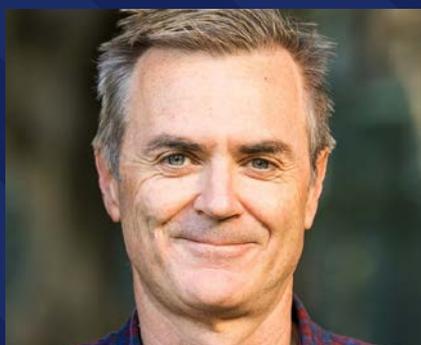




Australia's  
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## GILBERT + TOBIN CENTRE OF PUBLIC LAW NEWSLETTER No. 2 2018



Centre Director, Sean Brennan

Dear Friend,

Welcome to a newsletter that brings you up to date with what happened at the Centre in the first half of the year, plus a few recent snippets snuck in after I went over deadline (and apologies for that). The year got off to a big start with three books from Centre writers published in the first six weeks. Professor Rosalind Dixon's edited collection *Australian Constitutional Values* (Hart, 2018) was launched by Justice Stephen Gageler AC at our February conference (report inside). The other two books were Jessie Blackbourn, Deniz Kayis and Nicola McGarrity's *Anti-Terrorism Law and Foreign Terrorist Fighters* (Routledge, 2018) and the latest edition of *Blackshield and Williams Australian Constitutional Law and Theory: Commentary and Materials* (Federation Press, 7th ed 2018) by George Williams, Sean Brennan and Andrew Lynch.

Later, in April, Ros had a second edited collection published, with UNSW Law colleague Professor Theunis Roux, *Constitutional Triumphs, Constitutional Disappointments* (CUP, 2018) assessing the local and international influence of the South African Constitution. In more book news, Lisa Burton Crawford's *The Rule of Law and the Australian Constitution* (Federation Press, 2017) will feature at a UNSW Law Book Forum on 29 October at 5pm in the Law Building, with a stellar panel of commentators: Justice Gageler, Professor James Stellios (ANU) and Professor Martin Krygier (UNSW).

Our Steering Committee plays an important role in overseeing the management of the Centre. I want to acknowledge the contribution of two members of the committee who stepped down this year. For more than a decade, Professor Andrea Durbach offered us her expertise in the field of human rights, constructive organisational and policy guidance, and loads of common sense and good humour. From 2011 until March this year, Steven Glass provided wise and humane counsel and a vital perspective from beyond the campus, particularly important to our efforts in reaching out to the legal profession and broader public. We will miss them both. We are delighted that Professor Natalie Klein, a renowned international law scholar at UNSW, and Ms Anne Cregan, a national leader in the field of pro bono lawyering, both accepted our Dean's invitation to join the committee this year.

GILBERT+TOBIN

CENTRE  
OF  
PUBLIC  
LAW



Lisa Burton Crawford, James Lee (KCL), Janina Boughey and Grant Hooper (University of Sydney) at PLIC 2018 in February

A big welcome also to some new members of the Centre. We profiled Dr Lisa Burton Crawford in the last newsletter and you can find out more about Dr Janina Boughey in this edition. We also have some fabulous new Higher Degree Research (HDR) members – Josh Gibson, Christian Ponce Terrazas and most recently Lizzy Perham – and you will hear more about their projects in coming newsletters. Many of you will have already heard from the Centre's new Administrator Tom Chapman, who has provided terrific support to the Centre since commencing in February, and Tom has sketched a short bio for this edition as well.

We have had some big achievements to celebrate, starting with the HDR crew. Long-time Centre member Shipra Chordia was awarded her doctorate mid-year. Dr Chordia is now at the NSW Bar, but we are very pleased that she continues her connection with us as our newest Centre Fellow. There is a story inside from Shipra about her PhD and experience with the Centre. Congratulations also to current PhD student Jemimah Roberts who was appointed earlier this year as an Associate Lecturer at Macquarie Law School.

After co-organising a very successful annual conference of the International Society of Public Law (ICON-S) in Hong Kong mid-year, Rosalind Dixon was elected Co-President of the Society, further recognition of her international standing and reputation in the field of comparative constitutional law and more recently she was named Australian Law Academic of the Year at the Lawyers Weekly Australian Law Awards. In February Lisa Burton Crawford took the reins as Blog Co-ordinator for AUSPUBLAW and we have her first report for the newsletter. The 2017-18 joint editors for the blog, Centre colleagues Lauren Butterly and Harry Hobbs, poured heart and soul into the job, and I thank them on behalf of the Centre for their enterprise, sensitivity and sheer hard work. Harry is serving another year as a joint editor and has been joined recently by Zsofi Korosy. We owe an enormous debt to Gabrielle Appleby, who stepped down in February after making a founding contribution to AUSPUBLAW as its first co-ordinator – she got the blog underway in its early days and provided remarkable leadership and vision over a two and half year period.

Events are an important part of the Centre's engagement with a wider world and inside you will find stories on our annual Constitutional Law Conference and national teaching workshop Public Law in the Classroom (PLIC 2018), plus two public talks by leading members of the Hong Kong judiciary. There are also reports from the Tuvalu constitutional design workshop organised by Ros Dixon with external agencies, and some Centre seminars, as well as pieces from visitor James Lee (KCL) and our intern Max Jones.

Finally as well as the listings of books, articles, submissions and so on published in the first half of 2018, there is an array of project reports, including one introducing the new Statutes Project co-directed by Lisa Burton Crawford and Janina Boughey. In the next edition we will bring you news of an exciting new Administrative Law and Justice Project getting underway, again with Nina and Lisa in a leading role, providing a platform for the diverse research and activities of an impressive group of Faculty and HDR members of the Centre in the years to come.

*The idea [in the Uluru Statement] is to place a representative body of First Nations in the national capital, to influence law and policy-making through direct dealings with the Parliament and the government. Popular validation at a referendum and constitutional entrenchment were intended to protect the body against abolition, as happened to ATSIC in 2005. The proposal picked up on decades of political advocacy for a stronger say in Indigenous affairs. It also sought to align with the political constitutionalism that has dominated Australian law and politics, by preserving the central role of the national Parliament.*

Sean Brennan and Megan Davis, 'First Peoples' in Cheryl Saunders and Adrienne Stone (eds), *Oxford Handbook of the Australian Constitution* (Oxford University Press, 2018)

The near future promises some excellent public events. The 2018 National Administrative Law Conference, organised by the NSW Chapter of the Australian Institute of Administrative Law (AIAL), holds its national conference at UNSW on 27-28 September. The program features several Centre colleagues including Lauren Butterly, who has also played a vital organisational and planning role in the run-up to the event. At the end of the year, Ros Dixon will host a significantly expanded version of her annual Comparative Constitutional Law Roundtable, Melissa Crouch is holding a major event on peace-processes and constitution-making and another on the law and politics of elections in Indonesia, and the Statutes Project will hold its first event, a workshop on Interpreting Executive Power. The call for abstracts is out for Session 2 at Public Law in the Classroom 2019, and we look forward to receiving proposals about Students as Co-Creators in Public Law by the submission deadline of 19 November. I am thrilled that early next year, both PLIC 2019 and the 2019 Constitutional Law Conference will feature presentations from leading international scholar and theorist Professor Jeremy Waldron – more on that in the next edition. Please enjoy the newsletter and I look forward to seeing you soon at one of our events.

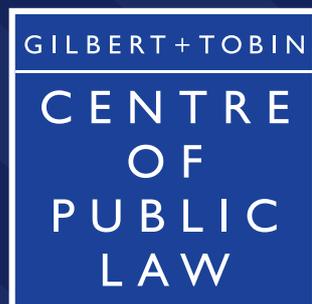
*Associate Professor Sean Brennan  
Centre Director*

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For details of Centre events, publications, submissions and so on please go to our website: [www.gtcentre.unsw.edu.au](http://www.gtcentre.unsw.edu.au)

The Centre's Twitter account keeps you up to date between newsletters and e-bulletins: [@GTCentre](https://twitter.com/GTCentre)

Or if you prefer Facebook: [www.facebook.com/pages/Gilbert-Tobin-Centre-of-Public-Law/138063326284705](https://www.facebook.com/pages/Gilbert-Tobin-Centre-of-Public-Law/138063326284705)





2018 Conference Dinner Speaker the Hon Wayne Martin AC, Chief Justice of WA

## ACTIVITIES

### 2018 CONSTITUTIONAL LAW CONFERENCE AND DINNER

Over 200 people packed into the Art Gallery of NSW Domain Theatre and the Strangers Dining Room at Parliament House for the seventeenth consecutive staging of our flagship Constitutional Law Conference and Dinner on 23 February 2018.

The morning keynote session began with Justin Gleeson SC, of the NSW Bar, on a busy 2017 for the High Court in constitutional law. He focused particularly on the rash of s 44 parliamentary disqualification cases and ‘a continued exploration of the concepts and limitations on judicial power and federal jurisdiction arising from Chapter III’. He detected a strong ‘Commonwealth-centric’ focus to the cases coming before the Court, noting the sparsity of cases on heads of Commonwealth legislative power, Commonwealth executive power and State or Territory constitutional law. Gleeson noted with interest the Court’s analysis of separation of powers in *Graham* (a visa cancellation case) and speculated whether the Court was moving to a more unified set of reviewability principles governing all courts in the nation.

In the other keynote on 2017 constitutional law cases in the Federal and State Courts, Justice Pamela Tate of the Victorian Court of Appeal discussed the role of intermediate appellate courts, suggesting that it sometimes includes signalling to the High Court that ‘there is a gap in its jurisprudence or uncertainty about the scope of a doctrine’. She initially focused on two key cases, concerning the implied freedom of political communication and the *Kirk* doctrine respectively. Justice Tate also addressed challenges to pre-trial compulsory examination of criminal accused, and some other interesting constitutional law cases in Federal and State courts.

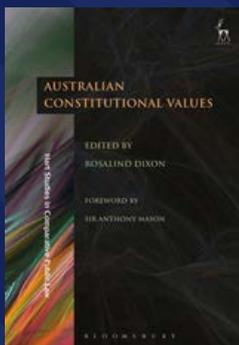
Justice Tate’s detailed paper is available at the event page on the Centre’s website and Justin Gleeson’s keynote was published online by the AUSPUBLAW blog on 3 April.

Through the middle of the day, experts on section 44 (Professor Graeme Orr and Associate Professor Elisa Arcioni), parliamentary appropriation (Michael Wait SC), the implied freedom of political communication (Kathleen Foley), State tribunals and Chapter III (Stephen McDonald) and citizenship (Dr Sangeetha Pillai) took the audience through the most important cases of 2017.

The final session focused on contemporary rights issues across the federation and heard from the Director of the new Australian Human Rights Institute at UNSW Professor Louise Chappell (democracy and human rights), new Centre member Dr Lisa Burton Crawford (rights, statutory interpretation and the rule of law) and Professor Carolyn Evans (religious freedom and same sex marriage – delivered by Gabrielle Appleby due to Carolyn’s forced absence on the day).

The Conference Dinner featured a forthright speech from the Hon Wayne Martin AC, Chief Justice of Western Australia. He spoke about the delicate balance to be struck between stability in constitutional arrangements and their need to be responsive to changes in community standards, values and expectations. As well as addressing the debate over s 44, he discussed the Uluru Statement from the Heart and proposals for constitutional reform relating to Aboriginal and Torres Strait Islander people.

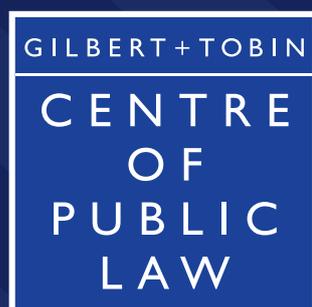
The presentations throughout the day were characterised by meticulous preparation and valuable insight. On behalf of all who attended, my thanks to all the speakers for the expertise and exceptional commitment they brought to the preparation and delivery of their papers.



*Australian Constitutional Values* launched in February by the Hon Justice Stephen Gageler AC



Session 1 at PLIC 2018: Gemma McKinnon, Jason Behrendt, Christopher Davis, Marcelle Burns and Melissa Castan



The Chief Justice's speech, together with papers and powerpoint slides from a number of conference speakers, and Andrew Lynch's statistical report on High Court decision-making in 2017, are all on the website event page. So too are webcasts of all four sessions of the conference.

### BOOK LAUNCH OF *AUSTRALIAN CONSTITUTIONAL VALUES*

Between the closing session of the 2018 Constitutional Law Conference on 23 February and the dinner at Parliament House, the Hon Justice Stephen Gageler AC launched *Australian Constitutional Values* (Hart Publishing, 2018), a new collection of essays about the relevance and scope of substantive constitutional values in Australia and their potential to influence future High Court interpretation.

The book is edited by Rosalind Dixon and follows on from her keynote presentation on functionalism and the High Court at the Centre's 2015 Constitutional Law Conference.

The edited collection, featuring emerging scholars and leading lights in Australian constitutional commentary, developed from a workshop held at UNSW in June 2016 that was supported by the Centre and the Law Faculty.

In a fascinating and entertaining speech, Justice Gageler recounted his own experiences as a young lawyer in the Attorney-General's Department as well as considering the question of values-influenced approaches to constitutional interpretation as a matter of intellectual history. Ros Dixon gave a very well-received response to Justice Gageler's speech and an instigator's view of the book and its intent.

### PUBLIC LAW IN THE CLASSROOM 2018

Once again over 60 people from more than 20 institutions in Australia, New Zealand, the US, the UK and Canada came to UNSW on 22 February for Public Law in the Classroom. This was the fourth annual workshop for teachers of Australian public law, co-hosted by our Centre and the Public Law and Policy Research Unit at the University of Adelaide.

The first session focused on Indigenous Issues, Perspectives and Law in the Public Law Classroom. Jason Behrendt, Managing Director of the firm Chalk and Behrendt, gave an excellent keynote that situated the teaching discussion in a wider context, distilling decades of professional and personal experience of the ways in which Aboriginal people, their laws and the Western law system interact. Gemma McKinnon (UNSW) moderated the panel discussion which followed with three specialists in the area, Marcelle Burns (University of New England), Melissa Castan (Monash University) and Christopher Davis (University of Adelaide) before the discussion broadened out to comments and questions from workshop participants.

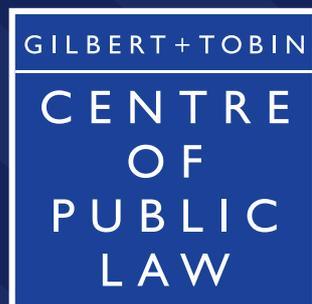
The second session was about teaching and assessing public law in large cohorts and through online courses. The presentation from Dr Joe McIntyre (UniSA) focused on dispelling myths and achieving effectiveness in online learning, while Associate Professor Luke Beck (Monash) returned to PLIC to update us on the use of multiple choice questions in assessing public law students. In her review of digital tools in the public law classroom, Associate Professor Kate Galloway (Bond) provided real-life examples of online engagement in public law debates by academics and challenged teachers to consider alternative media for student assessment tasks.



Centre HDR Members Zsofi Korosy and Lynsey Blayden with Keiran Hardy (Griffith University) at PLIC 2018

*'Negotiations are ongoing with the Northern Territory government about the outcome of the Blue Mud Bay case. What must be at the forefront of these negotiations is that the Blue Mud Bay case was a powerful affirmation of the existing legal rights of Traditional Owners on the Northern Territory coastline.'*

Lauren Butterly, 'The Battle for Sea Country Legal Rights', *Land Rights News* (Northern Edition, May 2018)



The final session on the intersection of public law practice and teaching was chaired by Nick Kelly, barrister and University of Sydney teacher. Centre Fellow Joanna Davidson (NSW Bar and UNSW teacher) talked about the challenges and benefits of being primarily a practitioner who teaches public law and explored the aspects of public law practice that should inform the curriculum and teaching of public law.

Dr Daniel Ghezelbash (Macquarie University) reflected on his experience as the founding director of the Social Justice Clinic at Macquarie and the benefits of teaching public law through this practical experience. Professor Alex Reilly (University of Adelaide) completed the panel contributions, highlighting the importance of theory in public law pedagogy, and reflecting on what the role of theory requires of practice-based learning in public law courses. This generated a lively whole-group discussion before the event concluded with some participant feedback and suggestions for the fifth annual workshop in February 2019.

### PUBLIC LECTURES BY HONG KONG JUDGES – CHIEF JUSTICE GEOFFREY MA AND CHIEF JUDGE ANDREW CHEUNG

On 24 May 2018 the Gilbert + Tobin Centre of Public Law hosted public lectures by two leaders from the Hong Kong Judiciary. In an afternoon talk to students and staff, Justice Andrew Cheung, Chief Judge of the High Court, spoke about immigration, torture claimants and the right to family life in Hong Kong. Later that evening, Chief Justice Geoffrey Ma of the Hong Kong Court of Final Appeal delivered a public lecture on the topic of criticising judges and the court.

#### Chief Judge Andrew Cheung

Justice Cheung's talk examined how courts have grappled in recent years with complex human rights issues that engage Hong Kong's Basic Law, legislation, and international law obligations. He began with the proposition that a good measure of the strength of the rule of law and the independence of the judiciary is how those on the fringe of society are treated before the law. He then discussed the treatment in Hong Kong of immigrants and refugees, and torture claimants, before turning to the right to family life, enshrined in Hong Kong's Basic Law, and how it may affect the claims of these groups.

Hong Kong has historically adopted a stringent immigration policy and affords wide decision-making discretion to the executive branch of government on matters of immigration. Justice Cheung outlined two avenues of judicial intervention: first, the courts may uphold procedural fairness through judicial review, ensuring that a decision is rational, reasonable and within jurisdiction; and second, the courts can ensure that legislation is consistent with the rights granted under the Basic Law and the statutory Bill of Rights, which incorporate international law obligations.

In Hong Kong, the Bill of Rights is subject to a general exclusion from affecting immigration laws for non-Hong Kong citizens. In that context, courts have limited powers of review, beyond the interpretational principle of legality, which requires any legislation derogating the rights of immigrants and refugees to do so with clear and unequivocal language.

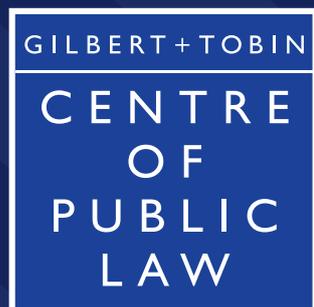
The scope for greater intervention in the case of torture claimants results from protections under the Bill of Rights that have been found to be non-derogable and the applicability of the Convention against Torture to Hong Kong. Justice Cheung explained that the courts have also ensured procedural fairness is afforded to torture claimants, for example through the requirements for legal



Andrew Lynch, Gabrielle Appleby, George Williams and Geoffrey Ma during the introduction to Chief Justice Ma's Public Lecture



Chief Justice Ma and some audience members after his public lecture



representation and reasoned decision-making that cannot rely exclusively on an assessment separately made by the relevant UN agency.

Finally, Justice Cheung examined the relationship of the right to family life, which is protected under article 37 of the Basic Law, to immigration matters. In relation to the question whether the right to family life encompasses a child's right to be raised in Hong Kong, he said that the courts have not addressed whether such a right exists or how it might operate in the context of immigration.

### Chief Justice Geoffrey Ma

Chief Justice Ma's lecture was entitled 'Criticising Judges and the Courts: Overstepping the Crease'. The cricket analogy referred to the fine line between upholding freedom of speech through public criticism of the judiciary, and impermissibly undermining the authority and legitimacy of courts through unfounded or unreasoned criticism.

As the Chief Justice explained, both freedom of speech and judicial authority and legitimacy are fundamental values that operate in the public interest. These values come into conflict, he said, when an exercise of free speech distorts the rule of law by misrepresenting the court's role. Public law cases are prone to generate more controversy than most and in Hong Kong, the Chief Justice noted a tendency for some commentators to align the values of courts and judges with the outcomes of the case they decide and in turn call the integrity and impartiality of the judicial system into question. He argued that such an approach is wrong in that it disregards the basis of judicial independence, the transparent and principled application of the law to the facts.

Chief Justice Ma discussed the criminal offence of contempt for scandalising the court. Such an offence, he argued, admits that judges must be open to criticism, but criminalises that which would harm the court by undermining the administration of justice. The Chief Justice noted that the offence is limited in scope, however, so a large part of responding to criticism involves communicating the role of courts and the legal system, promoting the transparency of courts and encouraging more informed responses from the public. He argued that to a significant extent that responsibility falls to the wider legal community, including law schools.

In response to audience questions, Chief Justice Ma explored further what an informed critique of the court might look like. He argued that, instead of assessing courts by the outcomes of the cases they decide, commentators should read the reasons of a decision and assess them against objective indicators of independence, such as whether they indicate why a decision was reached, and how they are seen by members of the legal community. Responding to a question about the use of injunctions or super-injunctions to suppress the publication of certain cases, the Chief Justice noted that this can and should only occur in exceptional cases, and not for the purpose of concealing judicial reasoning.

A copy of Chief Justice Ma's speech is available at the event page for the Public Lecture on the Centre website.

### TUVALU COMPARATIVE CONSTITUTIONAL DESIGN WORKSHOP

From 26 February to 2 March 2018, the UNSW Law School, led by Professor Rosalind Dixon, hosted a five-day workshop to assist members of the Tuvaluan Government and its Constitutional Review Committee ('TCRC') in revising the Tuvaluan Constitution by providing expertise and comparative constitutional insight.



Participants at the Tuvalu Comparative Constitutional Design Workshop in February

The workshop was organised by the United Nations Development Programme ('UNDP'), the Gilbert and Tobin Centre of Public Law and the UNSW Institute for Global Development, and was supported by Australian Aid.

The Workshop was attended by, amongst others, Tuvaluan Government Ministers, TCRC members, UNDP staff, Elliot Bulmer from the International Institute for Democracy and Electoral Assistance ('IDEA') and academics from various institutions, including Gabrielle Appleby, Melissa Crouch, Megan Davis, Rosalind Dixon, Cameron Holley, Marc de Leuw, Sangeetha Pillai and Theunis Roux (UNSW), Anna Dziedzic and Cheryl Saunders (University of Melbourne), Graham Hassall (Victoria University of Wellington), Helen Irving (University of Sydney), Bal Kama (ANU) and Christina Murray (University of Cape Town).

Tuvalu's current Constitution was drafted in 1986. Since then there have been important changes in understandings of rights, both internationally and in Tuvalu, and there has been a push for Tuvalu to express its culture, independence and sovereignty through revisions to its Constitution. Tuvalu has a population of roughly 10,000, distributed across eight locally-governed islands. In that context, a key challenge of the workshop was to assist in the design of democratic arrangements and codification of rights and responsibilities in a way that is compatible with traditional cultural norms and customs. The current review of Tuvalu's Constitution began in 2017 with extensive public consultations across the country and with Tuvaluans living overseas.

A range of topics was discussed in sessions over the first four days. Each session began with an introduction by TCRC members of the relevant challenges faced in Tuvalu, as identified in the public consultations. This was followed by a presentation of comparative experiences and models by relevant experts, before a longer, open discussion of the topic led by members of the Tuvaluan Government.

The topics covered included executive-legislative relations and the separation of powers; the judicial sector; independent entities to achieve accountability and integrity such as an Electoral or Boundaries Commission, a Judicial Service Commission and an Ombudsman; finance; traditional norms and governance; the protection of fundamental rights; the constitutionalisation of socio-economic rights; gender and the constitution; citizenship, membership and voting; religion and constitutions; and the place of the environment and climate justice in constitutions. Towards the conclusion of the workshop, Rosalind Dixon addressed options for reform and the role for public consultation, outlining four possible pathways to reform.

## THE AUSPUBLAW BLOG

Blog Co-ordinator: [Lisa Burton Crawford](#)

AUSPUBLAW, the Australian Public Law Blog hosted by the Gilbert + Tobin Centre of Public Law, continues to provide expert commentary on recent cases, legislative changes, and topical issues in the field of public law.

The first half of 2018 was a busy time for the blog. We've been pleased to publish a wide array of posts from commentators across Australia and beyond – ranging from constitutional interpretation and the theory of originalism (with posts from Professor Helen Irving and Henry Cooper), the purposes and values of administrative law and key challenges facing judicial and merits review of executive action (Dr Joe McIntyre, Dr Janina Boughey, and Dr Maria O'Sullivan), and insightful surveys of recent developments in the field of native title (Aaron Moss) and constitutional law more broadly (Justin Gleeson SC).



Commentators engaged with both enduring and emerging public law challenges and controversies. These include the administrative law conundrums caused by 'robo-debt' (Professor Terry Carney), the work of Royal and Anti-Corruption Commissions (Dr Grant Hoole, and Dr Adam Webster) the thorny questions of whether State tribunals can exercise judicial power (Stephen McDonald) and the extent of non-statutory executive power to spend (Amanda Sapienza), legal accountability in the context of major mining projects (Narelle Bedford), important issues concerning the legal protection of individual rights (Professor Carolyn Evans, and Dan Westbury), and recent moves towards negotiating treaties between Indigenous communities and Australian governments (a joint post from Harry Hobbs and Professor George Williams). Unsurprisingly, section 44 of the *Constitution* played a prominent part, with several expert posts on the dual citizenship crisis from Professor Anne Twomey, Emeritus Professor Tony Blackshield, and Dr Lulu Weiss.

As this brief summary shows, the blog provides an invaluable platform for public debate on topical issues across the spectrum of public law – as well as a useful 'roundup' of upcoming public law events.

We are pleased to announce that the blog has introduced a new initiative: book forums on recently published works in the field of public law. We see this as an opportunity to promote new Australian scholarship and foster further debate on important public law issues. If you are the author of a forthcoming work, or have a suggestion for a book that you would like to see featured in a forum, please contact the editors at [auspublaw@unsw.edu.au](mailto:auspublaw@unsw.edu.au).

To subscribe to the blog, sign up at [www.auspublaw.org](http://www.auspublaw.org) or follow it on Twitter [@auspublawblog](https://twitter.com/auspublawblog). To submit a post for consideration at the blog, or to advise an upcoming public law event, please also contact the editors at [auspublaw@unsw.edu.au](mailto:auspublaw@unsw.edu.au).

## CENTRE SEMINARS

### Dr Keiran Hardy – The Rule of Law and Countering Violent Extremism

This seminar on 17 May, co-hosted with the new Centre for Crime, Law and Justice at UNSW, featured Centre alum and Griffith University academic Dr Keiran Hardy.

Keiran displayed his expert knowledge of laws and programs about countering violent extremism (CVE) in Australia and the UK, part of his current comparative research project. He presented a constructive and critically minded analysis of countering violent extremism programs, interrogating the role for law (eg in requiring mandatory interventions, in sentencing and through control orders).

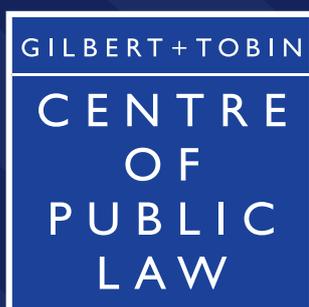
He advocated a tailored, targeted and proportionate community-based approach, and rule of law perspective that emphasised values such as transparency, free expression autonomy, equality, individualised justice and certainty in terms of aims and definitions. He also noted the potential for federalism to allow improved approaches to emerge and adapt to local needs.

### Associate Professor Dayna Scott – Learning from Kanawayandan D'aaki: Is There (Still) Only One Law?

This seminar, co-hosted with the Faculty's Environmental Law Cluster on 28 May 2018, featured Associate Professor Dayna Scott of Osgoode Hall Law School and Faculty of Environmental Studies at York University in Toronto.



Dayna Scott with Centre members Sean Brennan and Lauren Butterly

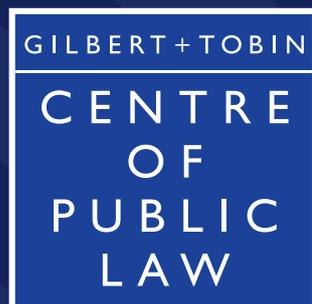


*'[T]he role of courts in reviewing administrative action is to determine whether a decision-maker has exceeded the powers (or jurisdiction) granted to them by the legislature. No less and no more... The curious list of remedies in s 75(v) of the Constitution, their application at particular points in time, and the historical jurisdiction of State Supreme Courts are frequently a distraction from this central focus.'*

Janina Boughey, 'Resolving Some "Anomalies" and "Snares" in Judicial Review: Probuild Constructions' on AUSPUBLAW (6 April 2018) <auspublaw.org/2018/04/resolving-some-anomalies-and-snares-in-judicial-review/>



New Centre member Janina Boughey



Dayna discussed a research collaboration she is involved with, between university and Indigenous community researchers, exploring the purposes and practices of articulating Indigenous law for a remote Oji-Cree community in Ontario's far north. In August 2017, the community of Kitchenuhmaykoosib Inninuwug (KI), or the people of Big Trout lake, re-visited a dispute with a mining company, Platinex, that had culminated ten years earlier with the jailing of several community members. In the court proceedings on the contempt of court charges, community members described the key concept in the community legal tradition: the notion of Kanawayandan D'aaki, roughly translated as 'keeping my land'.

As Dayna described it, in 2006, the KI discovered that the notion that community members could be respectful towards Canadian law and still be compelled to act in accordance with duties under their own law, was not cognisable in the Canadian courts. In the 10 years since the dispute, the community has been engaged in an active process of articulating and recording its own law. It has drafted a Declaration of Sovereignty, a Governance Framework, a Water Declaration and a Consultation Protocol. Meanwhile significant developments have occurred in Canadian aboriginal title law and the scholarship of Professors John Borrows and Val Napoleon and others has contributed to the revitalisation of understandings of Aboriginal law.

The community is located within the 'Ring of Fire', a region of Ontario with very substantial mineral deposits but also very significant environmental values. An important question in front of the community and the researchers is whether the process of writing down all of this KI law will assist them in future encounters with the Canadian legal system in disputes over resource extraction.

Dayna discussed the tensions confronting the community as resource developers approach First Nations communities seeking impact and benefit agreements that permit resource extraction to proceed. She also reflected on the careful negotiation of the research project with the community and the importance for such research of sufficient time being spent on planning, establishing relationships and building trust.

## PEOPLE

### NEW CENTRE MEMBER: JANINA BOUGHEY

Janina has recently joined UNSW Law and the Gilbert + Tobin Centre as a Senior Lecturer. She is the co-director, with Dr Lisa Burton Crawford, of the Centre's new Statutes Project and the even newer Administrative Law and Justice Project.

Janina previously worked at Monash University Faculty of Law, and prior to academia worked in a number of legal, policy and research positions in Canberra, including in the Administrative Law section of the Commonwealth Attorney-General's Department and as a researcher in the Department of the Senate. Janina has also volunteered for many years in community legal centres that specialise in social security law, as a lawyer, board member and chairperson.

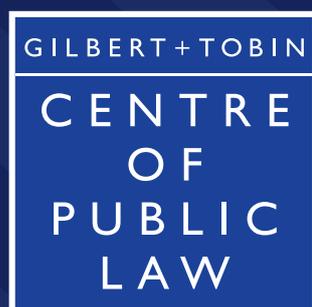
Janina's research interests are in administrative law. Her work focusses on the interaction between human rights and judicial review of administrative action, comparative administrative law, and the constitutional powers of the judiciary and legislature to hold the executive to account. Janina has published widely on administrative law in leading Australian, Canadian and UK journals and edited collections. For example, her recent work has examined issues including whether



Centre Administrator Tom Chapman



Centre Visitor in 2018: James Lee (KCL)



there is any scope for a doctrine of deference in Australian administrative law (2017, *Federal Law Review*), the impact of a bill of rights on common law principles of standing (2016, *University of British Columbia Law Review*), and the rationale for the distinction between jurisdictional and non-jurisdictional errors (with Lisa Burton Crawford, 2017, *Public Law Review*).

Janina is the author of *Human Rights and Judicial Review in Australia and Canada: The Newest Despotism*, a monograph published by Hart Publishing in 2017. The book examines the effect of judicially-enforceable human rights charters on the development of principles of judicial review of administrative action in Australia and Canada. She is also a co-author of *Public Law and Statutory Interpretation: Principles and Practice* (Federation Press, 2017), a student-focussed text which examines fundamental public law principles together with the principles and process of statutory interpretation.

Janina holds a PhD from Monash University (for which she was awarded the 2014 Mollie Holman doctoral medal), an LLM in government and commercial law from ANU, and undergraduate degrees in Law and Economics (social science), both with first class honours, from the University of Sydney. Janina has experience teaching administrative law, public law and statutory interpretation, and is teaching administrative law in Semester 2 2018.

#### CENTRE ADMINISTRATOR: TOM CHAPMAN

In March this year I was handed the administrative duties for the G+T Centre as part of the newly created role of Centres Administrator, which reports as part of the Faculty Administration Team. Along with my G+T Centre responsibilities, I also support the Centre for Law Markets and Regulation (CLMR), the Indigenous Law Centre (ILC) and the Centre for Crime, Law and Justice (CCLJ). Supporting four centres comes with its challenges, but also provides the opportunity to gain insight into how the various centres function and how each director approaches their role. This has proven valuable for each of the four centres, and for my development.

Taking over from the Centre's previous Administrator, Belinda McDonald, was going to be a huge task. I was lucky enough to spend a month in my new role before Belinda finished up with the Centre, which has hopefully kept the disruptions to a minimum. I hope I can provide a level of support similar to what Belinda has provided over the past decade plus.

I've been a professional staff member of UNSW since 2012, initially working for the School of Aviation upon completing my Bachelor of Aviation (Management). I began working part time with the Law Faculty in September 2017 and accepted my current full-time role in January 2018. I am continuing with my studies and I'm currently enrolled in a Master of Commerce (Marketing) part time.

#### CENTRE VISITOR: JAMES LEE

I have had the privilege of spending the first half of 2018 as a Senior Visiting Fellow with the Judiciary Project at the Gilbert + Tobin Centre of Public Law, with the support of a Visiting Research Fellowship from the UNSW Faculty of Law and the PC Woo & Co Research Fellowship 2016-17 from The Dickson Poon School of Law at King's College London, where I am Reader in English Law.

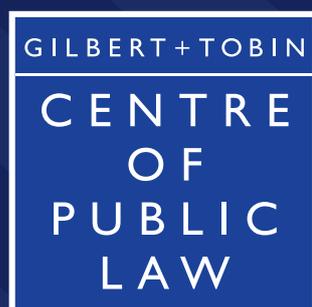
There have been two main strands to my writing while at the Centre. The first has been a comparative project on judging in final appellate courts, which will lead to several articles. My work in this area aims to understand how the institutional practices of, and personalities on, top courts bear upon their decision-making.

*'In 1997, a House of Representatives committee saw section 44 as a recipe for chaos. It said that 30 or more members might be disqualified and described the section as "a risk to the integrity and stability of the parliamentary system and to the government of the nation". It predicted this could make the life of a government with a narrow majority "virtually impossible" and that "it could take months for High Court challenges to be resolved". The failure to heed these warnings explains why Australia has spent the past months dealing with the destabilising influence of section 44.'*

George Williams, 'Despite Evidence, Canberra has no Appetite for Change', *The Australian* (18 May 2018)



Centre Intern Max Jones



In 'Conceptions of Collegiality', I compare the practices of the High Court of Australia and the United Kingdom Supreme Court with respect to judgment-giving and argue that the differences in approach amongst Justices on the High Court are attributable to different understandings of collegiality and individuality as judges. An early version was delivered at the Australian National University and a podcast is available at <https://soundcloud.com/anu-college-of-law/james-lee-conceptions-of-collegiality-uk-and-australia>. A more developed and updated version of the paper was presented at a G+T Centre Workshop, 'Uncloaking the Judiciary', in July 2018.

In April, I was a Visiting Professor at Hong Kong University, where I gave the Inaugural PC Woo & Co Research Seminar, 'Foreign Judges in Hong Kong and Singapore: Evaluating Reciprocity of Influence in Private Law'. This paper looked at the influence of foreign judges serving in the Hong Kong Court of Final Appeal and the Singapore International Commercial Court, both in the law of those jurisdictions and in their home jurisdictions. I also gave this talk as part of the Staff Seminar Series at UNSW Law.

In July, I attended the Ninth Biennial Conference on the Law of Obligations at the University of Melbourne, presenting 'Tort Law in Top Courts: Bad Form and Addictive Substance', in which I critique recent trends in policy-focused reasoning in tort law decisions from the UK Supreme Court in particular. I visited the University of Newcastle to discuss the topic in May.

Another article that I finalised while at the Centre, 'Judging Reformers and Reforming Judges', was presented at a Kirby Seminar at the University of New England and will appear in a special issue of the *European Journal of Law Reform* later this year. I submitted written evidence to the EU Justice Sub-Committee Inquiry into Brexit: Enforcement and Dispute Resolution, addressing questions of precedent, and the evidence was published by the Committee.

The other writing project has been the completion of work on the 21st edition of *Hanbury & Martin: Modern Equity*, a leading textbook on the law of trusts and equity. With Jamie Glister of the University of Sydney, I am co-author of the book: it is the second edition on which we have worked together, having succeeded the previous editor for the 20th edition in 2015. The new edition has been comprehensively updated, with strengthened references to other jurisdictions, and will be published by Sweet & Maxwell in August 2018.

The Fellowship also enabled me to benefit from conversations with colleagues. I presented a seminar entitled "'We're off to see The Wizard!'" Innovating with Small Group Teaching and Feedback' as part of the UNSW Law Learning and Teaching Seminar Series, and took part in an informal workshop on career advice and personal research strategy for Higher Degree Research Students in the Faculty. It is really valuable to have such interactions.

Overall, my experience at the Centre has been enriching and inspiring. It has been a model of how to involve (and make use of) visiting scholars. I record my sincere gratitude to all of the colleagues in the Centre, and the wider Faculty, especially Associate Professor Gabrielle Appleby, Associate Professor Sean Brennan, Professor Andrew Lynch, Professor George Williams and the excellent professional services team. It has been an exceptional place to visit.

## SOCIAL JUSTICE INTERN REPORT MAX JONES

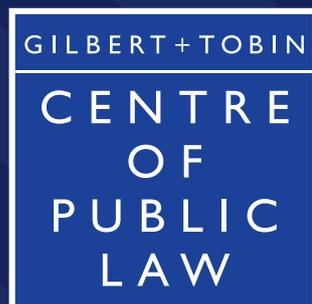
I thoroughly enjoyed my semester as the Social Justice Intern at the Gilbert + Tobin Centre of Public Law. I take away from my experience an appreciation

*'The government, however, should not be too quick to celebrate these temporal victories. The instability caused by further doubts over the eligibility of members of Parliament is likely to do further harm to the public's faith in our political system as in good working order. This hurts the government, as much as it hurts other parties.'*

Rosalind Dixon, 'Sting in the tail of strict High Court ruling', *Sydney Morning Herald* (9 May 2018)



Shipra Chordia catching up with former Centre colleagues, Dr Jessie Blackbourn and Dr Tamara Tulich, at I-CON, New York University in 2015



of the important role public law institutions like the Centre play in our society by inciting broad engagement with legal issues, promoting law reform, and organising and driving innovative academic research.

I have learnt a great deal from the Centre's members in the course of assisting with their individual and collective projects. This work spanned across diverse legal areas, including reforms to youth criminal justice in the context of terrorism, Aboriginal cultural heritage reforms in NSW, and the development of High Court jurisprudence on electoral law under s 44 of the *Constitution*. I was given the opportunity for an extended involvement with one project, the Comparative Constitutional Design Workshop for Tuvalu, in which academics from Australia and overseas offered their expert advice to Tuvaluan ministers and the government body responsible for reforming the country's *Constitution*. After attending the workshop during my first week, I worked with Professor Rosalind Dixon to prepare a report for the Department of Foreign Affairs and Trading that summarised what was discussed, how the workshop benefitted Tuvalu, and the strategic value of Australia's future engagement with Tuvalu and the international community in similar projects. This project, like the others I have worked on at the Centre, provided a great insight into the role legal research can play in driving and informing social and political change. I am grateful to Ros for her invaluable guidance.

Coming into the internship, I had hoped to gain a better understanding of how the Centre engages with different stakeholders. To that end, I have learnt a great deal about how academic research can be pitched to different audiences, and I believe this will help bring diversity to my own legal writing. I was able to see how the Centre engages with the legal community at this year's events, including the annual Constitutional Law Conference, lectures by Chief Judge Andrew Cheung and Chief Justice Geoffrey Ma, respectively of the Hong Kong High Court and Court of Final Appeal and, more recently, the Mason Conversation, featuring Ms Patricia Anderson AO and Professor Megan Davis. It has also been interesting to play a part in maintaining the Centre's institutional knowledge by summarising recent High Court decisions, providing background research for upcoming events, and updating the monthly AUSPUBLAW events roundup.

I would like to take this opportunity to thank the Centre and all the members that I was fortunate to work with. They have, without fail, been welcoming, supportive, and generous with their time and expertise. I am especially grateful to the Centre Director, Associate Professor Sean Brennan, whose attentiveness as a supervisor and willingness to take the time to discuss legal concepts have made for an enriching learning experience. Having spoken with Sean about the future direction of the Centre, I look forward to seeing its exciting new projects unfold.

## PHD REPORT

### SHIPRA CHORDIA

#### ***Federalism, proportionality and beyond: the dynamic world of public law scholarship at the Gilbert + Tobin Centre of Public Law***

I first joined the Gilbert + Tobin Centre of Public Law as a Research Fellow in 2012. Since that time, the Centre has supported and encouraged me in a broad range of endeavours, including teaching, research and community engagement, and I have benefited greatly, both in a personal and professional capacity, from being part of this unique community of scholars.

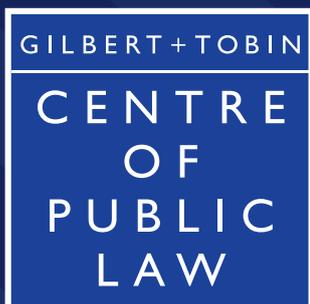
Upon moving back to Sydney following a few years practising in London, I was invited to take up a position as the Director of the Centre's Federalism Project



The breathtaking train journey from Oslo to Bergen following the International Association of Constitutional Law World Congress in Norway in 2014



The spectacular hues of Harvard Square in Fall Term 2016



in late 2012. A significant part of the Federalism Project involved dissecting and analysing the implications of *Williams v Commonwealth* (2012) 248 CLR 156 (the School Chaplains case), which had redefined the scope of the federal executive power to spend. The project led to productive research collaborations culminating in the publication of several articles in high quality journals, such as the *Melbourne University Law Review* and the *Federal Law Review*. The articles covered topics ranging from the scope of executive power to fiscal imbalance, intergovernmental cooperation and the coercive use of federal grant money.

Another significant part of the Federalism Project involved engaging with the public on wider themes connected with the federal structure established by the Constitution and its interaction with modern fiscal federalism. This led to the publication of 'legal explainer' articles in *The Conversation*, extended radio interviews on programs such as ABC Radio National's Counterpoint and written and oral submissions to parliamentary committees on matters of law reform.

Upon the completion of the Federalism Project, the rewarding experience I had had as a Research Fellow encouraged me to undertake higher studies in the field of constitutional law. At the time, proportionality was being considered and, to some degree, applied in cases concerning the implied freedom of political communication. I had previously encountered the concept in other areas of law, although it seemed to me that there was no readily available explanation as to what precisely was meant by 'proportionality' in the context of constitutional law, and how and when it might be appropriately applied. The gap in the literature seemed particularly acute in relation to constitutional questions arising outside the context of an entrenched Bill of Rights.

The next three years were spent extensively researching the topic and building a theoretical framework that sought to explain when, why and how proportionality might be employed as an analytical tool in Australian constitutional law. Throughout that time, I was encouraged by the G+T Centre to present at conferences, to participate in workshops involving constitutional law scholars from around the world, and to publish my work in high-profile forums, such as *AUSPUBLAW*.

At the initial stage, the project involved undertaking a detailed examination of the historical development of proportionality, tracing its use as a conceptual device in classical philosophy through to its emergence in Prussian administrative law in the 19th century and German constitutional law in the 20th century. The analysis led to the design of a theoretical framework that sought to explain proportionality's function as an analytical tool in legal reasoning.

The next stage involved considering alternative judicial methods to proportionality. In undertaking that task, and with the support of my G+T Centre colleagues, I was fortunate to be appointed a Visiting Researcher at Harvard Law School in 2016. Attending constitutional law courses on First Amendment jurisprudence and American constitutional history, and presenting papers to colleagues from around the globe, provided a unique and contextualised platform from which to undertake analysis of alternatives to proportionality which have developed in the United States, such as tiered scrutiny and ad-hoc balancing.

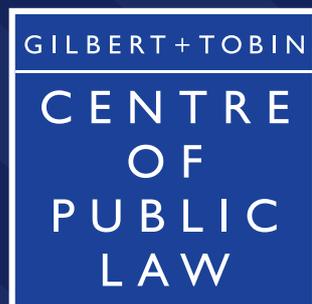
The final stage of the project involved returning to Australia and to the High Court's constitutional jurisprudence, and applying the theoretical model developed at the earlier stages of research to explain the application of proportionality across contexts as varied as the free trade guarantee in s 92, characterisation in relation to the 'purposive' powers and, of course, the implied freedom of political communication. The project culminated in the submission of my doctoral thesis in February and the conferral of the degree in June 2018.



Christopher Davis (University of Adelaide), Charlotte Steer, Sean Brennan and Jason Behrendt at PLIC 2018 in February

*'The courts in Myanmar have been subject to much criticism in the post-2011 environment. Yet in contrast to many other areas of governance and administration, the courts are one sector where reform has been less evident or obvious. In fact, while many have been calling for greater judicial independence, the current framework pulls in the opposite direction towards centralization and executive-military control over the courts.'*

Melissa Crouch, 'Judiciary' in N Farrelly, I Holliday & A Simpson (eds), *Routledge Handbook of Contemporary Myanmar* (Routledge, 2017)



My experiences at the G+T Centre over the last few years have been rich, varied and extremely rewarding. I think this is in no small part due to the Centre's unique culture, which is sustained by the warmth and generosity of its members and their willingness to impart expert knowledge and insight in the spirit of academic collegiality. The structure and direction of my research at the Centre was informed in many ways by the robust and intellectually challenging exchanges I had, both formally and informally, with Centre colleagues. In this regard, a deep debt of gratitude must go to the Centre's Director, Associate Professor Sean Brennan, as well as to Professor Rosalind Dixon, Associate Professor Gabrielle Appleby, Professor Theunis Roux, Associate Professor Ben Golder, and to my Centre PhD colleagues – Zsofia Korosy, Shreeya Smith, Harry Hobbs, Lynsey Blayden and Lauren Butterly. A special thank you must go to my wonderful supervisors, Professors Andrew Lynch and George Williams, both of whom have continually inspired me with their extraordinary capacity for critical insight and analysis.

The G + T Centre fosters an environment in which early career researchers are given opportunities to participate in the full breadth of Centre life and, consequently, to thrive. I am very grateful for my time at the Centre, and that my association with the Centre will continue in the years ahead. In my capacity as a Centre Fellow, I look forward to many new collaborations with Centre members on matters of significant public importance.

## PROJECT REPORTS

### COMPARATIVE CONSTITUTIONAL LAW PROJECT

#### **Project Director - Rosalind Dixon**

The CCL Project continues to gather scale and pace. As reported earlier in the newsletter Rosalind was the key organiser for the Tuvalu constitutional design workshop in February, and co-editor with UNSW Law Professor Theunis Roux of the newly published collection *Constitutional Triumphs, Constitutional Disappointments: A Critical Assessment of the 1996 South African Constitution's Local and International Influence* (Cambridge University Press, 2018).

A busy 2018 will be capped off in December by an expanded version of the annual CCL Roundtable featuring a more than usually impressive array of overseas and Australian presenters.

#### **Deputy Director - Melissa Crouch**

In February 2018, Melissa organised and contributed to a number of events in Myanmar on constitutional law. These seminars were held with a wide range of stakeholders, and it was the 10th series of workshops for the Australia Myanmar Constitutional Democracy Project. In March 2018, the first Australia-ASEAN Summit was held in Sydney and Melissa contributed to several side events. In April 2018, Melissa was a Kathleen Fitzpatrick Visiting Fellow at Melbourne Law School and in May 2018, she was an invited keynote speaker for the annual 'Politics in Action in Southeast Asia' event at the University of Sydney. In June 2018, Melissa contributed to a constitutional law bootcamp run by International IDEA in Myanmar.



Lauren Butterly with Professor Rob Williams at University of Arizona in January

*'The Regional Dialogues' working groups realised that constitutionalising a political voice was no guarantee that adverse laws would not be passed in the future. Rather, it would create a political limit, or political tension: whenever Parliament exercised its power to pass laws affecting Aboriginal and Torres Strait Islander peoples, their voices would necessarily be heard.'*

Gabrielle Appleby, Sean Brennan, Dylan Lino, Gemma McKinnon and Dean Parkin, Submission to Joint Select Committee on Constitutional Recognition Relating to Aboriginal and Torres Strait Islander Peoples (11 June 2018)

GILBERT+TOBIN

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OF  
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LAW

## INDIGENOUS LEGAL ISSUES PROJECT

**Project Director: Sean Brennan**

In March the Commonwealth Parliament established a Joint Select Committee on Constitutional Recognition Relating to Aboriginal and Torres Strait Islander Peoples. The Uluru Statement from the Heart and the report of the Referendum Council (which was appointed by the Prime Minister and Leader of Opposition in 2015) featured at the top of the committee's terms of reference. The extent of support expressed for it in hundreds of public submissions to the committee showed that the Uluru Statement continues to exert a powerful, shaping influence over the national debate on constitutional reform.

As reported in earlier newsletters, Centre members Gabrielle Appleby, Gemma McKinnon and Sean Brennan attended all 12 regional dialogues and the First Nations Constitutional Convention at Uluru, as members of a pro bono technical support team. In 2018, Gabrielle, Gemma and Sean have provided similar support at two meetings held by North Queensland Land Council and Cape York Land Council involving UNSW Pro Vice Chancellor and Professor of Law Megan Davis. These meetings have sought to develop the discussion amongst Aboriginal communities of a proposal for a Voice to Parliament, the single recommendation for constitutional reform to emerge from the Uluru Statement and subsequent final report of the Referendum Council.

Gabrielle, Gemma and Sean also provided a submission (co-authored with colleagues Dean Parkin and Dr Dylan Lino) from the Technical Advisers to the Regional Dialogues and Uluru Convention to the Joint Select Committee and subsequently gave oral evidence.

With Megan Davis, Sean authored a historical and contemporary overview of the position of First Peoples under the Australian Constitution in the newly published *Oxford Handbook of the Australian Constitution* (OUP, 2018) edited by Cheryl Saunders and Adrienne Stone.

Other Centre colleagues have also continued their research and engagement in the area of Indigenous legal issues and public law. In January, Lauren Butterly travelled to both the University of Arizona and Arizona State University. At the University of Arizona, Lauren was invited by Professor Rob Williams to present a comparative law seminar to students of the Indigenous Peoples Law and Policy program. Lauren's visit to Arizona State was organised through UNSW's Plus Alliance program and included a workshop on the water-food nexus where Lauren presented on Aboriginal fishing legislation in the Northern Territory.

Following this, Lauren went north to Iqaluit (the capital of the Territory of Nunavut in Canada), where she was hosted by the University of Saskatchewan College of Law's Nunavut Law Program. As well as running a comparative law workshop for the law students, Lauren was also asked to present to the Nunavut Branch of the Canadian Bar Association on Indigenous rights and governance of Sea Country in Australia.

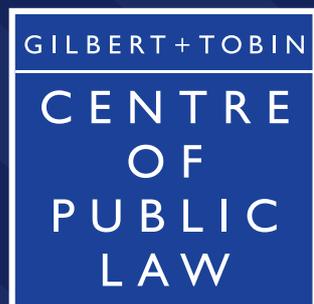
Lauren has been involved with reform debates about Aboriginal cultural heritage laws in both Western Australia and New South Wales for some time. In April, she and UNSW Law colleague Lucas Lixinski made a submission on proposed NSW reforms. As part of the research for the submission, Lauren attended consultation workshops during the submission period. Lauren is also collaborating with UWA Law School colleague Ambelin Kwaymullina on work towards a submission in the next round of consultations for reform of the WA Aboriginal cultural heritage legislation.



Returning from Nunavut, Lauren Butterly caught up with Centre member Grant Hoole in Ottawa, Canada – here outside the Canadian Parliament

*'Lawyers sometimes lament the fact that the public mistakenly perceives investigative commission hearings to be a form of trial, but perhaps we would do better to recognise the wisdom in this perception: that the public resolution of an accusation is central to what a trial conjures in our imaginations, and whether or not that resolution has an immediate legal quality is secondary.'*

Grant Hoole, 'Two questions about the powers of anti-corruption commissions, on *AUSPUBLAW* (3 May 2018) <[auspublaw.org/2018/05/two-questions-about-the-powers-of-anti-corruption-commissions/](http://auspublaw.org/2018/05/two-questions-about-the-powers-of-anti-corruption-commissions/)>



Meanwhile Lauren continues her doctoral research into Aboriginal sea country rights and governance in the Northern Territory, and in the tenth anniversary year since the landmark High Court decision in the *Blue Mud Bay* case, she published an article in the Northern Land Council's edition of *Land Rights News*.

Harry Hobbs and George Williams wrote about the comprehensive Noongar agreement for the Sydney Law Review as well as the AUSPUBLAW blog. Individually, Harry and George also made submissions to the Joint Select Committee on Constitutional Recognition. Harry has also attended and presented at workshops on the treaty issue in the Northern Territory and written on the topic for the Northern Land Council's edition of *Land Rights News*. George has continued his commentary on the treaty issue, including with an opinion piece in April for *The Australian*.

## INQUISITORIAL JUSTICE PROJECT

### **Project Director: Grant Hoole**

After launching in 2017, the Inquisitorial Justice project has continued its focus on the applications, conduct, and potential of legal processes intended to fulfill fact-finding or investigative mandates. A significant component of the project has included Project Director Grant Hoole and Associate Professor Gabrielle Appleby's collaboration in studying the design of anti-corruption commissions. Having contributed parliamentary submissions, media commentary and a discussion paper on this subject last year, in 2018 Grant and Gabrielle's research culminated in the *Adelaide Law Review's* publication of their paper, 'Integrity of Purpose: A Legal Process Approach to Designing a Federal Anti-Corruption Commission'. This work draws from Gabrielle and Grant's participation in public debate surrounding the creation of a federal anti-corruption commission, and presents for the first time an attempt to solve common institutional challenges by anchoring the design of anti-corruption commissions in a single principled and adaptive methodology. It also presents several claims that challenge prevailing design features in state-level anti-corruption commissions, such as reliance on public hearings. As South Australia's new government plans to introduce legislation conferring public hearing powers on its ICAC, Grant Hoole has published commentary in *Inside Story* and *AUSPUBLAW* highlighting subtle considerations, trade-offs and risks to this approach.

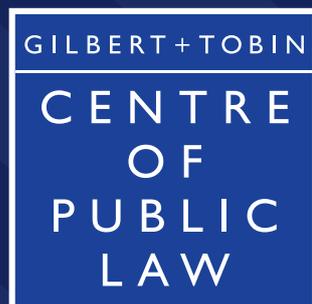
Grant also published new research on royal commissions in 2018. His article 'Reconceiving Commissions of Inquiry as Plural and Participatory Institutions', in South Africa's *Constitutional Court Review*, compares a decision of that country's apex court with Australian and Canadian jurisprudence on royal commissions. It also presents a theory of how royal commissions can be adapted to context and advance the equality of their participants and innovate new procedures. As Grant's postdoctoral fellowship at UNSW draws to a close, this research offers a significant contribution to international scholarship on royal commissions. It also informs his contribution to public debate unfolding in Canada about the controversial National Inquiry into Missing and Murdered Indigenous Women and Girls. In a piece published in May in the Canadian magazine *Policy Options*, Grant considered how the public at large should judge that inquiry's request for more time, noting the unique onus placed on the inquiry to engage diverse and disparate Indigenous communities, but also criticising elements of its communication and planning.



Joe McIntyre (UniSA) with James Lee and Gabrielle Appleby at PLIC 2018

*'As the number of active and healthy retired judges rises with growing longevity, and these ranks further swell as judges chose to leave the bench early and pursue other careers, the ethical regulation of former judges has become a mounting concern ... We have proposed a model of regulation for former judges in common law jurisdictions that balances independence, individual autonomy and accountability, with a view to ultimately securing the integrity of the judiciary.'*

Gabrielle Appleby and Alysia Blackham, 'The Shadow of the Court: The Growing Imperative to Reform Ethical Regulation of Former Judges' (2018) 67 *International and Comparative Law Quarterly* 505



## THE JUDICIARY PROJECT

### **Project Co-Directors: Gabrielle Appleby and Andrew Lynch**

In June, Gabrielle and Andrew reunited with their regular collaborators, Professors Suzanne Le Mire (Adelaide) and Brian Opeskin (UTS) to present their shared research on acting judges, with a paper titled 'Temporary Judicial Officers: Best Practice in Comparative Perspective' delivered at a panel session on 'Constitutional Courts and "Foreign" Judging' at the 2018 ICON-S. The paper drew on the research conducted by the same team for their major report on this topic to the Judicial Conference of Australia but adopted a more distinctly comparative examination across different constitutional settings beyond simply those of the Australian states and territories. Gabrielle also joined an ICON-S Reader meets Author panel for Ron Levy, Hoi Kong, Graeme Orr and Jeff King's *Cambridge Handbook of Deliberative Constitutionalism* (Cambridge University Press, 2018). She spoke to her chapter in the Handbook, co-written with Dr Anna Olijnyk (Adelaide) as part of her Discovery Project, *Law, Order and Federalism*. The chapter, 'Constitutional Deliberation in the Legislative Process' considers how legislatures deliberate about constitutional limits in areas where the courts have not clarified the scope of the legislature's powers. As many readers will know, ICON-S is the annual global gathering of the International Society of Public Law. This year's conference was hosted by the University of Hong Kong's Faculty of Law and its Centre for Comparative and Public Law.

In July, Gabrielle and Andrew welcomed a number of Australian and visiting international academic researchers, as well as senior judicial officers (retired and sitting) to UNSW for the workshop, 'Uncloaking the Judiciary' – a rich discussion on matters of judicial leadership, decision-making, style and image. There will be more about that event and the distinctive role of 'critical friends' of the event played by the sitting and retired judges in the next newsletter.

As a companion event to 'Uncloaking the Judiciary', the project also co-hosted a workshop with Professor Rhonda Evans from the Edward A. Clark Center for Australian and New Zealand Studies at the University of Texas at Austin. Rhonda contacted the Project co-directors about testing a new dataset on decisions of the High Court of Australia, the creation of which she has led at the Clark Center. This workshop brought together a group of notable Australian researchers with expertise in the study of the High Court to give feedback and suggestions on this significant project that has been developed by American scholars and promises to be of great utility and value to future international research collaboration on the study of Australia's final court.

Recent publications from the project include a co-authored article by Gabrielle and Alysia Blackham (Melbourne), 'The shadow of the Court: the Growing Imperative to Reform Ethical Regulation of Former Judges' in *International & Comparative Law Quarterly*. This piece was originally presented at the International Legal Ethics Conference (ILEC) in New York in 2016. Gabrielle is looking forward to the next ILEC, which will be hosted in Melbourne in 2018, where she will co-present with Suzanne Le Mire (Adelaide) about the reform of judicial discipline and complaints procedures in Australia.

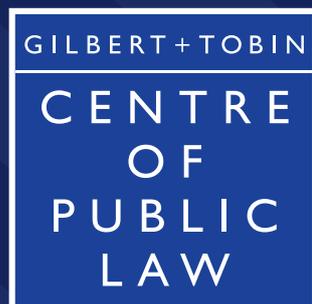
The G+T Centre has been delighted to play host to two guests of the Judiciary Project. Mr James Lee, of the Dickson Poon School of Law at Kings College London, and whose work on decision-making in the House of Lords and the Supreme Court, as well as the value of concurring opinions and collegiality, has received a wide readership, visited for several months over the first half of 2018 (see his report earlier in newsletter). Also spending time at UNSW in order to

*'The approach to statutory interpretation taken by the various judges [in *Probuild* and *Maxcon*] is striking, and suggests that much in this area of the law is in a state of flux. In particular, the judgments strike a somewhat different tone from well-known judgments of the French Court, which insisted that parliamentary intention is a 'fiction', downplayed the utility of extrinsic material, and embraced a robust and fairly rigid principle of legality — especially in the context of legislative attempts to curtail judicial review.'*

Lisa Burton Crawford, 'Jurisdictional Error and the Principle of Legality', *Administrative Law in the Common Law World Blog*, 6 March 2018



Statutes Project Co-Directors Janina Boughey and Lisa Burton Crawford



participate at the July events was Dr Rachel Cahill-O'Callaghan from the School of Law and Politics at Cardiff University. Rachel presented her work on the role of values in judicial decision-making in multimember courts.

It is always stimulating and rewarding to have researchers join us at the G+T Centre to share their work, contribute to events and projects, spend time with higher research degree candidates, and possibly write for blogs and other forms of collaboration. We encourage Australian and overseas colleagues conducting research on any aspect of the judicial arm as an institution to contact the Centre with proposals for a visit to UNSW Law.

## REFERENDUMS PROJECT

**Project Director: Paul Kildea**

It has been relatively quiet on the referendums front in 2018 so far. Then Prime Minister Malcolm Turnbull began the year with a robust defence of the postal survey on same-sex marriage, and even suggested that he would like to run another on the republic. More recently, the Joint Standing Committee on Electoral Matters recommended that the federal government hold a referendum on the repeal or alteration of section 44 of the Constitution, and Aboriginal and Torres Strait Islander leaders have continued to lobby for a constitutional amendment to facilitate a First Nations Voice. The government has ruled out a referendum on both issues. It therefore seems likely that this parliamentary term will conclude without any further referendums or surveys.

Centre members have continued their commentary on these issues, and section 44 in particular. George Williams, in *The Australian*, described the High Court's reading of the provision in *Re Gallagher* and earlier rulings as 'severe, but certain', and lamented that it would pose an 'insurmountable barrier' to many dual nationals who wish to enter federal politics. He also argued that the rulings were likely to put minor parties and independents at a disadvantage. Both George and Rosalind Dixon (in the *Sydney Morning Herald*) have advocated for section 44 to be amended, with Rosalind noting that this is just one of many pressing issues and 'that there is an urgent need for a broader national conversation about constitutional reform'.

## STATUTES PROJECT

**Project Co-Directors: Lisa Burton Crawford and Janina Boughey**

The Statutes Project is a new research initiative for the Gilbert + Tobin Centre, co-directed by Dr Lisa Burton Crawford and Dr Janina Boughey. The aim of the project is to examine contemporary developments in legislative practice and statutory interpretation, in comparative perspective. Straddling the divisions of constitutional law, administrative law and legal theory, it aims to shed new light on important public law debates by viewing them in light of the way in which statutes are used as a tool of governance in the modern administrative state.

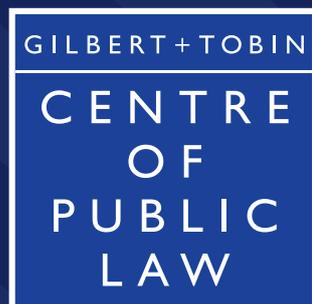
Many have observed that we now live in an 'age of statutes'. The volume and complexity of legislation has increased, and with it, the reach of executive power. Statutes are used in new and challenging ways. The ramifications of this — doctrinal, conceptual, theoretical and practical — are the subject of vibrant debate in other jurisdictions, but remain comparatively unexplored in Australia. In a legal system so densely populated by statutes, statutory interpretation is of vital importance. Long standing orthodoxies about how statutes should and should not be interpreted by the courts have been questioned, in part due to the volume and complexity of legislation. As a result, important interpretive principles have undergone significant change.



Nina Boughey, Angela Kintominas, Rohan Nanthakumar and Sangeetha Pillai at PLIC 2018 in February

*'One effect of the lack of clarity about the scope and operation of s 44 is that prospective candidates who are unable to obtain assurance that they are safe from disqualification under s 44 may elect not to nominate. This poses particular challenges for independent candidates and minor parties, who are more likely to lack sufficient resources to undertake a thorough investigation, to the extent that it is possible to do so. It is undesirable that Australian citizens who satisfy the legislative qualifications for election to Parliament should in effect be disbarred from seeking election on this basis.'*

Harry Hobbs, Sangeetha Pillai and George Williams, Submission to Parliamentary Joint Standing Committee on Electoral Matters, Inquiry into matters relating to Section 44 of the Constitution (8 February 2018)



The Statutes Project will use doctrinal, theoretical and empirical research methods to explore the following themes, in conjunction with leading researchers from Monash University, Deakin University and abroad.

### **Contemporary legislative practice**

- How are statutes used in the modern administrative state? What trends in legislative practice can be observed in Australia, and are they comparable to those seen in the United Kingdom, United States and Canada?
- Do we need to reassess what a statute is, and how it functions, especially in light of contemporary legislative practice?
- How might technological advances (including artificial intelligence) and other developments (such as the outsourcing of legislative drafting) affect our understanding of statute law?

### **Statutory interpretation**

- How do courts interpret legislation in Australia, the United Kingdom, United States and Canada? What similarities and differences emerge, and (how) can they be explained?
- Are existing interpretive practices theoretically and constitutionally sound? In particular, what is the contemporary relevance of parliamentary intention, and can the canons of construction be justified on any other basis?
- What role does the executive play in statutory interpretation? Is there any place in Australian law for deference to executive interpretation of statute law, as there is in other jurisdictions?

### **The rule of law and rights in the age of statutes**

- How can we protect and promote the rule of law in this age of statutes? Does the volume and complexity of contemporary legislation necessarily diminish the rule of law, or does it force us to rethink its demands?
- What are the ramifications of these developments for the individual? What role can the principle of legality play, especially in those jurisdictions which lack a constitutional bill of rights? How should that interpretive principle be understood and applied?

### **Administrative law in the age of statutes**

- What are the ramifications of these developments for judicial review of executive action? How should the substantive principles of judicial review be understood? Is the position in Australia the same as elsewhere?
- To what extent can, and should, courts resist the trend towards broad conferrals of executive power, and other legislative devices which might curtail judicial review?
- What are the ramifications of these developments for our understanding of the separation of powers? Is the administrative state valid and legitimate?

While the Statutes Project is in its infancy, we have already had a busy start to the year. Lisa provided commentary on the present state of the principle of legality, in light of broader uncertainty about the constitutional parameters of statutory interpretation ('Rights Protection, Statutory Interpretation and the Rule of Law, Gilbert + Tobin Centre Constitutional Law Conference, February 2018) and in the specific context of judicial review of executive action ('Jurisdictional Error and the

'We propose that the constitutional prohibition against dual citizens nominating for election to the Australian Parliament (s 44(i)) be abolished, and be replaced by narrowly and specifically defined grounds for disqualification – based on specific and proven acts of disloyalty – under the Commonwealth Electoral Act. We note ... that this should be accompanied with reforms to the regulation of political donations by foreign donors.'

Gabrielle Appleby, Rosalind Dixon and Lachlan Peake, Submission to Joint Standing Committee on Electoral Matters, Inquiry into matters relating to Section 44 of the Constitution (9 February 2018)

Principle of Legality', Administrative Law in the Common Law World Blog, March 2018). Janina presented a seminar to the Victorian Branch of the Australian Institute of Administrative Law on the relationship between the courts and Parliament in establishing the limits of executive power ('Jurisdictional Error and Remedies: Is a Coherent Approach Possible?', AIAL Victoria seminar, May 2018). Janina also took part in an international online forum, providing commentary on the extent to which Australian and Canadian courts defer to executive agencies ('Dunsmuir's Influence in Australia', Administrative Law Matters Blog, 22 February 2018).

In May, the Project co-hosted a seminar in Melbourne in conjunction with Deakin Law School on the 'Stated Purposes Canon', presented by Professor Kevin M Stack of Vanderbilt University Law School, providing an international perspective on the role that purpose plays in statutory interpretation. In June, both Lisa and Janina attended the International Society of Constitutional Law Conference in Hong Kong to take part in a panel discussion on the topic of 'Democracy in the Age of Hyper-Legislation', exploring the public law implications of the proliferation of statute law. Later in the year, we will host a workshop on the theme of 'Interpreting Executive Power' at UNSW, examining how developments in the principles and practice of statutory interpretation and legislative drafting have shaped administrative law.

We look forward to announcing other events in due course, and welcome contact from anyone who may be interested in the Project's work.

## PUBLICATIONS AND PRESENTATIONS

### PUBLICATIONS

#### Joint Publications

Gabrielle Appleby and Alysia Blackham, 'The Shadow of the Court: The Growing Imperative to Reform Ethical Regulation of Former Judges' (2018) 67 *International and Comparative Law Quarterly* 505;

Gabrielle Appleby and Brendan Lim, 'Democratic Experimentalism' in Rosalind Dixon (ed), *Australian Constitutional Values* (Hart Publishing, 2018);

Jessie Blackbourn, Deniz Kayis and Nicola McGarrity, *Anti-Terrorism Law and Foreign Terrorist Fighters* (Routledge, 2018);

Janina Boughey and Lisa Burton Crawford, 'Jurisdictional Error: Do We Really Need It?' in John Bell, Mark Elliott and Jason Varuhas (eds), *The Unity of Public Law? Doctrinal, Theoretical and Comparative Perspectives* (Hart, 2018);

Janina Boughey and Greg Weeks, 'Government Accountability as a "Constitutional Value"' in Rosalind Dixon (ed), *Australian Constitutional Values* (Hart Publishing, 2018);

Sean Brennan and Megan Davis, 'First Peoples' in Cheryl Saunders and Adrienne Stone (eds), *Oxford Handbook of the Australian Constitution* (Oxford University Press, 2018);

Lisa Burton Crawford and Jeffrey Goldsworthy, 'Constitutionalism' in Cheryl Saunders and Adrienne Stone (eds), *Oxford Handbook of the Australian Constitution* (Oxford University Press, 2018);

Rosalind Dixon and Theunis Roux (eds), *Constitutional Triumphs, Constitutional Disappointments: A Critical Assessment of the 1996 South African Constitution's Local and International Influence* (Cambridge University Press, 2018);

Rosalind Dixon and Julie Suk, 'Liberal Constitutionalism and Economic Inequality' (2018) 85 *University of Chicago Law Review* 369;

Harry Hobbs and Andrew Trotter, 'Lessons from History in Dealing with Our Most Dangerous' (2018) 41 *University of New South Wales Law Journal* 319;

Harry Hobbs and George Williams, 'The Noongar Settlement: Australia's First Treaty' (2018) 40 *Sydney Law Review* 1;

Harry Hobbs and George Williams, 'Australia's First Treaty' on AUSPUBLAW (16 April 2018) <auspublaw.org/2018/04/australias-first-treaty/>;

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*'In his final report in 1974, Justice Woodward recommended that a buffer zone of up to two kilometres (from low tide) out to sea should be closed to non-Indigenous people to protect Aboriginal land.'*

Lauren Butterly, 'The Battle for Sea Country Legal Rights', *Land Rights News* (Northern Edition, May 2018)

Sangeetha Pillai and George Williams, 'The Utility of Citizenship Stripping Laws in the UK, Canada and Australia' (2018) 41 *Melbourne University Law Review* (advance);

George Williams, Sean Brennan and Andrew Lynch, *Blackshield and Williams Australian Constitutional Law and Theory: Commentary and Materials* (Federation Press, 7th ed 2018).

#### **Gabrielle Appleby**

'Unwritten Rules' in Cheryl Saunders and Adrienne Stone (eds), *Oxford Handbook of the Australian Constitution* (Oxford University Press, 2018).

#### **Janina Boughey**

'Resolving Some "Anomalies" and "Snares" in Judicial Review: Probuild Constructions' on AUSPUBLAW (6 April 2018) <[auspublaw.org/2018/04/resolving-some-anomalies-and-snares-in-judicial-review/](http://auspublaw.org/2018/04/resolving-some-anomalies-and-snares-in-judicial-review/)>;

'Dunsmuir's Influence in Australia', *Administrative Law Matters blog* (22 February 2018) <<http://www.administrativelawmatters.com/blog/2018/02/22/dunsmuir-s-influence-in-australia-janina-boughey/>>.

#### **Lisa Burton Crawford**

'Review of Cowen and Zines's Federal Jurisdiction in Australia' (2018) 24 *Australian Journal of Administrative Law* 271;

'Jurisdictional Error and the Principle of Legality', *Administrative Law in the Common Law World Blog*, 6 March 2018;

'The Rule of Law' in Rosalind Dixon (ed), *Australian Constitutional Values* (Hart Publishing, 2018).

#### **Melissa Crouch**

'Myanmar's Rakhine State Crisis: Diplomatic Challenges for ASEAN and Australia' (2018) *Disruptive Asia: Asean Special Edition* 8;

'Constitutionalism, Religion and Inequality: Perspectives from Asia' (2018) 13(2) *Asian Journal of Comparative Law*;

'Judiciary' in N Farrelly, I Holliday & A Simpson (eds), *Routledge Handbook of Contemporary Myanmar* (Routledge, 2017).

#### **Rosalind Dixon**

*Australian Constitutional Values* (ed), Hart Publishing, 2018;

'Functionalism and Australian Constitutional Values' in Rosalind Dixon (ed), *Australian Constitutional Values* (Hart Publishing, 2018).

#### **Harry Hobbs**

'Constitutional Recognition and Reform: Developing an Inclusive Australian Citizenship Through Treaty' (2018) 53 *Australian Journal of Political Science* 176;

'International Criminal Justice Redux: A New Wave of Hybrid Courts', *Justice in Conflict*, 13 March 2018 <<https://justiceinconflict.org/2018/03/13/international-criminal-justice-redux-a-new-wave-of-hybrid-courts/>>.

#### **Grant Hoole**

'Two questions about the powers of anti-corruption commissions' on AUSPUBLAW (3 May 2018) <[auspublaw.org/2018/05/two-questions-about-the-powers-of-anti-corruption-commissions/](http://auspublaw.org/2018/05/two-questions-about-the-powers-of-anti-corruption-commissions/)>.

#### **Paul Kildea**

'Book Review: *The Law of Deliberative Democracy*' (2018) 29 *Public Law Review* 83.

#### **Brendan Lim**

'Legitimacy' in Cheryl Saunders and Adrienne Stone (eds), *Oxford Handbook of the Australian Constitution* (Oxford University Press, 2018).

### **PRESENTATIONS**

#### **Joint Presentations**

Gabrielle Appleby, Suzanne Le Mire, Andrew Lynch, Brian Opeskin, 'Temporary Judicial Officers: Best Practice in Comparative Perspective', ICON-S Annual Conference, Hong Kong, 27 June 2018;

Janina Boughey and Caroline Henckels, 'Hyper-legislation and Deference', ICON-S Annual Conference, Hong Kong, 25 June 2018;

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*'Permanent agencies are limited by their mandates and jurisdictions; royal commissions are designed to transcend those limits, allowing them to draw links between issues that would otherwise be parcelled out among agencies. Royal commissions operate in public not just to ensure procedural integrity but also to deal very visibly with a crisis of public confidence, facilitate public participation, contribute to resolving systemic problems, and compensate for the limits of standing regulatory mechanisms. Anti-corruption commissions, on the other hand, are part of those regulatory mechanisms.'*

Grant Hoole, 'Does transparency have its limits?', *Inside Story*, 23 May 2018

Janina Boughey and Liz Richardson, 'Litigants in Person', Council of Australasian Tribunals Conference, Canberra, 7 June 2018;

Rosalind Dixon and Vicki Jackson, 'Hybrid Constitutional Courts: Foreign Judges on National Constitutional Courts', ICON-S Annual Conference, Hong Kong, 27 June 2018;

Rosalind Dixon and David Landau, 'Abusive Judicial Review', ICON-S Annual Conference, Hong Kong, 27 June 2018.

#### **Gabrielle Appleby**

'Constitutional Deliberation in the Legislative Process', ICON-S Annual Conference, Hong Kong, 26 June 2018.

#### **Janina Boughey**

'Jurisdictional Error and Remedies: Is a Coherent Approach Possible?', Australian Institute of Administrative Law Seminar, Melbourne, 17 May 2018.

#### **Sean Brennan**

'The Uluru Statement and the Status of Constitutional Recognition', Legal Profession Reconciliation Network Meeting, Gilbert + Tobin, Sydney, 21 March 2018.

#### **Lisa Burton Crawford**

'The Age of Hyper-Legislation?', ICON-S Annual Conference, Hong Kong, 25 June 2018;

'Rights Protection, Statutory Interpretation and the Rule of Law', Gilbert + Tobin Centre of Public Law Constitutional Law Conference, Sydney, 23 February 2018.

#### **Lauren Butterly**

'Indigenous rights and governance of Sea Country in Australia', Canadian Bar Association, Nunavut Branch, Iqaluit, Canada, 25 January 2018;

'The Million Dollar Fish', Plus Alliance Nexus Workshop: Governing energy, water, food and climate challenges, Arizona State University, Phoenix, United States, 12 January 2018;

'Systems of Colonial Governmentality: Comparative Indigenous Rights Regimes – Australia', University of Arizona, Tucson, United States, 9 January 2018.

#### **Melissa Crouch**

Constitutional-making Workshop, International IDEA, Pyin Oo Lwin, Myanmar, June 2018;

'Closing Remarks', *Politics in Action in Southeast Asia*, University of Sydney, 18 May 2018;

'Myanmar's Constitutional Tribunal and the Debate over Citizenship and the Right to Vote', Centre for Statelessness and Asian Law Centre, Melbourne Law School, 17 Apr 2018;

'Work in progress seminar: *The Constitution of Myanmar*', Melbourne Law School, University of Melbourne, 10 Apr 2018;

'The Constitution of Myanmar', UNSW Law Staff seminar, Sydney, 20 March 2018;

Panel Member, ASEAN 360°, King & Wood Mallesons, Sydney, 12 March 2018;

'Religion and Constitutions in Comparative Perspective', Tuvalu Comparative Constitutional Design Workshop Commission of Tuvalu, UNSW Law, Sydney, February 2018;

'The Role of a Constitution in a Democratic Transition', Law Faculty of University of Yangon, Myanmar, February 2018;

'Comparative Perspectives on Federalism', Karen National Party with International IDEA, Yangon, Myanmar, February 2018;

Participant, Roundtable on Constitutionalism, International Relations Committee of the Lower House, Myanmar with International IDEA, Yangon, Myanmar, February 2018;

'Constitutional Adjudication and Interpretation in a Federal System', Constitutional Tribunal of Myanmar with International IDEA, Yangon, Myanmar, February 2018;

'Assessing Judicial Independence', Union Supreme Court of Myanmar with International IDEA, Yangon, Myanmar, February 2018.

#### **Rosalind Dixon**

'The Core Case for Weak Form Judicial Review', ICON-S Annual Conference, Hong Kong, 25 June 2018;

'Closing Remarks', ICON-S Annual Conference, Hong Kong, 27 June 2018.

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'Without a framework for responsibility provided for by a treaty, Australians cannot expect programs such as Close the Gap to achieve their potential. Nor can we expect taxpayers' money to be well spent. On this, the Harvard Project found that when Native Americans "make their own decisions about what development approaches to take, they consistently outperform external decision makers". It is yet another reason Australia needs treaties with its first nations.'

George Williams, 'We Need the Framework of Responsibility a Treaty Gives', *The Australian* (2 April 2018)

### **Sangeetha Pillai**

'Tiered Community Membership in Australia: Constitutional Concepts and Contemporary Developments', ICON-S Annual Conference, Hong Kong, 25 June 2018.

### **Shreeya Smith**

'Freedom from Arbitrary Detention: Immigration Detention and the Australian Constitution', 10th World Congress of Constitutional Law, Seoul, Korea, 18-22 June 2018.

### **George Williams**

'Engaging with Policy Makers: How to Get Your Research Noticed', UNSW Thought Leadership and Public Engagement Seminar, Division of Research UNSW Sydney, 7 June 2018;

'Models for a Human Rights Act' seminar, Human Rights Law Centre, 18 May 2018;

'Does Australia Need a Bill of Rights', Sydney Salon, Australian Museum, 3 May 2018;

'Are All Subclauses of Section 44 Still Relevant to Today's Society?', 2018 *National Schools Constitutional Convention*, Parliament House, Canberra, 21 March 2018;

'What is Section 44? Its Purpose and Impact', 2018 *National Schools Constitutional Convention*, Parliament House, Canberra, 21 March 2018;

'Technology and a 21st Century Legal Education', Faculty Seminar, City University of Hong Kong, 1 March 2018.

## **MEDIA PUBLICATIONS**

### **Lauren Butterly**

'The Battle for Sea Country Legal Rights', *Land Rights News: Northern Edition* (May 2018) 12-13.

### **Melissa Crouch**

'Democracy and peace frustrated in Myanmar: remembering U Ko Ni', *The Interpreter* (29 January 2018).

### **Rosalind Dixon**

'Liberal Party must change rules in light of Jane Prentice's pre-selection loss', *Sydney Morning Herald* (17 May 2018);

'Sting in the tail of strict High Court ruling', *Sydney Morning Herald* (9 May 2018);

'Study law is about much more than becoming a lawyer, Malcolm Turnbull', *ABC News Opinion* (2 February 2018).

### **Harry Hobbs**

'A Territory Treaty', *Land Rights News: Northern Edition* (February 2018) 4-5.

### **Grant Hoole**

'Does transparency have its limits?', *Inside Story*, 23 May 2018;

'Should the MMIWG Inquiry be Given More Time?' on Policy Options <[policyoptions.irpp.org/magazines/may-2018/should-the-mmiwg-inquiry-be-given-more-time](http://policyoptions.irpp.org/magazines/may-2018/should-the-mmiwg-inquiry-be-given-more-time)>.

### **Andrew Lynch**

'Susan Kiefel's first year shows a welcome degree of consensus', *The Australian* (23 January 2018).

### **George Williams**

'This Citizenship Fix Will Not Work', *The Australian* (28 May 2018);

'Despite Evidence, Canberra has no Appetite for Change', *The Australian* (18 May 2018);

'Political Doors Slam Shut for Half the Population', *The Australian* (10 May 2018);

'After the Royal Commission Comes the Headache of Banking Reforms', *The Australian* (30 April 2018);

'Republic Looks a Bridge Too Far', *The Australian* (16 April 2018);

'We Need the Framework of Responsibility a Treaty Gives', *The Australian* (2 April 2018);

'Aspiring Pollies Breath Easier', *The Australian* (19 March 2018);

'Citizenship Changes Sound Right But are Misguided', *The Australian* (5 March 2018);

'Let's Not Focus Just on the Leader: It's Two, It's a Tango, It's Trouble', *The Australian* (19 February 2018);

'The Fix for Section 44 is Hiding in the Constitution', *The Australian* (5 February 2018).

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## SUBMISSIONS

### Joint Submissions

Gabrielle Appleby, Sean Brennan, Dylan Lino, Gemma McKinnon and Dean Parkin, Submission to Joint Select Committee on Constitutional Recognition Relating to Aboriginal and Torres Strait Islander Peoples (11 June 2018);

Gabrielle Appleby, Rosalind Dixon and Lachlan Peake, Submission to Joint Standing Committee on Electoral Matters, Inquiry into matters relating to Section 44 of the Constitution (9 February 2018);

Lauren Butterly and Lucas Lixinski, Submission on Aboriginal Cultural Heritage Law Reforms in NSW (20 April 2018);

Harry Hobbs, Sangeetha Pillai and George Williams, Submission to Parliamentary Joint Standing Committee on Electoral Matters, Inquiry into matters relating to Section 44 of the Constitution (8 February 2018).

### Harry Hobbs

Submission to Joint Select Committee on Constitutional Recognition Relating to Aboriginal and Torres Strait Islander Peoples (11 June 2018).

### James Lee

Submission to House of Lords EU Justice Sub-Committee Inquiry into Brexit: Enforcement and Dispute Resolution (19 January 2018).

### George Williams

Submission to Joint Select Committee on Constitutional Recognition Relating to Aboriginal and Torres Strait Islander Peoples (11 May 2018)

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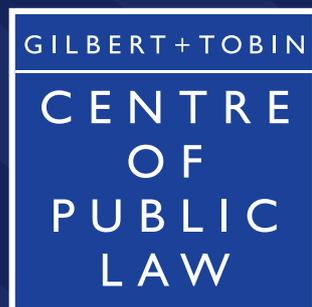
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