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## GILBERT + TOBIN CENTRE OF PUBLIC LAW NEWSLETTER JUNE 2024

### DIRECTOR AND DEPUTY DIRECTOR'S REPORT

Dear colleagues,

It has been a busy time for the Centre, and we are looking forward to a range of new and exciting events and activities in the coming months.

The year started with another successful iteration of the Centre's flagship Constitutional Law conference, with papers analysing important decisions from 2023, particularly relating to Chapter III and migration, and taxation, and developments relating to judicial bias and immunity. Associate Professor Lael Weis also gave an extremely well-received keynote address, with comments from Mr Gerald Ng SC of the NSW Bar, while Justice Kris Walker of the Victorian Court of Appeal provided an insightful overview of constitutional decisions in the Federal Court and state courts. The conference finished with a panel discussion on the topic of 'Rights and Voice: Where to from Here', and we were privileged to hear from Professor Megan Davis, Assistant Professor Narelle Bedford, Professor Rosalind Croucher AM, and Professor Lisa Burton Crawford on next steps in implementing the Uluru Statement from the Heart and in ensuring greater rights protection more broadly in Australia.

The day before the conference, the Centre also co-hosted the annual Public Law in the Classroom workshop – an annual workshop for public law teachers organised jointly with colleagues from the Public Law & Policy Research Unit at the University of Adelaide, Monash University's Castan Centre for Human Rights Law, and Western Sydney University School of Law. More information about that workshop can be found in the report for the new Public Law Teaching project.

2024 has also seen the continuation of the Centre's Global Book Series, in collaboration with the Greater Sydney Law Schools' Public Law Reading Group. In February, the Centre hosted Harvard Professor Cass Sunstein to discuss his new book, *How to Interpret the Constitution*. Centre Director, Professor Rosalind Dixon, also provided commentary on how these ideas might apply in an Australian context (also [published](#) on AUSPUBLAW). In May, the Centre collaborated with the Julius Stone Institute at the University of Sydney to co-host NYU Professor Jeremy , to discuss (via Zoom) his new book on *Thoughtfulness and the Rule of Law*.

The Centre has also hosted several ad hoc seminars on current public law topics. In May, the Centre hosted the new Head of School (elect) of Trinity College Dublin Law School, Professor David Kenny, to discuss the lessons from the recent failed attempt at constitutional change in Ireland.

The Centre also hosted an online discussion on the impartiality and independence of the public service, chaired by Director of the Centre's Administrative Justice project, Associate Professor Janina Boughey and featuring expert commentary from Professor Vicki Jackson (Harvard), Professor Janet McLean (Auckland) and Emeritus Professor and Centre Advisory committee member, John McMillan AO. This event attracted a record attendance for a Centre seminar, with around 200 colleagues joining online, and we are deeply grateful to Associate Professor Boughey for expert chairing and stewardship of the discussion on such a timely and engaging topic.

May also saw the second meeting of the Judges and the Public Law Academy seminar series, a partnership with the NSW Supreme Court, and co-convened by the Centre along with Professors Peter Gerangelos and Lisa Burton Crawford of the University of Sydney. The topic of the May meeting was the principle of legality.



Rosalind Dixon  
Centre Director



Elisabeth Perham  
Centre Deputy Director



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

The Centre has been fortunate to welcome several new members, including two new HDR candidates, Sinethemba Memela and Shanil Wijesinha (you can read about them later in the newsletter). The Centre also welcomed as visitors 17 junior scholars from around the world in May, as part of the second ICON•S winter-summer school for junior scholars, co-hosted by the Centre in partnership with its Centre partners at the University of Ottawa, Hong Kong University and the National University of Singapore. The event was further supported by visits by several senior colleagues, the ICON•S communications team (especially Irene Parra) and large amounts of time and energy from all of the members of the Centre – including most notably Centre administrator Tamas Allenby.

In addition, we are delighted that Associate Professor Daniel Joyce, a UNSW colleague with extensive media law and free speech expertise, has agreed to join the Centre to help launch a new project on Free Speech, Social Media and Online Speech. This is an important step for the Centre in enhancing its capacity to contribute to critical debates around the regulation of misinformation and disinformation in our democracy. Daniel has already taken important steps in this direction, including through a recent submission to the Parliamentary Joint Standing Committee on Electoral Matters Inquiry into civics education, engagement and participation in Australia.

Centre Director Rosalind Dixon and Project Officer Rose Vassel also contributed a submission to the JSCEM' inquiry outlining the Centre's current pilot projects around primary and high school civics education – another attempt to enhance Australian democracy, in the face of global threats.

Several of our colleagues are currently on well-earned sabbaticals and long-service leave – and as you will see from the individual project reports, have been doing great things to advance their own work and that of the Centre around the world. Associate Professor Sean Brennan recently returned from a Centre-Centre exchange visit at Trinity College Dublin, as part of his sabbatical. And Professor Melissa Crouch has been advancing the work of the Constitutionalism from the Global South project while visiting the Valdy Centre at the University of Buffalo. As you will see from the project report, Melissa continues to do extremely important work supporting a focus on Asian law and constitutionalism in Australia, and ensuring the safety and protection of Burmese students affected by that country's military coup.

Rosalind Dixon  
Director & Scientia Professor of Law

Elisabeth Perham  
Deputy Director

## CENTRE ACTIVITIES

### EVENTS

#### Public Law in the Classroom Workshop 8 February 2024

The tenth annual PLIC Workshop was held at the UNSW Faculty of Law & Justice on 8 February (the day before the Constitutional Law Conference). Organised by the Gilbert + Tobin Centre in conjunction with the Public Law and Policy Research Unit at the University of Adelaide, the Castan Centre for Human Rights Law at Monash University and the School of Law at Western Sydney University, the workshop was a great success, attracting around 50 public law teachers from across the country and internationally. Session 1 was a facilitated discussion about experiences of technology and teaching, facilitated by Associate Professor Laura Grenfell (Adelaide) and Shreeya Smith (WSU). Session 2 was on 'Change and Public Law Teaching' – chaired by Deputy Director Elisabeth Perham and featuring presentations from Professor Dean Knight (Te Herenga Waka – Victoria University of Wellington), Cornelia Koch (Adelaide), Marie Iskander (Legal Aid NSW/UNSW) and a video appearance from Associate Professor Elisa Arcioni (University of Sydney). Session 3 was chaired by Shreeya Smith, and focused on 'Comparative and Critical Approaches to Public Law Teaching' with presentations by Associate Professor Becky Batagol (Monash), Professor Rosalind Dixon, Dr Janet Hope (Canberra) and Dr Siddharth Narrain (Adelaide). Keep an eye on your inbox to register for next year's event, to be held on 6 February 2025 in hybrid format – we'll send an invitation later in 2023.

#### Constitutional Law Conference 9 February 2024

The 2024 Constitutional Law Conference (with the support of the Australian Association of Constitutional Law and Federation Press) was held in a hybrid format at the Gilbert + Tobin offices in Barangaroo, with more than 120 in-person attendees and approximately the same number



PLIC 2024



Constitutional Law Conference 2024

joining online. The conference featured discussions on important developments in the High Court, Federal Court and state courts and provided an overview of the key public law debates in 2023. It included papers on the separation of powers, public finance, public law and migration, and future directions for human rights and Voice in Australia. The conference was addressed and attended by leading judges, academics, barristers and government lawyers. We are pleased to report that the conference was once again a great success, and given the overwhelmingly positive feedback, we will be holding the event in the same format and in the same location next year – so please mark 7 February 2024 in your diaries (invitation coming soon).

### Gendered Interruptions Revisited: New Evidence and Techniques for Assessing the Question in Australia 15 March 2024

In a pathbreaking study of the US Supreme Court, Professor Tonja Jacobi (Emory) found a startling pattern regarding interruptions of justices in the US Supreme Court: a pattern in which men interrupted women at far higher rates. In early, qualitative studies in Australia, Centre Fellow Amelia Loughland found a similar pattern. The scope and strength of those patterns in Australia, however, remains open to debate. In this hybrid seminar, hosted by the UNSW Gilbert + Tobin Centre of Public Law at UNSW Law & Justice and online via Zoom, Professor Jacobi revisited this and broader questions of High Court practice – using new evidence and statistical techniques. Her findings are also worthy of note: gendered effects are identifiable in Australia, but mixed in origin, and demonstrably smaller than in the US. In the seminar, the questions of what we should make of this finding, and what it suggests about the health of Australian bar and judicial practice, as well as the scope for potential reform, were explored.

### How to Lose a Referendum (in Ireland) 9 May 2024

In March 2024, two referendums put to the Irish people, proposing constitutional changes related to families and the value of care, failed by spectacular margins. These failures—not expected in the run up to the campaigns – mark the end of more than a decade of lauded referendum successes in Ireland, which included votes to legalise same-sex marriage and abortion and the pioneering use of citizens’ assemblies. Ireland had been one of the few positive case studies of constitutional change referendums, but has this now changed? In this hybrid seminar, hosted by the UNSW Gilbert + Tobin Centre of Public Law at UNSW Law & Justice and online via Teams, Professor David Kenny (Trinity College Dublin) explored the reasons for the failure of these proposals and discussed what it might say more broadly about the difficulties of constitutional change referendums in Ireland, Australia, and beyond.

### Public Service Independence 15 May 2024

An apolitical, professional public service that provides ‘frank and fearless’ advice to ministers is a core component of Westminster democracy. Yet, a number of recent events and reports have raised concerns that public service independence is being eroded in Australia. The Victorian Ombudsman recently reported on a range of ways in which ‘creeping politicisation’ is occurring in the Victorian public sector, including via non-merit-based appointments, the use of consultants, secrecy and a lack of rigorous scrutiny of projects. The Robodebt Royal Commission revealed a culture in which some public servants were not providing ‘frank and fearless’ advice and made several recommendations to improve the knowledge and accountability of the Commonwealth public service. This online seminar (hosted via Zoom) explored the importance of, and modern challenges for, an independent public service. Hosted by the UNSW Gilbert + Tobin Centre of Public Law and the Australian Institute of Administrative Law (NSW Branch), it featured a conversation between Emeritus Professor John McMillan AO (former Commonwealth Ombudsman), Professor Janet McLean (University of Auckland) and Professor Vicki Jackson (Harvard), chaired by Associate Professor Janina Boughey (UNSW).

### 2024 ICON•S Winter/Summer School for Junior Scholars 15-24 May 2024

In this second edition of the ICON•S Winter/Summer School, 17 junior scholars from 14 countries participated in introductory sessions on comparative constitutional law research methodology, writing and publishing, academic skills, and career planning. Throughout the program, participants had opportunities to workshop and showcase their research projects. They received feedback from their peers and senior scholars through various activities, including panels and poster presentations. Another highlight was the Comparative Constitutional Law Conference on the final day, where junior scholars served as chairs/ commentators on sessions where senior scholars presented research in progress.



Gendered Interruptions Revisited



How to Lose a Referendum (Ireland)



Public Service Independence



Attendees at the recent Winter/Summer School

One of the most valuable aspects of the Winter/Summer School was the opportunity for junior scholars to connect with peers from diverse backgrounds and nationalities, fostering a global community of scholars. A dedicated meeting addressed gender gap challenges in academia, further strengthening bonds within the public law academic community. Continuing from the previous edition, the Winter/Summer School featured a Mentorship Program where senior scholars volunteered to provide insights, advice, and expertise to junior scholars, helping them navigate the challenges and opportunities in the field.

### Free + Equal Human Rights Conference 6-7 June 2024

The Gilbert + Tobin Centre of Public Law were community partners for the recent Free + Equal Human Rights Conference, presented by the Australian Human Rights Commission. The conference was part of the Vivid Sydney festival's Ideas program and included 12 engaging sessions and events featuring a diverse line-up of more than 60 eminent experts, thought leaders, social justice advocates and community heroes. Centre intern Brad Marzol and undergraduate student Ishani Gangopadhyay represented the Centre at the Conference and found it to be a very rewarding experience.



Brad & Ishani at Free + Equal

### Greater Sydney Law Schools Public Law Reading Group and Global Book Series

The Reading Group and Global Book Series brings together public law academics from across greater Sydney to discuss global books in the field of public law. In 2024, the series has returned in a hybrid format, allowing for a formal discussion of the book with international and remote guests followed by a more informal discussion by public law scholars attending in person. It is convened by Professor Rosalind Dixon (UNSW), Professor Lisa Burton Crawford (University of Sydney), Associate Professor Harry Hobbs (UTS), Shreeya Smith (WSU) and Ashleigh Barnes (Macquarie).



GSPL Reading Group Series

### How to Interpret the Constitution by Cass Sunstein 16 February 2024

In his provocative new book, [How to Interpret the Constitution](#), Cass Sunstein (Robert Walmsley University Professor at Harvard) argues for a new form of constitutional pragmatism in the US – but a pragmatism cabined by a commitment to upholding or acting consistently with various constitutional ‘fixed points’. What is the relevance of these ideas to an Australian context? Could a legalist High Court ever contemplate pragmatism of this kind – and indeed should it? And what would be the ‘fixed points’ of Australian constitutional law and construction? In this seminar, Professor Sunstein introduced the book and Gilbert + Tobin Centre Director Professor Rosalind Dixon offered commentary. The seminar was chaired by Professor Lisa Burton Crawford (University of Sydney). The event was held in a hybrid format at the UNSW Faculty of Law & Justice and online via Zoom.

### Thoughtfulness and the Rule of Law by Jeremy Waldron 17 May 2024

It is often said that the rule of law is one of the most fundamental constitutional principles in Australia and globally. But how should we understand the idea of the rule of law in this context? Is it an absolute value or one that must be balanced against other competing public law values and principles? How can it prevail in complex legal systems? Is it best served by clear and certain rules – or does it instead depend on the ‘thoughtfulness’ of its subjects? In this special Global Book series event, co-hosted by the Gilbert + Tobin Centre of Public Law, Julius Stone Institute and Greater Sydney Law Schools’ Public Law Reading Group, we reflected on these questions through a dialogue between Australia’s leading rule of law theorists – Professors Lisa Burton Crawford (University of Sydney) and Martin Krygier (UNSW) – and one of the world’s leading legal philosophers, NYU Professor Jeremy Waldron, author of a new book published by Harvard University Press, [Thoughtfulness and the Rule of Law](#) (2023). The event was chaired by Professor Wojciech Sadurski (University of Sydney). It was held in a hybrid format at the University of Sydney Law Faculty and online via Zoom, with many of the junior scholars attending the concurrent ICON•S Winter/Summer School also in attendance.



Jeremy Waldron Zoom'ing in for his Global Book Series seminar

## UPCOMING EVENTS

### Sustainable Sovereignty for Small Island States 19 June

Small island states encounter significant economic challenges that cannot be easily overcome with current development practices. Decades of development loans and grants have not resulted in economic sustainability. Instead, geographic, demographic and historical legacies have created conditions that make sustaining sovereignty virtually impossible in the current climate. Geography limits the creation of economies of scale, leaving intranational and



Sustainable Sovereignty for Small Island States

international trade too costly. In this seminar, Professor Alan Tidwell (director of the Center for Australian, New Zealand and Pacific Studies (CANZPS) at the Georgetown University Walsh School of Foreign Service) will argue that migration from small island states has eroded the local talent pool of employees. The historical legacy of colonialism and climate exploitation has imposed costs on small island states far in excess of their ability to manage. In the face of these challenges a case can be made for the establishment of an international norm through which countries in the international system undertake to sustain the sovereignty of the small island nations. This hybrid seminar, co-hosted by the UNSW Gilbert + Tobin Centre of Public Law and the UNSW Kaldor Centre for International Refugee Law, will take place in-person at the UNSW Law & Justice Building (Level 2 Staff Common Room) and online via Zoom. [Register here.](#)

### 2024 Mason Conversation: The Honourable Justice Virginia Bell AC 6 August 2024

We are delighted that this year's Mason Conversation will feature the Honourable Virginia Bell AC in conversation with Centre Director, Scientia Professor Rosalind Dixon.

Virginia Bell was appointed to the High Court of Australia in February 2009, and retired in February 2021. At the time of her appointment to the High Court she was a judge of the New South Wales Court of Appeal. She graduated from the University of Sydney with a Bachelor of Laws in 1977. After seven years as a solicitor with the Redfern Legal Centre, she was admitted to the New South Wales Bar in 1984 and was appointed Senior Counsel in 1997. Justice Bell practised as a public defender between 1986 and 1989 before returning to the private Bar. Between 1994 and 1997 she was a counsel assisting the Royal Commission into the New South Wales Police Service. Justice Bell was appointed a judge of the Supreme Court of New South Wales in March 1999.

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

The event will take place on Tuesday 6 August from 6.00 - 7.30pm in the Banco Court, Level 13, Law Courts Building, Sydney. [Register here.](#)

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## THE AUSPUBLAW BLOG

The first six months of 2024 were a time of transition for the AUSPUBLAW team. Douglas McDonald-Norman stepped down from the blog in May 2024. During his two years as joint editor, Douglas has made an enormous contribution to the blog and we are very grateful for his intellectual and administrative leadership. Laura Ismay's term as joint editor will also be ending in July, and we are equally grateful for the skill, expertise and diligence Laura has brought to the blog.

Our new team of joint editors is Dr Sangeetha Pillai, Kelly Yoon and Rebecca Lucas. Sangeetha and Kelly began their roles in May, and Rebecca will be coming on board in July. The three new joint editors bring a wealth of experience and knowledge across public law, and we are excited about the next two years under their joint editorship.

Amid this change, the blog has had a very busy and productive start to 2024. As our first posts of the year, we published a forum on the High Court's seminal judgment in *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs*, featuring contributions from Stephen McDonald SC; Harry Sanderson and Meghan Malone; and Sangeetha Pillai. We have since published another forum on the government's proposed creation of an Administrative Review Tribunal to replace the Administrative Appeals Tribunal, with posts by Ellen Rock; Joe McIntyre; Daniel Ghezelbash, Mia Bridle and Keyvan Dorostkar; and Joel Townsend and Emily Singh. These posts have promoted a range of perspectives on important and evolving issues in contemporary Australian public law.

Beyond our forums, we have continued to publish posts on a very wide range of topics relating to public law and governance. These have included topical consideration of ChatGPT and legal ethics (Brenda Tronson); the constitutional thought of Cass Sunstein (Rosalind Dixon); analysis of the role and limitations of judicial commissions, including commentary on the resignation of Justice Lex Lasry from the Supreme Court of Victoria (Joe McIntyre) and on the doctrinal issues



Mason Conversation 2024



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involved in such commissions (Jerry Leung, Maxen Williams and Kevin Zhu); and the role that a Human Rights Act may play in climate change litigation (Amy Tan). We have also continued our regular coverage of recent notable judgments on public law, including commentary on the High Court's judgments in *Thornton and Lesianawai* (Kate Bones), *Ismail* (Chris Honnery), *LPDT* (Douglas McDonald-Norman) and *McQueen* (Nina Boughey).

We look forward to continuing our important work in the second half of 2024!

Janina Boughey, Laura Ismay, Douglas McDonald-Norman, Sangeetha Pillai and Kelly Yoon

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## PEOPLE

### Daniel Joyce

Associate Professor Daniel Joyce works at the intersection of international law, human rights and media law. His current research examines the role played by digital platforms in the governance of online speech and engages with broader debates regarding the regulation of social media. At the Gilbert + Tobin Centre he leads a new project addressing Free Speech, Social Media and Online Speech. Daniel is a co-author, with David Rolph et al, of *Media Law: Cases, Materials and Commentary*, Third Edition (OUP, 2022). He is responsible for the chapters on freedom of expression and offensive speech. His monograph *Informed Publics, Media and International Law* was published by Hart in 2020. His latest article is: 'Communications Infrastructure, Technological Solutionism and the International Legal Imagination' (2023) 34 *Law and Critique* 363. Daniel was recently a visiting fellow at the LSE Law School.



Daniel Joyce



Sinethemba Memela

### Sinethemba Memela

Sinethemba Memela is a doctoral candidate at the UNSW Faculty of Law and Justice. Her doctoral research focuses on South African constitutionalism. She earned her Bachelor of Laws and Master of Laws degrees from the University of the Witwatersrand, Johannesburg, and later an additional Master of Laws from the University of California, Los Angeles where she was a Health and Human Rights Fellow. Prior to her doctoral studies, she worked as a Researcher at the South African Human Rights Commission and as a Research and Teaching Associate at the University of the Witwatersrand. Sinethemba's scholarly interests include constitutional theory, comparative constitutional law, race, gender and the law, and international law.

### Shanil Wijesinha

Shanil Wijesinha is a doctoral candidate at the UNSW Faculty of Law and Justice whose doctoral thesis examines judicial decision-making in Sri Lanka with a focus on judicial dissent. He obtained his Bachelor of Laws degree from the Faculty of Law, University of Colombo and Master of Laws degree from Harvard Law School. He is a lecturer at the Faculty of Law, University of Colombo and has qualified as an attorney-at-law of the Supreme Court of Sri Lanka. Prior to his doctoral studies, he was a legal consultant and research fellow at the Max Planck Foundation for International Peace and the Rule of Law.



Shanil Wijesinha

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## PROJECT REPORTS

### The Administrative Law and Justice Project

*Project Director: Janina Boughey*

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

In May, the Centre hosted an online panel discussion on public service independence – an issue raised in both the Robodebt Royal Commission report and the Victorian Ombudsman's recent report into the politicisation of the public service. The speakers, Emeritus Professor John McMillan, Professor Janet McLean and Professor Vicki Jackson, reflected on the importance of, and challenges to, public service independence in Australia and overseas.

The panel discussed practical challenges to independence including appointments, tenure and the use of consultants, in an extremely well-attended event.

Janina Boughey has continued her DECRA project on government outsourcing, publishing an article in the *Oxford Journal of Legal Studies* arguing that orthodox approaches to thinking about what is 'public' for the purposes of administrative justice do not work in the modern administrative state for non-court-based review and information rights. Janina also contributed to a comparative administrative law workshop and (forthcoming) book project on outsourced service delivery in Australia and Canada.

In addition to her work on government outsourcing, Janina was invited to contribute to a blog forum edited by Dr Oren Tamir and Professor Susan Rose-Ackerman on deference. The forum, hosted on the Balkanization blog, involved scholars from around the world reflecting on recent and forthcoming US cases on deference, which draw on comparative case law. In 2023, it was announced that Janina and Anne Carter's article on constitutional freedoms and statutory executive power, published in the *Melbourne Law Review*, won the 2023 Saunders Prize for outstanding scholarship in Australian constitutional law.

Chantal Bostock has continued her research (with Frances Simmons) on administrative review processes for vulnerable applicants. In her capacity as a UNSW Nexus Fellow, Chantal is leading various projects including the implementation of the IBA's International Guidelines on Wellbeing in Legal Education and conducting research with UNSW colleagues, including Dr Rowe (Academic Development) and Dr Gooi (Psychology), on improving the student experience of class participation. Preliminary findings of the research will be presented at ALAA and HERDSA in July 2024.

The Project has continued its collaboration with the Allens Hub for Technology, Law and Innovation, including in work with the NSW Information and Privacy Commission on informal release of government information.

### Comparative Constitutional Law Project

*Project Director: Rosalind Dixon / Deputy Director: Elisabeth Perham*

The CCL Project has had a busy few months, welcoming two new PhD students – Sinethemba Memela and Shanil Wijesinha, whose profiles you can find earlier in the newsletter – and hosting the second iteration of the ICON•S Winter-Summer school for Junior Scholars. The Winter-Summer School welcomed 17 junior scholars from around the world, and ran from 15–24 May, culminating in presentation by junior scholars on 23 May, and a Comparative Constitutional Law Roundtable on 24 May. We are extremely grateful to our partners at the uOttawa Centre de droit public/Public Law Centre, the Centre for Comparative and Public Law at Hong Kong University and the Centre for Asian Legal Studies at the National University of Singapore for making this possible, as well as to the Manos Foundation for generous financial support. We also thank ICON•S for trusting the Centre with this important initiative, and Dr Amal Sethi and Irene Parra from ICON•S for all their work on the program – and Irene for her extensive on the ground support as well.

The Project was also glad to host Professor David Kenny from our partner Centre at Trinity College Dublin (the Trinity Centre for Constitutional Law and Governance) for a seminar reflecting on the somewhat unexpected failure of two recent constitutional referendums in Ireland (on care and on family), and drawing lessons about referendum practice and process. David also generously ran a workshop on 'accounting for constitutional culture' in research for the Faculty's HDR candidates. We were also delighted to help co-sponsor two events as part of the ongoing Global Book series. Run in conjunction with the Greater Sydney Law Schools' Public Law Reading Group, these book seminars with Professor Cass Sunstein in February (*How to Interpret the Constitution*) and Professor Jeremy Waldron in May (*Thoughtfulness and the Rule of Law*) provoked thoughtful discussion and had the advantage of combining conversations with global public law scholars and local public law scholars.

Project Director, Professor Rosalind Dixon, also worked with Centre visitor, Gautam Bhatia, and student research assistant, Jeremy Ellis, to submit an amicus brief noting comparative support for a decision by Japanese courts to recognize same-sex marriage, either by a process of statutory interpretation or constitutional construction. In January, as Part of her ARC Future Fellowship, on Constitutions and Democratic Resilience, Rosalind Dixon also co-hosted a workshop at Yale Law School in January 2024 on "the Future of Constitutionalism".

At the end of last year, just after our last newsletter, the Project also hosted the annual Comparative Constitutional Law Roundtable, featuring discussions on work in progress papers by scholars from around Australia and the region. The Roundtable was preceded by a workshop run jointly with the UNSW Institute for Global Development and International IDEA



Small States

on ‘culturally rooted constitutionalism’. It was also followed by a two-day workshop on Small States Constitutionalism. Organised by the Project Co-Directors along with Professor Maartje de Visser from Singapore Management University, this hybrid workshop was attended by a range of scholars from, or with expertise, in small jurisdictions from across the globe to consider the questions of whether and how size impacts on constitution making and design. The papers from the Workshop will be published in a forthcoming edited collection. We were grateful for support from the Centre, the Faculty, and the Konrad Adenauer Stiftung to support this workshop. We were also grateful to Professor Philipp Dann from Humboldt University (who attended the Roundtable as a visitor of the School of Global and Public Law), and Professor Tracy Robinson from the University of the West Indies (who attended the Roundtable and the Small States Constitutionalism workshops) for running workshops for HDR candidates from the Centre and the Faculty as part of their visits.

### **Constitutionalism in the Global South Project**

*Project Director: Melissa Crouch*

Melissa has been collaborating with academics across Australia to support Burmese students on Australia Awards scholarship. In 2024, the military in Myanmar imposed a new conscription law, making it dangerous for many Burmese to return. The group of academics sent a joint letter to the Minister of Home Affairs and liaised with universities to advocate for these students to ensure they can stay in Australia upon completion of their degree.

Melissa has made a submission to government on behalf of the Asian Studies Association of Australia regarding the Australian Research Council’s Policy Review of the National Competitive Grants Program and the importance of support for research on Asia. Melissa also co-edited a blog series on [Women’s Contributions to the Asian Studies Association of Australia](#), which featured contributions from numerous academics on the history of women’s involvement in the ASAA. Separately, Melissa contributed to a [podcast](#) for The Baldy Centre at the University at Buffalo on the role of judges in authoritarian regimes.

### **Gender & Public Law Project**

*Project Co-Directors: Rosalind Dixon and Gabrielle Appleby*

In March, the Project hosted Professor Tonja Jacobi (Emory) for a hybrid workshop on gender and interruptions in the High Court of Australia. This research contributes to an ongoing debate on the issue in the US and Australia, including by Centre fellow, Amelia Loughland, and showed the power of new statistical techniques to confirm Loughland’s earlier finding – that gender does in fact play a role in this context. Jacobi was also generous enough to give a masterclass to Faculty and Centre research students during her visit.

In addition, the Gender & Public Law project continues to host the Pathways to Politics for Women Program NSW, with the program now being in its fourth iteration. The Program is now fully national as of 2024, with university partners in every Australian state and territory, and Rosalind Dixon and Marian Iskander (Assistant Director) joined all national program leads for a workshop in Melbourne in February. 2024 has also seen Elisabeth Perham return as Co-Director of the program, and a renewed emphasis on alumni engagement in the lead up to the September local council elections.

### **Free Speech, Social Media and Online Speech Project**

*Project Director: Daniel Joyce*

This newly created project builds on the Centre’s expertise in human rights and freedom of expression in order to contribute to current debates and regulatory developments regarding social media and online speech. It is led by Associate Professor Daniel Joyce.

In 2023 Daniel and former Centre Member Siddharth Narrain spoke at an event on freedom of expression in the digital age that took place in the context of the ICON•S winter/summer school. While visiting at the LSE Law School in 2023-24 Daniel presented his research on social media governance in a variety of contexts including in Durham, at the LSE, in Cambridge, in Helsinki and in Lund.

The project responds to a range of contemporary policy and regulatory challenges generated by social media and its impacts on public life and democracy, free speech and offensive speech, mis- and disinformation. All are current issues where law reform is being considered and Daniel recently made a submission to the Joint Standing Committee on Electoral Matters (JSCEM) inquiry into civics education, engagement, and participation in Australia. Along with contributing to public debates, the project is envisaged as a home for researchers in the Centre with interests in online speech, social media, and the wider relationship between public law, information and technology.



## Public Law Teaching Project

*Project Co-Directors: Svetlana Tyulkina and Elisabeth Perham*

This newly created project provides a dedicated home for the Centre's ongoing activities to support the teaching of public law subjects (broadly defined), both at UNSW and more broadly. It is led by Dr Svetlana Tyulkina, who is also currently the Faculty's Director of Learning and Teaching, and Elisabeth Perham.

On 8 February, the Centre hosted the annual Public Law in the Classroom workshop at UNSW. PLIC is a joint initiative, and this year Svetlana and Elisabeth worked with colleagues from the Public Law & Policy Research Unit at the University of Adelaide, Monash University's Castan Centre for Human Rights Law, and the Western Sydney University School of Law to organise the workshop. PLIC, which is in its 10th year, is now a pre-conference staple for public law teachers from around Australia (and further) to come together and discuss teaching practice – and we were delighted to engage with colleagues on a range of issues, including adapting to and harnessing changes in technology, teaching public law in times of legal and constitutional reform discussions, and bringing critical and comparative approaches to teaching. Next year's PLIC will again be hosted at UNSW (with hybrid options) on 6 February 2025.

Svetlana and Elisabeth are also in the process of creating a community of practice within ICON•S (the International Society of Public Law) to bring together public law scholars from around the world interested in discussing and collaborating on questions of public law teaching. The initial meeting of that group will be held at the ICON-S Annual Conference in early July at IE Law School in Madrid, Spain.

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## PUBLICATIONS AND PRESENTATIONS

### PUBLICATIONS

#### Joint

*Australian Constitutional Law and Theory: Commentary and Materials* (Federation Press, 8th ed 2024) (with Rebecca Ananian-Welsh, Sean Brennan, Andrew Lynch, Peta Stephenson and George Williams).

#### Janina Boughey

'The "Codification" of Administrative Law in Australia' in Felix Uhlmann (ed), *Codification of Administrative Law: A Comparative Study on the Sources of Administrative Law* (Hart, 2023).

'Administrative Justice in the Modern Mixed Administrative State: Moving Beyond Taxonomies' (2024) *Oxford Journal of Legal Studies* [ADVANCE].

'STATUTORY INTERPRETATION: Does Australia Need a Doctrine of Deference?' (2024) 98(1) *Australian Law Journal* 27.

'A Case for Recognising Non-Discrimination as a Fundamental Right at Common Law' (2023) 46(3) *UNSW Law Journal* 902 (with Dominique Allen and Dan Meagher).

#### Rosalind Dixon

'Gender and the Legal Academy' (2024) 22(1) *International Journal of Constitutional Law* 16 (with Gráinne de Búrca and Marcela Prieto Rudolph).

'Utopian Constitutionalism in Chile' (2024) 13(1) *Global Constitutionalism* 228 (with David Landau).

'Parity Constitutionalism in Chile' (2024) 13(1) *Global Constitutionalism* \_ (with Marcela Prieto Rudolph).

'A Global Constitutional Canon v Quasi-Canon? Towards a More Informed and Inclusive Comparative Constitutionalism' in Sujit Choudhry Michaela Hailbronner and Mattias Kumm (eds), *Global Canons in an Age of Contestation: Debating Foundational Texts of Constitutional Democracy and Human Rights* (Oxford University Press, 2024) 29

'Judicial Review' in *Elgar Encyclopedia of Comparative Law* (Edward Elgar, 2024) (with Erin Delaney).

'Which Constitutional Provisions Are Most Important?' (2024) 1(1) *European Journal of Empirical Legal Studies* 19 (with Richard Albert, Netta Barak-Corren, Daniel M Brinks, Adam Chilton, Zachary Elkins, Tom Ginsburg, Ran Hirschl, David Landau, Ashley Moran, Yvonne Tew and Mila Versteeg).

#### Shakhawat Hossain

'Utilizing Eurocentric Temporary Protection Directive as a Global Approach of Refugee Protection' (2024) 9(1) *Lambung Mangkurat Law Journal* 34 (with Sakhawat Sajjat Sejan)

## George Williams

'Australian Parliaments and the Pandemic' (2023) 46 *University of New South Wales Law Journal* 1314-1355 (with Harry Hobbs).

## PRESENTATIONS

### Janina Boughey

'Administrative Justice and Outsourced Service-Delivery', *Comparative Administrative Law Workshop*, 22 October 2023

'Constitutional Freedoms and Statutory Executive Discretions', *ACL South Australia Chapter*, 28 September 2023 (with Anne Carter)

### Rosalind Dixon

'The Notwithstanding Clause and Responsive Judicial Review', Public Law Conference, University of Ottawa Public Law Centre, 13 April 2024 (via zoom)

'A New Australian Constitutionalism? Purpose, Proportionality and Process-Theory in the High Court of Australia', 2024 George Winterton Memorial Lecture, University of Western Australia, 11 April 2024

'Utopian Constitutionalism', Public Choice Symposium on Constitutional Change, University of Virginia School of Law, 10 February 2024 (via zoom)

'Responsive Judicial Review in Central and Eastern Europe', Masaryk University, 2 February 2024 (via zoom)

'Utopian Constitutionalism', Conference on the Future of Constitutionalism, Yale Law School, 23 January 2024

### Elisabeth Perham

'Small States Constitutionalism', Comparative Constitutional Law Roundtable, UNSW, 17 May 2024 (jointly authored with Maartje de Visser and Rosalind Dixon).

'How does "State-ness" matter for Constitution Making and Constitutional Design?', Small States Constitutionalism Workshop, UNSW, 11-12 December 2023 (jointly authored with Maartje de Visser).

### Shakhawat Hossain

'Is a mere constitutional guarantee of institutional independence enough to maintain judicial independence in Bangladesh?', 2nd Graduate Conference, University of Texas at Austin, (11-13 January 2024).

## George Williams

'Delivering an Australian Human Rights Act' *Free + Equal Conference*, Australian Human Rights Commission, Sydney, 7 June 2024.

'After NZYQ – Community Safety Orders' Kaldor Centre for International Refugee Law Strategic Litigation Network, Sydney, 3 April 2024.

## MEDIA PUBLICATIONS

### Janina Boughey

'Departmental Advice in Ministerial Decision-Making: Minister for Immigration, Citizenship and Multicultural Affairs v McQueen [2024] HCA 11' *AUSPUBLAW* (22 May 2024).

'A perspective from a jurisdiction without a doctrine of deference: Australia' *Balkanization* (2 October 2023) (Blog series edited by Susan Rose-Ackerman and Oren Tamir).

### Rosalind Dixon

'Constitutional Fixed Points & the Australian Constitution: Cass Sunstein on 'How to Interpret the Constitution' *AUSPUBLAW* (21 February 2024).

'DV Bail Changes Make a Big Difference, but Minns Missed One Big Red Flag', *The Sydney Morning Herald*, 14 May 2024.

'Violence against Women Is Both a Legal and Cultural Problem. What Can We Do to Address It?', *The Conversation*, 1 May 2024 (with Emma Buxton-Namisnyk).

'A Royal Commission Will Take Too Long. Here's What Must Be Done to Keep Women Safe', *The Sydney Morning Herald*, 29 April 2024.

### Douglas McDonald-Norman

'What if? LPDT v MICMSMA [2024] HCA 12' *AUSPUBLAW* (22 April 2024).

## George Williams

- 'Perilous Legal Path Through Migrant Detention Quagmire' *The Australian* (19 April 2024).
- 'Good Ideas Lost in a Broken System that's Overdue for Reform' *The Australian* (15 April 2024).
- 'Rushed Citizenship Law Exposes Serious Issues of Security' *The Australian* (4 March 2024).
- 'We Don't Need to Wait to 'Vote' for Governor-General' *The Australian* (5 February 2024).
- 'High Court Ruling Shows Why Our Flawed Federal System Needs Reform' *The Australian* (27 December 2023).
- 'New Preventative Detention Regime a Legal Minefield' *The Australian* (11 December 2023).
- 'Reforms to Nation's Secrecy Laws Must Go Further' *The Australian* (7 December 2023).

## SUBMISSIONS

### Janina Boughey

Submission to House of Representatives Standing Committee on Social Policy and Legal Affairs Inquiry into the Administrative Review Tribunal Bill, 30 January 2024 (with Ellen Rock).

### Rosalind Dixon

Submission to Joint Standing Committee on Electoral Matters 'Inquiry into Civics Education, Engagement, and Participation in Australia' (30 March 2024) (with Rose Vassel).

### Daniel Joyce

Submission to Joint Standing Committee on Electoral Matters 'Inquiry into Civics Education, Engagement, and Participation in Australia' (24 May 2024).

### George Williams

Submission to Joint Standing Committee on Electoral Matters 'Inquiry into Civics Education, Engagement, and Participation in Australia' (30 March 2024).

Submission to Parliamentary Joint Committee on Intelligence and Security 'Review of the Amendments made by the Australian Citizenship Amendment (Citizenship Repudiation) Bill 2023' (13 December 2023).

Submission to Social Development Committee, Parliament of South Australia 'Inquiry into the Potential for a Human Rights Act for South Australia' (11 December 2023).

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