the Omicron Covid outbreak, but we thank the Australian Association of Constitutional Law (AACL) for their support for these plans as well as the conference more broadly, and the AACL and Professor Luke Beck for hosting the Melbourne pod. The conference was exceptionally well attended and we thank all of those who presented such informative and insightful papers, including our Keynote speaker Professor James Stellios of the ANU.

As is now our custom, the day before the Constitutional Law conference we also hosted the annual Public Law in the Classroom, joint with the Castan Centre at Monash and the Public Law and Policy Research Unit at the University of Adelaide. The themes of the conference were engagement and motivation for public law teachers and “extensions of public law”, and both panels were extremely well received by all. We are grateful to Centre colleagues Dr Svetlana Tyulkina and Shreeya Smith for their outstanding organization and leadership of this event.

In February, the Centre hosted a reception at NSW Parliament House for the graduates of the inaugural Pathways to Politics for Women Program NSW, co-hosted by the Centre, the Australian Human Rights Institute, Centre for Social Policy Research, AGSM and Division for Equity Diversity and Inclusion. The reception was addressed by our Chancellor David Gonski AC, and attended by a range of friends of the Centre and University – and celebrated the wonderful cohort of women who graduated from the program in 2021. One of our graduates, Sally Sitou, was elected as the ALP Member for Reid in the May 2022 election, and we were especially proud of her achievements – and the role the Centre played in her journey to Canberra in this context. We are also deeply grateful to Centre HDR candidate, Elisabeth Perham, for the central role she played in organising and curating the Program, as its inaugural Co-director.

In April, we looked toward the May federal election with an event hosted by the Centre’s Elections Project and the Electoral Regulation Research Network. The topic was: *Australia Votes 2022: Election Preview with Antony Green*, and featured a discussion by Green on a range of issues of public law significance, as well as a focus on the races to watch in the House and Senate.

We also hosted the first of our 2022 global book series seminars, joint with the Australian Human Rights Institute. The seminar focused on an important new book about human rights by NYU Professor Grainne de Burca ([Reframing Human Rights in a Turbulent Era](#)) and featured a discussion between Professor de Burca and Australian Human Rights Institute Director Justine Nolan and Centre member, Professor Ben Golder.



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REGISTRATIONS OPEN NOW

10 FEBRUARY 2023

Constitutional Law
Conference – Online
with pod/satellite
cocktail parties in major
Australian cities (TBC)

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](#).

In May, we co-hosted, along with the Australian Human Rights Institute, a seminar on 'Public Institutions, Accountability and Sexual Violence', which featured perspectives from Dr Catherine Williams, Professor Gabrielle Appleby and Professor Rosalind Dixon on issues raised by reviews into conduct at the national Parliament and also the High Court, in particular the Jenkins Report. Dixon also presented the findings of a report she co-authored with former Centre student interns, Matt McLeod and Kate Jackson: [Family-friendly Parliament report – Pathways to Politics](#). This event was also hosted by Professor Justine Nolan.

Also in May, we hosted an important seminar reflection on 'National Security, Accountability and Public Law Values'. The seminar featured papers by Justice Michael Kirby, Professor George Williams, Drs Keiran Hardy and Rebecca Ananian-Welsh, and discussed potential reforms to the current system of national security oversight to improve accountability and strengthen rule of law values. This remains a topic of ongoing concern to the Centre.

May also saw the first part of a two-part version of the annual Comparative Constitutional Law roundtable hosted by the Centre's Comparative Constitutional Law Project. This first part of the roundtable featured papers by Centre HDR Candidate Siddharth Narrain, as well as ourselves, and A/Professor Elisa Arcioni from Sydney Law School. We were especially glad to see so many colleagues from partner Centres at the roundtable, including colleagues from Hong Kong University, the National University of Singapore, Ottawa and Victoria University Wellington.

In June, we hosted the second of our global book events, featuring a discussion between LSE Professor Martin Loughlin and Centre member Professor Theunis Roux on the theme of constitutionalism, specifically in the context of Professor Loughlin's provocative new book, [Against Constitutionalism](#).

Throughout this time, Centre members Lisa and Janina have continued to progress their partnership with the Allens Hub for Law, Technology and Innovation, particularly on the issues raised by the automation of government decision making and technological approaches to making and interpreting legislation. You can read more about the Global Plenary on Rules as Code that was held in March and future plans for this project later in this newsletter.

In this period, we have also seen several colleagues return from leave, and new colleagues join – including Paul Hayes, a new Centre HDR candidate. And numerous colleagues have had great successes.

We congratulate Centre members Lisa and Janina on their promotion to Associate Professor, effective as of January this year. Centre Director Rosalind Dixon was awarded an ARC Future Fellowship on Constitutions and Democratic Resilience, which will commence in July this year. And HDR Centre members, Shreeya Smith and Elisabeth Perham, were recently appointed on Faculty at Western Sydney University.

Lizzy and Shreeya have been invaluable contributors to the intellectual life and community of the Centre and warm and generous colleagues. We wish them well, and we will miss them, but look forward to continuing to work with them in a variety of capacities.

The next few months are likely to be just as busy for the Centre – with new visitors, seminars and global book events, and work to support a range of constitutional and public law reforms, including the campaign for a First Nations Voice to Parliament.

We look forward to engaging with you in these contexts, and also to welcoming you to our 2023 Constitutional Law conference, which is now open for booking.

Sincerely,

Rosalind Dixon and Lisa Burton Crawford

CENTRE ACTIVITIES

EVENTS

CONSTITUTIONAL LAW CONFERENCE

Please refer to the Director and Deputy Director's Report for a wrap-up of this very successful event.

AUSTRALIA VOTES 2022: ELECTION PREVIEW WITH ANTONY GREEN 4 APRIL 2022

In early April, the federal election was just around the corner and Australians were weighing up their vote. In this public lecture, ABC election analyst Antony Green discussed a range of key issues and talked about the races to watch in the House and Senate. The event was jointly hosted by the Gilbert + Tobin Centre of Public Law and the Electoral Regulation Research Network. Antony Green has covered more than 60 federal, state and territory elections for the ABC. He has written a variety of expert reports and submissions on electoral matters, and posts frequently on his popular election blog. In 2015, Antony was appointed an Adjunct Professor in the Department of Government and International Relations at the University of Sydney.

PUBLIC INSTITUTIONS, ACCOUNTABILITY, AND SEXUAL VIOLENCE 6 MAY 2022

The last few years have forced a major reckoning in our understanding and approach to issues of sexual violence and harassment in all areas of Australian society, including in our highest public institutions – from the High Court to the Commonwealth Parliament. Part of that reckoning is also a debate about how institutional norms and so as to provide a safer workplace for female parliamentarians, parliamentary staff, and those working in the parliamentary service. Most notably, the [Set the Standard: Report on the Independent Review into Commonwealth Parliamentary Workplaces](#) called for a range of reforms along these lines. In this seminar, we brought together leading scholars and practitioners in the field, including UNSW Professors Gabrielle Appleby and Rosalind Dixon and Research Director of the Centre of Public Integrity, Dr Catherine Williams, to explore these reforms, their logic and likely effect, as well as their prospects for adoption now and after the next election. The event was co-hosted by the Australian Human Rights Institute and chaired by its Director, Professor Justine Nolan.

PUBLIC LAW VALUES, ACCOUNTABILITY AND NATIONAL SECURITY 27 MAY 2022

As the world has faced new challenges, the powers of our national security agencies have greatly increased. But have the forms of oversight kept pace? Are our national accountability processes fit for purpose when it comes to national security? In this unique online seminar, hosted by the G+T Centre for Public Law at UNSW, we explored these questions with leading experts in public law and counter-terrorism.

Speakers:

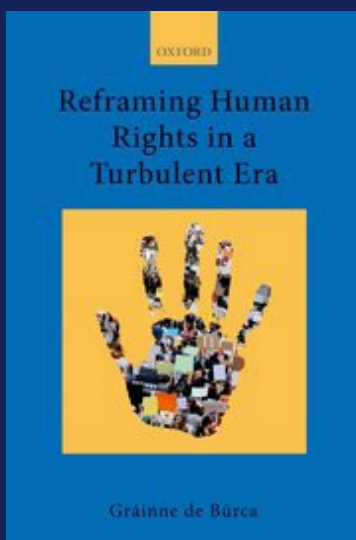
- Former Justice Michael Kirby AC
- Scientia Professor, Deputy Vice-Chancellor George Williams AO, UNSW
- Dr Keiran Hardy, Griffith University
- Dr Rebecca Ananian-Welsh, UQ

GLOBAL PUBLIC LAW VIRTUAL BOOK SEMINAR SERIES

REFRAMING HUMAN RIGHTS IN A TURBULENT ERA 8 APRIL 2022

No one could doubt that we live in turbulent times – floods, fires, COVID-19 and a war in the Ukraine are but some of the challenges facing the world today. Yet what role do human rights have to play in responding to these challenges, and making policy and practice more just and effective?

In our first global book series event for 2022, hosted in conjunction with the Australian Human Rights Institute, we explored these questions in conversation with global human rights expert, NYU Professor Gráinne de Búrca, author of [Reframing Human Rights in a Turbulent Era](#) (OUP, 2021). Professor de Búrca was joined in conversation by UNSW Professor Ben Golder. The event was co-hosted by the Australian Human Rights Institute and chaired by its Director, Professor Justine Nolan.



Reframing Human Rights in a
Turbulent Era

Gráinne de Búrca



Against Constitutionalism
Martin Loughlin



2022 Mason Conversation



Global Public Law Virtual Book
Seminar Series

AGAINST CONSTITUTIONALISM BY MARTIN LOUGHLIN 3 JUNE 2022

In this much anticipated [new book \(Harvard UP 2022\)](#), Professor of Public Law at the London School of Economics, Martin Loughlin, traces the development of constitutional thought, and argues that constitutionalism now propagates the widespread belief that social progress is advanced not through politics, electoral majorities, and legislative action, but through innovative judicial interpretation. In this way, the rise of constitutionalism, commonly conflated with constitutional democracy, actually contributes to its degradation. In this seminar, Professor Loughlin was in conversation with Professor of Law and Head of the School of Global and Public Law at UNSW, Theunis Roux. This event was chaired by Professor of Law and Director of the Gilbert + Tobin Centre of Public Law, Rosalind Dixon.

UPCOMING EVENTS

2022 MASON CONVERSATION 3 AUGUST 2022 (5:30 - 7:00 PM)

The 2022 Mason Conversation features the Honourable Murray Gleeson AC in conversation with Professor Rosalind Dixon.

The Mason Conversation is a series named in honour of Sir Anthony Mason AC KBE GBM marking his outstanding generosity and contribution over decades to the University of New South Wales. As well as a distinguished career in the law, including as Chief Justice of the High Court of Australia (1987-95), Sir Anthony was the fifth Chancellor of the University of New South Wales between 1994 and 1999 and the inaugural Chair of the Advisory Committee to the Gilbert + Tobin Centre of Public Law.

Murray Gleeson served as Chief Justice of Australia from 1998 to 2008, and of NSW from 1988 to 1998. He was called to the bar in 1963 and appointed QC in 1974, was President of the NSW Bar Association from 1984 to 1985 and Lieutenant Governor of NSW from 1989 to 1998. He currently serves as a non-permanent judge on the Hong Kong Court of Final Appeal.

Register for the 2022 Mason Conversation [here](#).

GLOBAL PUBLIC LAW VIRTUAL BOOK SEMINAR SERIES

THE NEW FOURTH BRANCH BY PROFESSOR MARK TUSHNET 12 AUGUST 2022 (9:30 - 10:30 AM)

Current constitutions complicate our understanding of the traditional separation of powers. In addition to courts, legislative and executive actors, most democratic constitutional systems now have a vast arrangement of 'fourth branch' bodies – including equality, human rights, electoral and integrity commissions. In this seminar, we explore the origins and function of these bodies in global perspective, in conversation with Harvard Law School Professor Mark Tushnet, author of [The New Fourth Branch](#) and UNSW Professor Gabrielle Appleby, a leading expert on integrity and other fourth branch institutions in Australia. Register [here](#).

A V DICEY AND THE COMMON LAW CONSTITUTIONAL TRADITION: A LEGAL TURN OF MIND BY PROFESSOR MARK WALTERS 9 SEPTEMBER 2022 (12:00 - 1:00 PM)

A V Dicey is one of the most influential figures in the common law world, however how well are he and his theory of the constitution really understood. [In this book](#), Professor Mark Walters re-examines the life and work of Dicey. This re-examination allows for an alternative reading of his work to emerge, one which challenges many contemporary assumptions. Registrations opening soon.

TECHNOPOLITISM: THE NEW LOGIC OF DEMOCRATIC POLITICS 20 OCTOBER 2022 (4:00 - 5:00 PM)

Democracies around the world are currently under pressure. [In this book](#), Professor Christopher Bickerton and his co-author Carlo Invernizzi Accetti explore what they call 'techno-populism', in which appeals to technocratic expertise as well as populist invocations of 'the people' represent a new political logic that is being superimposed on the traditional struggle between left and right. Registrations opening soon.

THE AUSPUBLAW BLOG

2022 started off relatively quietly for the AUSPUBLAW blog, before really picking up pace. We have published 18 posts to the end of May, and with the federal election just behind us and the Prime Minister's commitment to a referendum on a First Nations Voice, as well a number of important High Court judgments currently reserved, and the ALRC's Judicial Impartiality report currently awaiting tabling in Parliament, we expect the coming six months will be busy – both for Australian public lawyers, and for the blog.

Since the last Centre newsletter, the blog's readership has continued to grow: we now have over 3600 Twitter followers (an increase of roughly 300 followers since the previous newsletter). Our following on LinkedIn is also growing. Regular readers of the blog may have also noticed that we switched blog platforms at the start of the year, and we are grateful to Tam Hanson for their work in making that happen. The new platform is more stable and gives us greater visibility around blog analytics: for example we know that in the month of May, there were almost 15,000 visits to the blog site by just over 13,000 individual visitors.

There are some changes coming in the blog leadership for the second half of this year. After over three years as joint editor, Elisabeth Perham is stepping down from the editorial team at the end of June, as she takes up a faculty position at the School of Law at Western Sydney University. Lizzy's energy, commitment and organisation has been pivotal to the Blog's success over the last few years. Associate Editor Kate Jackson will also be leaving the team at the end of September. Kate has been terrific to work with over the last couple of years, stepping into help with the backend of the blog (making sure posts and emails go out!) as well as helping with commissioning and editing posts. While we are sad to say goodbye, we wish both Lizzy and Kate all the best into the future. Professor Gabrielle Appleby, the founding editor of the blog, will continue as Joint Editor until the end of the year.

In May, the Centre issued a general call for Expressions of Interest to join the editorial team, and we were truly blown away by the quantity and quality of people interested in working with us. We are delighted that Douglas McDonald-Norman, currently working at the Bar in Sydney, and an incoming PhD student at the Gilbert + Tobin Centre of Public Law, UNSW, will join the editorial team as Joint Editor at the end of June. In August, the editorial team will be joined by Laura Ismay as Associate Editor, who currently works in the NSW Legislative Council and is a graduate from the JD program at the University of Sydney.

As always, the goal of the blog is (1) to publish scholarly analysis of recent cases and other public law developments, as well as (2) insights into the academic research being undertaken by Australian public law scholars.

On the former, we have published a wide range of posts dealing with public law developments and topical issues in the first half of this year, including analysis on the High Court cases of *Ruddick v Commonwealth* (Graeme Orr); *M1/2021 v Minister for Home Affairs* (Chris Honnery); and *Citta Hobart Pty Ltd v Cawthorn* (Stephen McDonald SC); as well as on the Federal Court case of *Campbell v Northern Territory* involving the application of the *Racial Discrimination Act* (Alan Zheng). We published a number of other posts on broader developments and issues of current importance: including from Paul Kildea on the parliamentary inquiry into constitutional reforms and referendums (reported in December 2021); from Nicholas Simoes da Silva and William Isdale on the need for constant care and review of the Commonwealth statute book; from Dane Luo on what would happen to the reserve powers under the Australian Republican Movement's recently released model for an Australian Republic; from Samuel White on the source of the power for domestic military deployments; from Luke Beck on how to draft a workable religious Discrimination Bill; from Kieran Pender on whether truth in political advertising laws are constitutional; and from Catherine Williams on Commonwealth grants reform. We also published posts from Margaret Thornton, and from Gabrielle Appleby and Prabha Nanda, on the issue of the culture in Parliament House and thinking about workplace reform in that unique constitutional context, as well as in the context of the courts.

On 26 May, the fifth anniversary of the Uluru Statement from the Heart being issued to the Australian people, we published a fantastic post by Professor Megan Davis about the serious responsibility of lawyers in times of constitutional law reform – we commend that post to all our readers, and all lawyers in Australia more generally.

The blog has published a number of posts focussed on highlighting public law scholarship, including excellent posts by Lael Weis on her work on originalism and constitutional amendment (forthcoming in *Chapman Law Review*), and by Dani Larkin, Harry Hobbs, Dylan Lino and Amy Maguire on their work on the role of the states vs the Commonwealth in Indigenous law reform (published in the *University of Queensland Law Journal*). We are also pleased to continue our partnership with NSW Young Lawyers in relation to the Sir Anthony Mason Essay Competition

– and in that context published the 2021 prize-winning essay by Dane Luo on the march of structured proportionality. We have a couple of book forums planned for the second half of the year. These forums were instituted in 2018 and provide an opportunity for scholars and practitioners, both early career and more senior, to critically engage with new book-length scholarship focussed on Australian public law.

AUSPUBLAW also continues a monthly roundup of public law events across the country – and Kelly Yoon continues to provide excellent assistance in pulling those roundups together. It has been interesting to see a return to some in-person events, as well as the increase in hybrid events across the country.

We will continue to commission and welcome analysis on public law developments in Australia, and posts which highlight research on Australian public law. We welcome contact from any friends of the Centre who are interested in writing for AUSPUBLAW. To subscribe to the blog, sign up at www.auspublaw.org or follow it on Twitter [@auspublawblog](https://twitter.com/auspublawblog), or on LinkedIn. To submit a post for consideration by the blog editors, or to advise of an upcoming public law event, contact the editors at auspublaw@unsw.edu.au.

Gabrielle Appleby and Elisabeth Perham (Joint Editors)

PEOPLE

PAUL HAYES

Paul Hayes is a PhD student in Law and Justice at UNSW. His thesis is looking at civil callouts of the military, which will have a strong public law foundation, as well as a fascinating historical dimension. Paul's supervisors are Associate Professor Catherine Bond, Professor Sarah Williams and Dr Paul Kildea. Paul has a BA from Sydney University and graduated with a MA in military history from the UNSW Canberra where he won the 2017 Defence Studies Prize. Professionally, Paul's earlier career was in the NSW Cabinet Office and Department of Transport, and then as a risk and governance consultant. He is a Fellow of the Australian Institute of Project Management and a Fellow of the Institute of Managers and Leaders.



Paul Hayes

PROJECT REPORTS

ADMINISTRATIVE LAW AND JUSTICE PROJECT PROJECT DIRECTOR: JANINA BOUGHEY

The Administrative Law and Justice Project brings together UNSW Law scholars, and the wider government law community, concerned with ensuring those who exercise administrative powers act in accordance with public law principles and values. The Project is particularly interested in accountability implications of changes in the nature, scope and exercise of government powers since Australia's administrative law 'system' was designed; such as the use of technology in administrative decision-making; mixed public-private administrative arrangements; and the modern use and interpretation of statutes which confer powers on the executive branch.

At the end of 2021 and start of 2022, the Project wrapped up its work marking the 50th anniversary of the Kerr Committee Report. The papers from last October's symposium were published in a special issue of the *Australian Journal of Administrative Law*, edited by Project Director, Associate Professor Janina Boughey. The special issue included papers from the Hon Justice John Basten, Dr Lynsey Blyden, the Hon Justice John Griffiths, Jaala Hinchcliffe, and Emeritus Professor John McMillan. Project members also wrote a blog post on *AusPubLaw* outlining their proposals for reform to Australia's administrative justice system. This followed their submission to the Senate Legal and Constitutional Affairs References Committee's [inquiry](#) into Australia's administrative review system. That submission, as well as the special blog series and symposium papers were influential in the Senate Committee's Interim Report, which highlighted the serious challenges facing the Administrative Appeals Tribunal, and recommended the re-establishment and funding of the Administrative Review Council.

A second aspect of the Project's work over the past six months has been our ongoing collaboration with the Allens Hub for Technology, Law and Innovation, on the automation of government processes. We contributed to a Hub submission to the Department of Prime Minister and Cabinet on its *Automated Decision Making and AI Regulation Issues Paper*. We also assisted the Hub and Australasian Society for Computers & Law to facilitate a Global Plenary event on Rules as Code in March. In February, Janina spoke at the *Administrative Law and Governance Colloquium (Artificial*



Administrative Law & Governance
Colloquium 2022

Administration), run by the University of Ottawa, on the cumulative challenges of outsourcing and automation in the design, build and operation of automated decision-making systems.

Janina's other work over the last six months has included: her ongoing project on government outsourcing, on which she spoke at the Centre's *Public Law in the Classroom* event, and will present at the *Public Law Conference* in Ireland in July; an article exploring developments in the test for legal unreasonableness published in the UNSW Law Journal; and speaking at the Samuel Griffith Society Conference in April on executive accountability during the pandemic and what lessons we might learn for dealing with future emergencies.

Gabrielle Appleby continues her work with the Centre for Public Integrity. Since 2020, she has been engaged on their executive power committee, and earlier this year was appointed to the Board. Her work with the Centre focusses on delivering a national integrity commission, accountability for the exercise of delegated power, and oversight of government responses to COVID across the country.

In March this year, Gabrielle Appleby was appointed as the external legal adviser to the NSW Legislative Council's Regulation Committee in a thematic inquiry looking at the reform of the management of delegated legislation in the State. She prepared a Discussion Paper, now [published](#), for the Committee looking at comparatively informed best practice for the making and oversight of delegated legislation. The Committee is due to report in August 2022.

In the lead up to the election, Gabrielle joined a range of experts providing her analysis of the major parties' position on a national integrity commission for *The Conversation*. Read her assessment, together with other experts, [here](#). Gabrielle was also writing for *The Conversation* on whether ministerial vetoes are a necessary part of an accountable grants scheme. Read her article, *As the Senate discusses research and ministerial vetoes, here's one idea for an independent, accountable grant scheme*, [here](#).

COMPARATIVE CONSTITUTIONAL LAW PROJECT PROJECT DIRECTOR: ROSALIND DIXON

The comparative constitutional law project seeks to connect Centre members and Australian public law scholars to the broader global public law community, and to support contributions to global public law debate.

Consistent with these objectives, in May the project hosted the first of a two-part version of its annual Comparative Constitutional Law roundtable, featuring presentations from Centre Director Rosalind Dixon, Deputy-Director Lisa Burton Crawford, Centre HDR candidate Siddarth Narrain, along with presentations from A/Professor Elisa Arcioni (Sydney) and commentary from Professor Adrienne Stone (Melbourne), Vanessa MacDonell (Ottawa) and Po Jen Yap (HKU).

Dixon, and other Centre members, also attended a range of global conferences and seminars, including those at our partner Centres at Hong Kong University and the National University of Singapore. In addition, Dixon contributed to debates over recent challenges to proposed constitutional amendments in Kenya, in light of her (joint) amicus submission to the Supreme Court of Kenya on this issue.

In addition, Dixon published a new book on the future of liberalism globally, and its economic and democratic dimensions, and presented on the book in a variety of contexts, including at the Sydney Writer's Festival.

CONSTITUTIONALISM IN THE GLOBAL SOUTH PROJECT PROJECT CO-DIRECTORS: THEUNIS ROUX AND MELISSA CROUCH

Melissa farewelled Research Fellows Mr Salai Samuel Hmung and Dr Christoph Sperfeldt who were part of her team for the ARC Discovery Project on *Constitutional Change in Authoritarian Regimes*. We congratulate Christoph on his new position at Macquarie Law School. We welcome Natasha Naidu who has joined the project.

In February 2022, Melissa was involved in collaborative advocacy initiatives to draw attention to the one year anniversary of the military coup in Myanmar. This included a joint public statement; featuring on ABC nightlife podcast; meetings with DFAT and the Head of Mission (Myanmar); a petition to parliament concerning the plight of detained Australian academic Sean Turnell; and the launch of a website and advocacy page (freeseanturnell.com).

In 2022, the Human Rights Education and Research Programme of the Danish Embassy (Myanmar) have included the translation of Melissa's book, *The Constitution of Myanmar* (2019), as a key resource in their new online e-library for their Burmese education programs run by the Danish Institute for Human Rights.

In early 2022, Melissa was an invited speaker as part of the Asian laws program at Oxford University; as a speaker for the Global History Workshop at Princeton University; for the

research methods course at University of Gajah Madah (Yogyakarta) and at Monash University. Melissa was also a Visiting Scholar (virtually) at the Faculty of Law, the University of Diponegoro (UNDIP), Semarang, Central Java, Indonesia.

ELECTIONS & REFERENDUMS PROJECT PROJECT DIRECTOR: PAUL KILDEA

The Centre was active in the lead up to the federal election held on 21 May 2022. In early April, just before the election was called, the Centre and the Electoral Regulation Research Network hosted a public lecture by ABC election analyst Antony Green. Antony gave a detailed preview of the election, highlighting key races in the House and Senate and noting the challenges that the COVID pandemic posed for electoral administration. He also touched on recent reform debates on issues such as voter ID and internet voting. Antony gave everyone lots to think about and it was great to welcome people back to campus for this in-person event.

During the election campaign, George Williams devoted his regular column in *The Australian* to election law and policy. After various candidates chose not to contest the election due to fears of breaching section 44 of the *Constitution*, George renewed his call for that provision to be reformed (7 May). Section 44 disqualifies people from 'being chosen or of sitting' as a member of the federal Parliament on various grounds, including dual citizenship. He argued that 'It is past time we reformed a clause that makes so many Australians ineligible for parliament and subjects our electoral process to such uncertainty and instability'. In another column, George observed the growing popularity in early voting (13 May). He suggested that Australia should expand the methods of voting available to voters and look at internet voting as part of that.

The newly elected Albanese government has committed to holding a first-term referendum on establishing a First Nations Voice in the *Constitution*. Numerous Centre members continue to play key roles in driving this reform and offering commentary on it (see Indigenous Legal Issues project report). In *The Conversation*, Paul Kildea and Eddie Synot explained that a Voice proposal would likely win majority support in the new Parliament. They suggested that the government should seek to forge a broad consensus across the Parliament. Paul and Eddie went on to argue that the idea that bipartisanship is a pre-condition for referendum success had been overstated and that the popularity of the Voice proposal, among other factors, made it resilient enough to withstand opposition.

In another article, on *AUSPUBLAW*, Paul Kildea outlined the work that needs to be done in ensuring that the *Referendum (Machinery Provisions) Act 1984* (Cth) is fit for purpose for a Voice referendum. Paul echoed some of the recommendations of 2021 the House of Representatives Standing Committee on Social Policy and Legal Affairs inquiry into constitutional reform and referendums, including a lifting of Commonwealth expenditure limits and stronger regulation of political finance. But he argued that more extensive reform of the *Referendum Act* is overdue and should include an overhaul of the official pamphlet and the creation of an independent Referendum Panel to oversee public education and campaign spending.

GENDER AND PUBLIC LAW PROJECT PROJECT CO-DIRECTORS: GABRIELLE APPLEBY AND ROSALIND DIXON

In 2021, Gabrielle Appleby worked as a consultant for the Australian Human Rights Commission on the [Set the Standard: Report on the Independent Review into Commonwealth Parliamentary Workplaces](#), which was released in November 2021. The report looked at workplace reforms to address workplace misbehaviour, including bullying, sexual harassment and sexual assault. In particular, she worked with the Commission on the question of developing enforceable codes of conduct, and navigating issues of parliamentary privilege.

In April 2022, Gabrielle presented a seminar at Parliament House, hosted by the Clerk of the House of Representatives, that outlined the recommendations of the *Set the Standard Report* relating to the creation of Codes of Conduct for parliamentarians and their staff, as well as a common Standards of Conduct for the Parliamentary Precincts, and the establishment of an Independent Parliamentary Standards Commission to oversee misconduct issues, exercising delegated power from the Houses to conduct investigations and impose or recommend sanctions.

In May 2022, the Gilbert + Tobin Centre partnered with the Australian Human Rights Institute to deliver a public panel webinar, hosted by AHRI Director Professor Justine Nolan, on *Public Institutions, Accountability, and Sexual Violence*. The panel included Professor Rosalind Dixon, Professor Gabrielle Appleby, and Catherine Williams, Research Director of the Centre for Public Integrity. A recording of the Webinar is available [here](#).

As part of this panel, Dixon also presented the results of a report (jointly authored with former Centre interns and Public Policy fellows) on creating more inclusive, family-friendly practices in Australian parliaments. The report was joint with the Pathways to Politics program and is available [here](#).



Set the Standard: Report on the Independent Review into Commonwealth Parliamentary Workplaces (2021)

The Pathways program also hosted an event in February celebrating its first graduating cohort, and their successes. Twenty nine women from across the political spectrum and NSW graduated from the program in 2021, and 9 ran for local government – of whom 5 were elected, including 2 CALD women. Two graduates, Sally Sitou (ALP, Reid) and George Steele (Independent, Hughes) ran at the recent federal election, and Ms Sitou was elected to the Commonwealth Parliament. We were fortunate to have many friends of UNSW and the Centre in attendance.

In a separate event, hosted by the Centre for Ideas at UNSW, Dixon also moderated a discussion between Julia Banks, Senator Mehreen Faruqi and Georgia Steele on the theme “Women Vote”. The event was introduced by UNSW supporters (and graduates) the Hon Gabrielle Upton MP and Courtney Houssos MLC.

Early in the year, Appleby and Dixon also participated in a series of online workshop on female chief justices and feminist judging, in preparation for a major conference on this theme to be co-hosted by the project in 2023.

THE JUDICIARY PROJECT PROJECT DIRECTOR: GABRIELLE APPLEBY

Earlier this year, three Chief Justices of Supreme Courts across Australia retired – in the Australian Capital Territory, Queensland and New South Wales – and three new Chiefs were appointed. Drawing on my previous research with Associate Professor Heather Roberts (ANU), which proposed a normative framework for assessing the performance of Chief Justices based on their defence and promotion of judicial values, we wrote a piece for *The Conversation*: [How are Chief Justices appointed, and how can the process be improved?](#) In that piece, we argue that Chief Justices must be individuals who can provide intellectual leadership and contribute constructively to the collegiality of the court, and they should also bring to the role an institutional sensitivity and a reform mindset that allows them to respond to and anticipate contemporary challenges to the court.

Drawing on my work on [judicial complaints systems](#), and parliamentary workplace reform with the Australian Human Rights Commission for the *Set the Standard: Report on the Independent Review into Commonwealth Parliamentary Workplaces* (2021), in April 2022, I co-wrote a piece with human rights and discrimination lawyer Prabha Nanda for AUSPUBLAW on [Workplace Reforms in Courts and Parliaments: Some Guiding Principles](#). In this piece we looked at the importance of careful but principled design of workplace reform in courts and parliaments to address behavioural misconduct, with a particular emphasis on transparency and confidentiality, and the role of sanctions. In June, drawing on this work, I presented a session at the Council of Australian Tribunals (COAT) annual conference on *The Two Sides of Taking Accountability for Misconduct Seriously: Supporting Members and Parties*. Presenting with Mr Malcolm Shyvens, President of the Tasmanian Civil and Administrative Tribunal, I looked at designing a system of accountability that supports tribunal members to make correct decisions, particularly in relation to ethical questions that arise for them in the course of their work, and demonstrates to the public that tribunals take accountability for misconduct seriously and provides robust institutional responses.

As I write this report, I am about to board a plane with some trepidation for my first international flight since the start of the COVID pandemic. I will be attending a workshop at Oñati International Institute for the Sociology of Law on *Empirical research with judicial professionals and courts: Methods and practices*. I will be presenting a paper, co-authored with Heather Roberts, ‘The study of judges: the role of the Chief Justice, and other institutional actors’. While in Europe, I will be attending a workshop, hosted by Dr Sophie Turenne (Cambridge), for authors who are contributing to a Research Handbook on Judging and the Judiciary, to be published by Elgar-Routledge’s ‘Law and Society’ collection.

In late September, we are looking forward to welcoming back to The Judiciary Project, this time as a Visiting Judicial Fellow to the Gilbert + Tobin Centre, the Hon. Chris Maxwell AC, former President of the Victorian Court of Appeal. We are looking forward to putting together an exciting schedule of events with Chris while he is able to join the Centre.

STATUTES PROJECT PROJECT DIRECTOR: LISA BURTON CRAWFORD

Lisa returned from maternity leave in April and is continuing to work on the key strands of the Statute Project, alongside other colleagues in the Gilbert + Tobin Centre.

One of the key aims of the Statute Project is to shed new and better light on the principles of statutory interpretation — a vital area of study given the role that legislation plays in contemporary legal systems. Lisa’s article ‘An Institutional Justification for the Principle of Legality’, was recently published in the Melbourne University Law Review. It critically examines the way in which this important canon of construction is applied and conceptualised by

Australian courts and articulates a new normative justification for the principle, which aligns with the suggestion in recent case law that it has 'variable impact'.

Lisa has also continued her research on the complexity of contemporary legislation and the ways in which technology might be used to assist the drafting or interpretation of statutes. Lisa is pursuing this inquiry alongside Centre Colleague Janina Boughey and with the generous support of the Allens Hub for Law, Technology & Innovation, where she is leading a research stream on 'Technologies of Legislation'. The current focus of that project is the idea of rules as code: an approach to co-designing legislation in natural language and code, in order to facilitate the use of automated systems and improve the clarity and quality of legislation. While this technology has the potential to assist some of the challenges posed by legislative complexity and the use of automated systems by government, there is also reason to be cautious about the ways it might influence the design of legislation and core public law values like the rule of law.

In March, Janina assisted the Hub to facilitate a Global Plenary event on Rules as Code. This event was attended by leading academics, government officials, and entrepreneurs from across law, IT and policy from across the globe, and included both scholarly discussions on the idea of rules as code and its implications and interactive roundtables where attendees put these ideas into practice. Lisa presented her research on the topic at the Comparative Constitutional Roundtable hosted by the Centre in May, and will shortly host a workshop at UNSW, which will be attended by some of the legislative drafters and computer scientists at the forefront of the international rules as code movement. She also continues to work on her broader project on legislative complexity and its implications for public law.

PUBLICATIONS AND PRESENTATIONS

PUBLICATIONS

CENTRE MEMBER CO-AUTHORED PUBLICATIONS

Rosalind Dixon and Theunis Roux, 'The Mason Court's Enduring Influence: Functionalism and Fair Markets' in Barbara McDonald, Ben Chen and Jeffrey Gordon (eds), *Dynamic and Principled: The Influence of Sir Anthony Mason* (Federation Press, 2022).

JANINA BOUGHEY

50th Anniversary of the Kerr Committee Report (Special Issue) (2021) 28(4) *Australian Journal of Administrative Law*.

'A Call for Ongoing Political Commitment to the Administrative Law Project' (2021) 28(4) *Australian Journal of Administrative Law* 242.

'Legal Unreasonableness: In Need of a New Justification?' (2022) 45(1) *UNSW Law Journal* 113.

LISA BURTON CRAWFORD

'An Institutional Justification for the Principle of Legality' (2022) 45(2) *Melbourne University Law Review* (advance).

'The Communist Party Case Revisited: Constitutional Review in the 2020 Term' (2022) 50(1) *Federal Law Review* 20.

'The Rule of Law and Human Rights' in Paula Gerber and Melissa Castan (eds), *Contemporary Perspectives on Human Rights Law in Australia* (Thomson Reuters, 2022).

'Materiality and the Interpretation of Executive Power' (2021) 24(3) *Australian Journal of Administrative Law*.

ROSALIND DIXON

From Free to Fair Markets: Liberalism after COVID-19 (Oxford University Press, 2022) (with Richard Holden).

'Designing and Protecting Presidential Term Limits' in James A Gardner (ed), *Comparative Election Law* (Edward Elgar, 2022) 344 (with David Landau).

Representing Care: Toward a More Family-Friendly Parliament (Report, Pathways to Politics, 2022).

PAUL KILDEA

Paul Kildea, 'The Law and History of State and Territory Referendums' (2022) 44(1) *Sydney Law Review* 31-76.

Paul Kildea and Sarah Murray, 'Democratic Constitutions, Electoral Commissions and Legitimacy – The Example of Australia' (2021) 16 *Asian Journal of Comparative Law* 177-192.

Paul Kildea and Eddie Synot, 'We keep hearing about a First Nations Voice to parliament, but what would it actually look like in practice?', *The Conversation*, 26 May 2022.

Paul Kildea, 'Letting the people decide: should Australia hold more referendums?', *The Conversation*, 9 March 2022.

Paul Kildea, 'Time to modernise: The future of constitutional review and referendums in Australia', *AUSPUBLAW*, 11 February 2022.

ELISABETH PERHAM

'Niue in New Zealand Legislation' (2021) 52 *Victoria University of Wellington Law Review* 245 (with Tony Angelo and Yi-Shen Lau).

GEORGE WILLIAMS

Micronations and the Search for Sovereignty (Cambridge University Press, 2022), 1-256 (with Harry Hobbs).

'Micronations: A Lacuna in the Law' (2021) 19 *International Journal of Constitutional Law* 71-97 (with Harry Hobbs).

PRESENTATIONS

JANINA BOUGHEY

'Executive Accountability in Emergencies: Lessons from the COVID-19 Pandemic', *Samuel Griffith Society Conference*, 30 April 2022, Sydney.

'The Automated State', *Administrative Law and Governance Colloquium (Artificial Administration)*, 16 February 2022, University of Ottawa (online).

'Connecting Teaching to the Frontiers of Public Law: Government Outsourcing' *Public Law in the Classroom*, 10 February 2022, UNSW (online).

LISA BURTON CRAWFORD

'Rules as Code: Implications for Legislation and Law', Presentation to the Comparative Constitutional Roundtable, May 2022.

MELISSA CROUCH

April 2022, Melissa Crouch was keynote speaker for a seminar on Indonesian language studies in Australia at the Herb Feith Indonesia Centre, Monash University.

February 2022, Melissa Crouch was invited speaker for the Global History Workshop, Department of History, Princeton University.

January 2022, Melissa Crouch was invited speaker at Oxford University, Faculty of Law, Asian Laws program.

ROSALIND DIXON

'Book Talk: Abusive Constitutional Borrowing: Legal Globalization and the Subversion of Liberal Democracy' (Panel, Hong Kong University Centre for Comparative and Public Law, 17 January 2022) (with David Landau, Stephen Gardbaum and Po Jen Yap).

'The Reckoning: Pandemic Politics' (Panel, Sydney Festival, 22 January 2022) (with Laura Tingle, Fran Kelly and George Megalogenis).

'Constitutionalism and the Market' (Panel, ANU Law Conference: Public Law and Inequality, 17 February 2022) (with Leighton McDonald and Will Bateman).

'Liberal Constitutionalism: Ideas and Reality' (Panel, ANU Law Conference: Public Law and Inequality, 18 February 2022) (with Jeff King and Tarun Khaitan).

'Keynote: Comparative Constitutional Law' (Third Annual International Conference on Comparative Law, 18 February 2022). Constitutional Conventions Workshop, Deakin University, 22 February 2022.

'How To Do Basic Structure Review' (Panel, Junior Faculty Forum Workshop Series '22, 24 February 2022) (with Dinesha Samararatne, Surya Deva, Ridwanul Hoque and MA Sayeed).

'Round Table Discussion on "Beyond Presidentialism and Parliamentarism: Democratic Design and the Separation of Powers" by Steffen Ganghof' (Panel, 26 March 2022).

'Discourse on Kenya's Supreme Court Judgment on the Constitution of Kenya Amendment Bill 2020 and Attendant Processes' (Panel, The Avid Readers Forum, Kabarak University Law School, International Commission of Jurists, KATIBA Institute and Konrad-Adenauer Stiftung, 8 April 2022).

'Virtual Symposium on Professor Rosalind Dixon's Forthcoming Book "Responsive Judicial Review"' (Symposium, National Law School of India Review, 22 April 2022) (with Andrea Katz, Conor Casey, Tom Daly, Oren Tamir, Janhavi Sindhu. Markus Kotzur, Mariana Rivera and Yaniv Roznai).

'Abusive Constitutional Borrowing' (Panel, Virtual Roundtables on Asian Law Series, National University of Singapore Centre for Asian Legal Studies, 26 April 2022) (with David Landau, Kevin YL Tan, Dian Shah, Wen-Chen Chang and Rehan Abeyratne).

'Pathways to Politics Program' (Presentation, Next25 Leadership Course, 29 April 2022).

'Vote for Women' (Panel, UNSW Centre for Ideas, 3 May 2022) (with Mehreen Faruqi, Julia Banks and Georgia Steele).

'Episode 11: Federal Election 2022', *Debate@G08* (Group of Eight Australia, 10 May 2022) 00:22:05.

'Socio-Economic Rights, (Re) Distribution and Judicial Competence' (Panel, Conference on a Referendum on Housing in Ireland, 11 May 2022) (with Eoin Carolan, David Kenny, Katharine Young and Paul O'Connell).

'Abusive Regulation and Democratic Backsliding' (Panel, The Constitutional Law of Democracy Around the World: How Elections, Parties and the Right to Vote are Enshrined Globally, University of Chicago Law School, 13 May 2022) (with Shamshad Pasarlay, David Landau, Michael Kang, Adam Chilton, Mila Versteeg and Zachary Elkins).

'The New Economic Order' (Panel, Sydney Writers' Festival, 22 May 2022) (with Ross Gittins, Judith Sloan and Richard Holden).

'Constitutional Processes and Democratic Commitment' (Panel, Virtual Roundtables on Asian Law Series, National University of Singapore Centre for Asian Legal Studies, 24 May 2022) (with Jaclyn Neo, Donald Horowitz, Shamshad Pasarlay and Dian Shah).

'Judges and Constitutional Change' (Lecture, Contemporary Perspectives on Constitutional Change, Universidad Panamericana Law School and Federal School for Judicial Training, 5 June 2022).

GEORGE WILLIAMS

'Counter-Terrorism Law, Human Rights and the Rule of Law in Australia' Plenary Meeting of the Independent Commission on UK Counter-Terrorism Law, Policy and Practice, Bingham Centre for the Rule of Law, London, 8 June 2022.

'20 Years of Australian Anti-Terror Laws' *Public Law Values, Accountability and National Security*, Online Seminar, Gilbert + Tobin Centre of Public Law, UNSW Law, 27 May 2022.

'Human Rights and the Pandemic' Law Society of NSW Thought Leadership Series, Sydney, 4 April 2022.

'Commencement Address: Religious Discrimination in Australia' New College UNSW, 15 February 2022.

MEDIA PUBLICATIONS

CENTRE MEMBER CO-AUTHORED PUBLICATIONS

Gabrielle Appleby, Lynsey Blayden, Chantal Bostock and Janina Boughey, 'A principled approach to key reforms to Australia's administrative review system' *AusPubLaw*, 17 December 2021.

GABRIELLE APPLEBY

Gabrielle Appleby and Heather Roberts, '[Explainer: How are Chief Justices appointed and how can the process be improved?](#)' *The Conversation* (21 February 2022)

Gabrielle Appleby, '[As the Senate discusses research and ministerial vetoes, here's one idea for an independent, accountable grant scheme](#)' *The Conversation* (11 March 2022)

Gabrielle Appleby and Prabha Nanda, '[Workplace reforms in Courts and Parliaments: Some Guiding Principles](#)' *AUSPUBLAW* (27 April 2022)

Gabrielle Appleby, Sean Brennan and Megan Davis, '[Australian Voters Confirm: History is Calling](#)' *IndigConLaw Blog* (26 May 2022)

MELISSA CROUCH

[Reflections on Sean Turnell](#), freeseanturnell.com, 2022.

['A year on, Australia's Most Unlikely Political Prisoner remains in jail: Sean Turnell'](#) *The Sydney Morning Herald*. 1 February, 2022.

ROSALIND DIXON

['Why the Supreme Court Needs \(Short\) Term Limits'](#), *The New York Times* (online, 31 December 2021).

['Reshaping Liberalism'](#), *Nightlife with Philip Clark* (ABC Radio National, 11 January 2022) (with Richard Holden).

['Could Australia Save American Democracy?'](#), *Saturday Extra with Geraldine Doogue* (ABC Radio National, 9 April 2022) 00:22:19.

[‘The Albanese Government Has Promised to Implement the Uluru Statement From the Heart’](#), *The Roundtable with Julian Morrow* (ABC Radio National, 29 May 2022) (with Dani Larkin and Dorinda Cox).

SIDDHARTH NARRAIN

[Book Review of Oishik Sircar’s, *Violent Modernities: Cultural Lives of Law in the New India*](#), for the Law and Other Things Blog, 22 April 2022.

GEORGE WILLIAMS

‘Aussies Cast a Vote for More Convenient System’ *The Australian* (13 May 2022).

‘Citizenship Trap will Claim More Political Scalps’ *The Australian* (7 May 2022).

‘Crossbench Deal Might be Essential for Nation’s Stability’ *The Australian* (27 April 2022).

‘House Rules in Favour of MP until Court Decides Fate’ *The Australian* (28 March 2022).

‘Covid Mistakes? We Made a Few ... So Let’s Take a Look’ *The Australian* (21 March 2022).

‘Rules on Political Donations Must be Tightened to Restore Trust’ *The Australian* (7 March 2022).

‘Overreach, Complexity Doomed Morrison’s Religion Bill’ *The Australian* (16 February 2022).

‘Judges’ Tenure on the Highest Courts an Age-Old Problem’ *The Australian* (4 February 2022).

‘Pandemic Lessons for Nought Without Federation Reform’ *The Australian* (19 December 2021).

‘There are Better Ways to Protect Religious Freedom’ *The Australian* (25 November 2021).

SUBMISSIONS

JOINT SUBMISSIONS

Felicity Bell, Lyria Bennett Moses, **Janina Boughey**, Justine Rogers and Simon Michael Taylor, Submission to Department of Prime Minister and Cabinet on Positioning Australia as a Leader in Digital Economy Regulation, *Automated Decision Making and AI Regulation Issues Paper*, April 2022.

GEORGE WILLIAMS

Submission to ACT Standing Committee on Justice and Community Safety ‘Inquiry into Electoral Amendment Bill 2021’ (18 December 2021).

Submission to Parliamentary Joint Committee on Human Rights ‘Inquiry into Religious Discrimination Bill 2021 and Related Bills’ (3 December 2021).

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