LAW AND SOCIETY ASSOCIATION OF AUSTRALIA AND NEW ZEALAND

CONFERENCE 3 - 5 DECEMBER 2014









TC Beirne School of Law

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GENERAL INFORMATION

REGISTRATION DESK

The Registration Desk will be located Foyer of St Leo's College If you have any queries, please feel free to ask the University of Queensland event staff, and volunteers

CONFERENCE CONTACT

Jane Gay - Events Officer TC Beirne School of Law, The University of Queensland P: 3365 2523 M: 0409 958 570 E: events@law.uq.edu.au

EMERGENCY AND SECURITY

UQ Security P: 3365 3333

Professor Heather Douglas TC Beirne School of Law, The University of Queensland P: 3365 6605 M: 0435 094 926

Tuesday, 2	December 2014
	Postgraduate Day
	St Leo's College, College Road, UQ, St Lucia Campus, Brisbane
	Postgraduate Workshop
	(Postgraduate Students only)
08:30 - 09:15	Registration and tea
09:15 - 09:30	Welcome and introductions
09:30 - 10:45	On Socio-Legal Scholarship: Professor Eve Darian-Smith Chair of Global & International Studies, UC Santa Barbara
10:45 - 11:00	Morning tea
11:00 - 12:15	Selection, Rejection and Perfection: Avoiding Publication Pitfalls Panel chaired by Professor Jennifer Corrin
12.15 - 13:00	Lunch
13.00 - 14:00	Professor Rosemary Hunter: Feminist Judgments as Critique (joint session with the Feminist Judgment Project Symposium*)
14.00 - 15:00	Exploring the nexus between methodology, theory, position and identity Dr Jennifer Nielsen
15:00 - 15:15	Afternoon tea
15:15 - 16:00	Landing the Academic Position Panel chaired by Dr Deirdre Howard-Wagner
16:00 - 16:30	Reflections, directions and connection Participant forum
16:15 - 16.30	Close

Tuesday, 2 December 2014

Book Launch

Banco Court, Supreme Court of Queensland, Queen Elizabeth II Courts of Law Complex, 415 George Street, Brisbane

17:45 - 20:00 Conference Welcome & Book Launch

Australian Feminist Judgments: Righting and Rewriting Law edited by Heather Douglas, Francesca Bartlett, Trish Luker and Rosemary Hunter (Hart Publishing)

Hosted by the Australian Association of Women Judges

Speakers

The Hon. Justice Margaret McMurdo, President of the Queensland Court of Appeal

The Hon. Justice Diana Bryant, Chief Justice of the Family Court of Australia

Chair

Her Hon. Judge Sarah Bradley, Judge of the Queensland District Court (Immediate Past President of the Australian Association of Women Judges)

Light refreshments will be served after the Launch.

Wednesday	y, 3 December 2014
	St Leo's College, College Road, UQ, St Lucia Campus, Brisbane
08:00 - 09:00	Registration
09:00 - 10:00	Welcome to Country from The University of Queensland
	Welcome - Professor Sarah Derrington, Dean of Law and Head of School, TC Beirne School of Law, The University of Queensland
10:00 - 11:00	Keynote
	'Globalizing the Commons, Rethinking the Public/Private Divide'
	Speaker
	Professor Eve Darian-Smith, University of California, Santa Barbara
	Chair Professor Heather Douglas, TC Beirne School of Law, The University of Queensland
11:00 - 11:30	Morning Tea
11:30 - 13:00	Parallel Sessions 1
13:00 - 14:00	Lunch
14:00 - 15:30	Parallel Sessions 2
15:30 - 16:00	Afternoon Tea
16:00 - 17:30	Panel Discussion:
	'Penetrating Covert Policing Practice: The Limits of State Power and Surveillance'
	Speakers
	Dr Clive Harfield, ARC Centre for Excellence in Policing & Security, Griffith University
	Ms Kate O'Donnell, School of Criminology & Criminal Justice, Griffith University
	Professor Simon Bronitt, TC Beirne School of Law, The University of Queensland
	Professor Phillip Stenning, School of Criminology & Criminal Justice, Griffith University
	Panel Facilitator
19:00	Damien Carrick, ABC Radio National 'The Law Report' Casual Dinner (cost not included in registration) & Book Launch
	Lefkas Taverna (\$35/head with a cash bar), 170 Hardgrave Road, West End

Surviving Peace: A Political Memoir by Olivera Simić (Spinifex Press). Olivera will discuss her book with Professor Eve Darian-Smith

Thursday, 4	December 2014
	St Leo's College, College Road, UQ, St Lucia Campus, Brisbane
10:00 - 11:00	Keynote
	'More than Just a Different Face? Judicial Diversity and Decision-Making'
	Speaker
	Professor Rosemary Hunter, Queen Mary, University of London, UK
	Chair
	Professor Kim Rubenstein, Director, Centre for International and Public Law ANU College of Law, Public Policy Fellow, Australian National University
11:00 - 11:30	Morning Tea
11:30 - 13:00	Parallel Sessions 1
13:00 - 14:00	Lunch
	Please note the LSAANZ AGM will take place at this time: Leonian Room
14:00 - 15:30	Parallel Sessions 2
15:30 - 16:00	Afternoon Tea
16:00 - 17:30	Panel Discussion:
	'The Different Faces of Facebook'
	Speakers
	Dr Nicholas Carah, School of Journalism and Communications, The University of Queensland
	Associate Professor Jean Burgess, Creative Industries Faculty, Queensland University of Technology
	Associate Professor David Rolph, Sydney Law School, University of Sydney
	Dr Lyria Bennett Moses, Faculty of Law, University of New South Wales
	Panel Facilitator
	Antony Funnell, ABC Radio National 'Future Tense'
18:30	Conference Dinner (cost included in full conference registration)
	St Lucy Caffé e Cucina, Blair Drive, The University of Queensland, St Lucia

Book Launch

First Nations Peoples, Colonialism and International Law: Raw Law by Professor Irene Watson (Routledge) to be launched by Mary Graham Kombu-merri and Waka Waka philosopher

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Friday, 5 De	ecember 2014
	St Leo's College, College Road, UQ, St Lucia Campus, Brisbane
09:30 - 10:30	Keynote
	'Not waving, drowning: Deaths at sea in law and art'
	Speaker
	Professor Desmond Manderson, ANU College of Law and ANU College of Arts and Social Sciences
	Chair
	Associate Professor Jonathan Crowe, TC Beirne School of Law, The University of Queensland
10:30 - 10:45	Morning Tea
10:45 - 12:00	Parallel Sessions 1
12:00 - 12:45	Lunch
12:45 - 14:15	Parallel Sessions 2
14:15 - 14:30	Afternoon Tea
14:30 - 16:00	Panel Discussion:
	'Social change lawyering: what, who and how?'
	Speakers
	Professor Patrick Keyzer, Head of School and Chair of Law and Public Policy, La Trobe University
	Professor Simon Rice OAM, Director of Law Reform and Social Justice, the Australian National University
	Paula O'Brien, Senior Law Lecturer, University of Melbourne
	Professor Mary Anne Noone, Faculty of Business, Economics and Law, La Trobe Law School
	Panel Facilitator
	Paul Barclay, ABC Radio National 'Big Ideas'
16:00 - 17:00	Ice-cream social and conference wrap-up
	Members of the LSAANZ executive will reflect on the conference and share information about the 2015 conference.

Tuesday, 2 December 2014

Conference Welcome and Book Launch

Australian Feminist Judgments: Righting and Rewriting Law edited by Heather Douglas, Francesca Bartlett, Trish Luker and Rosemary Hunter (Hart Publishing)

Hosted by the Australian Association of Women Judges

This book brings together feminist academics and lawyers to present an impressive collection of alternative judgments in a series of Australian legal cases. By re-imagining original legal decisions through a feminist lens, the collection explores the possibilities, limits and implications of feminist approaches to legal decision-making. The collection contributes a distinctly Australian perspective to the growing international literature investigating the role of feminist legal theory in judicial decision-making.

Wednesday, 3 December 2014

Casual Dinner & Book Launch (cost not included in registration)

Lefkas Taverna (\$35/head with a cash bar), 170 Hardgrave Road, West End

Book Launch: *Surviving Peace: A Political Memoir* by Olivera Simić (Spinifex Press). Olivera will discuss her book with Professor Eve Darian-Smith. This book (published in 2014 by Spinifex Press) is one woman's story of courage that echoes the stories of millions of people whose lives have been displaced by war. As we still face a world rife with armed conflict, this book is a timely reminder that once the last gunshot has been fired and the last bomb dropped, the new challenge of surviving peace begins.

Olivera Simić is a feminist, human rights activist and academic at the Griffith Law School, Australia. Born in Yugoslavia, she completed a Doctorate of Law at the University of Melbourne in 2011 and now teaches international law and transitional justice and lives in Brisbane. In 2013 she was a nominee for the Penny Pether Prize for Scholarship in Law, Literature and the Humanities, and won the Peace Women Award from Women's International League for Peace and Freedom.

Thursday, 4 December 2014

Conference Dinner (cost included in full conference registration)

St Lucy Caffé e Cucina, Blair Drive, The University of Queensland, St Lucia

Book Launch: *First Nations Peoples, Colonialism and International Law: Raw Law* by Professor Irene **Watson** (Routledge) to be launched by Mary Graham Kombu-merri. This work is the first to assess the legality and impact of colonisation from the viewpoint of Aboriginal law, rather than from that of the dominant Western legal tradition. It begins by outlining the Aboriginal legal system as it is embedded in Aboriginal people's complex relationship with their ancestral lands. This is Raw Law: a natural system of obligations and benefits, flowing from an Aboriginal ontology. And this book places Raw Law at the centre of an analysis of colonization – thereby decentring the usual analytical tendency to privilege the dominant structures and concepts of Western law. From the perspective of Aboriginal law, colonisation was a violation of the code of political and social conduct embodied in Raw Law. Its effects were damaging. It forced Aboriginal peoples to violate their own principles of natural responsibility to self, community, country and future existence. But this book is not simply a work of mourning. Most profoundly, it is a celebration of the resilience of Aboriginal ways, and a call for these to be recognized as central in discussions of colonial and postcolonial legality.

Irene Watson belongs to the Tanganekald and Meintangk Peoples. Her country lies across the Coorong and further into the south-east of South Australia. Watson is a well-published expert in the field of law and Indigenous Knowledges. She is a Professor of Law at the University of South Australia and is also an ARC Discovery Indigenous Awardee working on the research project: Indigenous Knowledges: Law, Society and the State. Raw Law - First Nations Peoples, Colonialism and International Law, is a prelude to Watsons's current work. Irene's scholarship draws from her First Nations' status and activism, her work as a legal practitioner and also her international law advocacy. In 1996 Watson was invited by the Chiefs of Ontario to sit as one of seven First Nations judges on the First Nations International Court of Justice, and is often invited to attend international meetings on the rights of First Nations. Her work has made a significant impression on everyday Australian legal practice in respect of centring an Indigenous perspective in the long processes of law reform. Watson has had a close relationship with South Australia's Aboriginal Legal Rights Movement since its inception in 1973, involved as a member, solicitor and director. She has served as a front-line solicitor advising the legal service on the Royal Commission into Aboriginal Deaths in Custody, and also contributing to Trevorrow v South Australia - the only successful stolen-generations case in Australian law.

Mary Graham was born in Brisbane and grew up on the Gold Coast, Queensland. She is a Kombu-merri person on her father's side and is also affiliated with the Waka Waka clan through her mother. Mrs Graham was the Administrator of the Aboriginal and Islander Child Care Agency (AICCA) during the 1970's and has been on the Boards and Committees of several Aboriginal organisations in Brisbane for many years since. She was a member of the Council for Aboriginal Reconciliation during its first term and was a member of the ATSIC Regional Council for South East Queensland for 6 years. She was also a Queensland Corrective Services Commissioner for 1 year. She then had her own successful consultancy in Aboriginal affairs - Mary Graham and Associates. Mrs Graham has carried out research work for the Foundation for Aboriginal and Islander Research Action (FAIRA), a Native Title Representative Body in Brisbane. Her varied career has also included free-lance editing for UQP; publishing training guide manuals for various Government departments, Federal, State and Local Government levels; script development work for film and television with Murri-image Production. Mrs Mary Graham is currently working as a community development/research consultant for the Kummara Association in Brisbane - a Stronger Indigenous Families initiative. She continues to conduct workshops and discussion papers on Aboriginal Worldviews for governments, corporations, institutions, national and international bodies in the areas of education, culture, psychology, policy and diplomacy.

Wednesday 3 December session 1: 11.30am-1pm	11.30am-1pm			
Boardroom 1	Leonian Room	Library	McKenna Room	Boardroom 2
Crime and gender	Big data Law and Information Practices	Conceptualising law and legal practice	Crime and victims of crime	Free speech and discrimination
Chair: Sally Sheldon	Chair: Kathy Bowery	Chair: Monica Taylor	Chair: Janet Ransley	Chair: Jonathan Crowe
Wendy Larcombe, Reasonable Grounds for Believing in Sexual Consent: An Objective Standard? Stella Tarrant, Reasonableness in Everything: Reasonableness in Nothing: A Feminist Call for National Consistency in the Laws of Self Defence Pamela Doherty and Katherine Kerr, The Dangerous Impact of Criminalisation: Coerced Pregnancy and Abortion	Lyria Bennett Moses and Janet Chan, Using Big Data for Legal Decisions: Testing the New Tools Decisions: Testing the New Tools Dale Barleben Owell, Jones and the New York Times: Conversations Shaping the Fundamental Rights of Privacy Bianca Phillips, The E-Health Records Cloud – How and Why the Law Must Cloud – How and Why the Law Must Lezie Coles-Kemp, Makayla Lewis Information Security Officers as Delegated Regulators	Abhishek Sudhir, Redeeming a Constitutional Promise: Equal Justice and Free Legal Ald in India Udapadie S. Liyanage, A Private Law Remedy for Constitutional Delicts of Public Bodies: An Appraisal Fabian Horton, Boundaries of the Legal Self in a Hyper-Connected World Liga Ayoubi, The Interface of Human Rights and Intellectual Property Rights- The Case of Access to Books for the Blind	Vera Bergelson, Victimless Crimes: Public or Private Wrongs? Robyn Holder, Just Interests: Connecting Crime Victims to their Status as Citizens Tyrone Kirchengast, Challenging the Public Orthodoxies of Criminal Law: Victim Personhood and the Right to Substantive and Procedural Justice Amanda Wilson, The Reshaping Game: Constructing Gendered Ideals in Drug Courts	Susan Bird, The Public/Private Dichotomy and the Right to Speak Luke McNamara and Katharine Gelber, Private Litigation to Address a Public Wrong: A Study of Australia's Regulatory Response to 'Hate Speech' Laura Sweeney, When Public and Private Lives Collide: Religious Exceptions in Australian Discrimination Law

wednesday 3 December session 2: 2pm-3.30pm	Dpm		
Boardroom	Leonian Room	Library	McKenna Room
Insights from Trailblazing Women Lawyers and Oral history: new spaces for imagining the self as a productive public being	Privacy and Reputation	Migration and citizenship	Pregnancy and abortion
Chair: Rosemary Hunter	Chair: Mark Burdon	Chair: Jennifer Nielsen	Chair: Paula Baron
Kim Rubenstein, How Does Being a Lawyer Enable Women to be Active Citizens and Productive Public Beings? Nikki Henningham, 'I Don't Give My Consent to Make This Interview Open' – Public Interest, Private Narratives and Trailblazing Women Lawyers in Australia. Lawyers in Australia. Personal Narratives Seen Within The Network Context	David Rolph, The Internet as the PublicAnthea Vogl and Elyse Methven, 'We will DomainDomainDomainDomainDomainDomainJessica Lake, Privacy on the Public Record: Uncovering Women's Public Record: Uncovering Women's Public Record:Anthea Vogl and Elyse Methven, 'We will decide who comes to this country and the manner in which they behave': A Critical Reading of the Asylum Seeker Code of Conc Claims for Control Over the Use of their Photographic and Cinematic Images in Early US Privacy' CasesAnthea Vogl and Elyse Methven, 'We will decide who comes to this country and the manner in which they behave': A Critical Reading of the Asylum Seeker Code of Conc Sally Richards, Unearthing Bureaucratic Leg Ronsciousness: Government Officials' Legal Identification and Moral IdealsMeldas Saltime Michael Dougas, Affirming Why Australia Does Not Naed a Local Richt to he DorottionMethod Sale Methy Sustralia Does	Anthea Vogl and Elyse Methven, 'We will decide who comes to this country and the manner in which they behave': A Critical Reading of the Asylum Seeker Code of Conduct Sally Richards, Unearthing Bureaucratic Legal Consciousness: Government Officials' Legal Identification and Moral IdealsSally Sheldon, How Ca Swallowing?: Medical A Pamela Doherty, The " Feminate a Pregnancy Medical Treatment and Contextual Analysis Katherine Curnow, Re Medical Treatment by P	Sally Sheldon, How Can a State Control Swallowing?: Medical Abortion and the Law Pamela Doherty, The "Private Choice" to Terminate a Pregnancy, Refusal of Medical Treatment and Judicial Intervention – A Contextual Analysis Katherine Curnow, Refusals of Care and Medical Treatment by Pregnant Women: The Common Law Position

Thursday 4 December session 1: 11.30am-1pm			
Boardroom	Leonian Room	Library	McKenna Room
'Others' judging and judging 'others'	Conversations about justice	Lawyering and legal practice	Native Title
Chair: Francesca Bartlett	Chair: Barbora Jedlickova	Chair: Monica Taylor	Chair: Deirdre Howard-Wagner
 Kcasey McLoughlin 'What a Difference Difference Difference Difference Difference Difference Difference Makes in Judging the Judges: Gender, Justice: Exploring the Role of the State in a Judicial Power on the Australian High Court.' Gabrielle Simm, Feminist Judgments? International Criminal Law and Peoples' Tribunals Kylie Burns, It's a Matter of "Common Sense": Judicial Cognition and Nudging Judging Laura Hilly, Standing At The Intersections: Do Laura Hilly, Standing At The Intersections: Do Laura Hilly, Standing At The Intersections: Do Laura Hilly, Standing Matter? Jonathan Crowe, Small Justice 	Janet Ransley and Rebecca Wallis, Governing Justice: Exploring the Role of the State in a Privatised Criminal Justice System Cristy Clark , Sacrificing Equality at the Attar of Privatisation Jocelyn Stacey Responding to the Environmental Emergency with New Legal Pluralism: A Case Study of the Forest Stewardship Council Jonathan Crowe, Small Justice	 Janet Chan, Conceptualising Legal Culture and Lawyering Stress Marc Trabsky and Paula Baron, Negotiating Grief Marc Trabsky and Paula Baron, Negotiating Grief Marc Trabsky and Paula Baron, Negotiating Grief Marc Trabsky and Paula Baron, Negotiating Grief Angus Frith, Native Title Groups: Private Versus Angus Frith, Native Title Groups: Private Versus Public Victoria Colvin, Prosecutorial Practices, a Comparative Analysis Rowena Maguire, Rachael Field and Gail Shearer, Revolutionising the Concept of Pro Bono in Law: Promoting Partnerships 	Ruth Thompson, Government Regulation of Indigenous Identity Angus Frith, Native Title Groups: Private Versus Public Margaret Stephenson Free, Prior and Informed Consent: The New Standard for Indigenous State Relationships when Resource Developments occurs on Indigenous Lands

Thursday 4 December session 2 : 2pm-3.30pm			
Boardroom	Leonian Room	Library	McKenna Room
Gender and Justice: At Home and Abroad	Business and commerce	Theory and Practice	Legal Pluralism
Chair: Zoe Rathus	Chair: Kate Curnow	Chair: Ian Duncanson	Chair: Ann Black
Olivera Simic, Hierarchies of Wartime Rape Eva Brems, Public / Private Tensions in the French and Belgian 'Burga Bans' Heather Douglas and Robin Fitzgerald, Domestic Violence, Cross-Orders and Alcohol Use Fiona Kelly, Autonomous from the Start: Single Mothering by Choice	Barbora Jedlickova and Jonathan Crowe, What's Wrong with Cartels? Antonio Martins, A Comment on the Recent Implementation of Tax Arbitration Courts in Portugal Laureen Snider, Too Much Law! Too Few Sanctions! The Clash of Private & Public Regulatory Regimes	Mark McDonell, Emptiness of Self; Emptiness of Law: The Buddhist Middle-Path and its Implications for Restorative Justice Christian Tumer, Law as Code Rhona Smith, Public /Private, State / Donor – Challenges in Higher Education in Cambodia Timothy Peters, Directors' Duties and Law-Made Gods: Towards a Theo-legality of the Corporation	Jennifer Corrin, Customary Laws in Solomon Islands - Public or Private? Sue Farran, Do Intellectual Property Rights in Traditional Knowledge and Expressions of Traditional Culture Fall Into the Public or Private Domain? Derirdre Howard-Wagner, Governing Aboriginal Lives through Legal Recognition Ann Apps, Co-operative Enterprise Solutions to Public and Private Problems - A Case for Rethinking Co-Operative Law In Fiji and Solomon Islands

Friday 5 December session 1: 10.45am-12.00			
Library	Leonian Room	Boardroom	McKenna Room
Sovereignty / citizenship	Technology and work	Pro bono and Lawyering	History
Chair: Tim Peters	Chair: David Rolph	Chair: Trish Mundy	Chair: JaneMaree Maher
lan Duncanson, Sovereignty in the Modern Era Penelope Weller, Reconceptualising the Subject of Law-relation Inter-subjectivity under the CRPD Graeme Orr, Public, Communal or Private: The Ritual of Voting Under Law	Jacinta Buchbach, Regulating the Boundary between Work and Self: Emerging Legal Tensions around Social Media and the Workplace Louise Thornwaite, Labour Law, Social Media Policies and the Chilling of Voice Veronica Hendrick Fahrenheit 451 and Facebook: Employee Surveiliance and Personal Online Profiles	Pascoe Pleasance and Nigel Balmer, Public/ Private Conceptions of Law and Legal Problems (and Why They Matter)Henry Kha, Divorce Law and Public Policy in Nictorian EnglandPrivate Conceptions of Law and Legal Problems (and Why They Matter)Witcorian England Christina Platz, The Censorship of Copyright and Its Effect on Public Lives and Its Effect on Public Lives William Mudford, Appointments to the High ProjectPeport on the Findings of the Pro Bono Values Project Mandatory Student Pro Bono Scheme?Nonce Law and Public Policy in Vitorian England Christina Platz, The Censorship of Copyright and its Effect on Public Lives William Mudford, Appointments to the High and its Reporting of Merit Mandatory Student Pro Bono Scheme?	Henry Kha, Divorce Law and Public Policy in Victorian England Christina Platz, The Censorship of Copyrights and Its Effect on Public Lives William Mudford, Appointments to the High Court of Australia: The Role of the Print Media and its Reporting of Merit

LIIUUAY J DECEILINEL SESSION 2. 12.40011-2.10011			
Library	Leonian Room	Boardroom	McKenna Room
Judges and interpretation	Expanding offences	Pro bono and Lawyering	Bodies and rights
Chair: Heather Douglas	Chair: Stella Tarrant	Chair: John Corker	Chair: Graeme Orr
Constance Youngwon Lee, Constitutional JaneMaree Maher, Jude McCulloch, Gail Silences Mason, Gender as a Hate Crime: Opening Rearlotte Steer, "Home" and the High Court of Reson, Gender as a Hate Crime: Opening Australia: Hit and Miss Elyse Methvyn, Constructing the Commun Zoe Rathus, Defining Family Violence in Mary Spiers Williams, Concepts Of Public Parenting Cases: Intersections of Social Science Mary Spiers Williams, Concepts Of Public and Family Law Legitimising Criminal Law: Their Role i Legitimising Criminal Case Ben Livings, Consent – Private and State	JaneMaree Maher, Jude McCulloch, Gail Mason, Gender as a Hate Crime: Opening the Floodgates? Elyse Methvyn, Constructing the Community in Offensive Language Crimes Mary Spiers Williams, Concepts Of Public And Private in the Criminal Law: Their Role in Legitimising Criminalisation and Suppressing Subaltern Perspectives on Place Ben Livings, Consent – Private and State Authorisation	Unloch, GailTrish Mundy, Place Matters: Gender, Tersh Mundy, Place Matters: Gender, Recommunity Context and the 'Rural' LegalGreta Bird and Jo Bird, The Shrinking Self: Aging in an Institutional Setting Raren Thorpe, The Statutory Guillotine: The Practice Experiencene: Opening the Practice ExperienceCommunity Context and the 'Rural' Legal Raren Thorpe, The Statutory Guillotine: The Karen Thorpe, The Statutory Guillotine: The Norld - The Murphy, Why We All Want to Save the Mulan R Murphy, Why We All Want to Save the Mulan R Murphy, Why We All Want to Save the Norld - The Motivations Behind Pro Bono Work Step-parent Adoption Deminer Nielsen, Advocating for Social Justice Patrick Keyzer, Self-Appointed Representatives Suppressing of the MarginalizedThe Statutory Guillotine: The Mariana Opperman, "The Weight of Their Penmanship": Writing and (De)Righting Real Amal Ali, Intersectionality and Human Right Facilitating Expression of the Female Self	Greta Bird and Jo Bird, The Shrinking Self: Aging in an Institutional Setting Karen Thorpe, The Statutory Guillotine: The Inadequacy of Adoption Laws in Relation to Step-parent Adoption Mariana Opperman, "The Weight of Their Penmanship": Writing and (De)Righting Reality- Law, Psychiatry and the Incredible Amal Ali, Intersectionality and Human Rights: Facilitating Expression of the Female Self

KEYNOTE SPEAKERS

Wednesday 3 December 2014

Professor Eve Darian-Smith, University of California, Santa Barbara

Globalizing the Commons, Rethinking the Public/Private Divide

In this talk Eve will explore the issue of scale in identifying and analyzing what constitutes the global commons. The global commons is often used to describe common-pool resources such as oceans, atmosphere and outer space that exist on a spatial scale exceeding the nation-state. She argues that our understanding of the global commons should also include elements not typically constructed as "global" such as genetic materials, indigenous knowledge, and a global public sphere. The inherent limitations of our modernist legal paradigm and international regulatory system make it difficult to identify, understand and manage common-pool resources. To address pressing issues associated with the global commons, we need to problematize what constitutes the global commons and at the same time transcend the limitations of modern law. A truly global legal paradigm would include plural legal norms, non-state legal actors, and collective forms of legal responsibility and ownership that fundamentally challenge conventional distinctions between the public and private.

Eve Darian-Smith is Professor and Departmental Chair in Global & International Studies at the University of California Santa Barbara, and an Adjunct Professor at RegNet, Australian National University. She also teaches critical approaches to international law at the University of Melbourne and UNSW. Trained as a lawyer and anthropologist, she is engaged in issues of legal pluralism and human rights and gives particular attention to racial and class discriminations, colonial and postcolonial implications, as well as shifting concepts of sovereignty and nationalism in a global political economy. She has published ten books and edited volumes, her most recent being Laws and Societies in Global Contexts: Contemporary Approaches (2013, Cambridge). Her first book Bridging Divides: The Channel Tunnel and English Legal Identity in the New Europe won the USA Law & Society Association Herbert Jacob Book Prize. Other books include Religion, Race, Rights: Landmarks in the History of Modern Anglo-American Law and Laws of the Postcolonial (with Peter Fitzpatrick). She is on various editorial boards including Social & Legal Studies and the Canadian Journal of Law and Society and she is a former Associate Editor of American Ethnologist and Law & Society Review.

Thursday 4 December 2014

Professor Rosemary Hunter, Queen Mary, University of London

More Than Just a Different Face? Judicial Diversity and Decision-Making

This lecture addresses a key question in debates around judicial diversity: what evidence is there that a more diverse judiciary will make a difference to substantive decision-making? The lecture will begin by outlining the range of arguments for a more diverse judiciary, which include but are not confined to making a difference to substantive decision-making. It will then turn to consider the considerable evidence which now exists both to refute and to support the existence of substantive differences in decision-making following the appointment of women and others from non-traditional backgrounds to the judiciary. On the basis of this evidence, it will draw conclusions as to the kinds of differences in decision-making which might be expected, and the circumstances under which different approaches to decision-making are likely to flourish.

Rosemary Hunter joined Queen Mary, University of London in 2014. She was previously at Kent Law School in between 2006-2014. Rosemary's major area of research interest is in feminist legal scholarship. Her major research project is currently the Feminist Judgments Projects, which are unique and imaginative collaborations in which groups of feminist socio-legal scholars have written alternative feminist judgments in significant legal cases. She is also looking more generally at the practice of feminist judging. She has done work in family law, access to justice, domestic violence, women's employment (including women in the legal profession and women judges), anti-discrimination law, and dispute resolution. She is particularly interested in the interface between law and society, and people's encounters with the legal system. Much of her recent work has taken an empirical approach, or has sought to build feminist legal theory from empirical data. Rosemary has previously taught at the University of Melbourne (1990-1997) and Griffith University (2000-2006). During 1998-99. She worked as a Principal Researcher for the Justice Research Centre, part of the then Law Foundation of NSW. At Griffith she was Director of the Law School's Socio-Legal Research Centre (2000-2002) and then Dean (2003-2004).

Friday 5 December 2014

Professor Desmond Manderson, ANU College of Law and ANU College of Arts and Social Sciences

Not Waving, Drowning: Deaths at Sea in Law and Art

JMW Turner's great painting, The Slave Ship, is disturbing and controversial. How can the story of this picture and the different ways in which it has been interpreted, help us to understand our responses and repressions in the face of the drowning of hundreds of asylum seekers off the coast of Australia and Italy? What does Turner's painting reveal about the representation of suffering and the jurisprudential imagination in the nineteenth century, and in the twenty-first? When the sea is the border, and the ocean is the other, how does the legal imaginary contain and comprehend images of oceanic suffering, and with what regulatory consequences?

Desmond Manderson is a Professor and an international leader in interdisciplinary scholarship in law and the humanities. He is the author of several books including From Mr Sin to Mr Big (1993); Songs Without Music: Aesthetic dimensions of law and justice (2000); Proximity, Levinas, and the Soul of Law (2006); and Kangaroo Courts and the Rule of Law—The legacy of modernism (2012). His work has led to essays, books, and lectures around the world in the fields of English literature, philosophy, ethics, history, cultural studies, music, human geography, and anthropology, as well as in law and legal theory. Throughout this work Manderson has articulated a vision in which law's connection to these humanist disciplines is critical to its functioning, its justice, and its social relevance. As Future Fellow in the colleges of law and the humanities at ANU he has been working on a range of interdisciplinary studies on the intersection of law, justice, and the fine arts, including work on asylum and refugees, indigenous peoples, and post-colonialism.

Wednesday 3 December 2014 Panel Discussions

Penetrating Covert Policing Practice: The Limits of State Power and Surveillance.

In this panel, discussants explore the practical, legal and ethical limits of covert proactive investigation in policing. Scandals exposing high profile illegal and unethical covert operations recently occurred in the UK, notwithstanding a framework of legal regulation (Regulation of Investigative Practices Act 2000) that was introduced to protect more effectively the right to privacy secured by the European Convention on Human Rights. Presenters in this panel will address this question: Can similar legal/regulatory and ethical/ moral failures occur in Australia? Issues include the use of covert officers and informers to infiltrate 'issue motivated groups'; the legal, ethical and moral limits of police deception; the pay-offs and pitfalls of controlled operations and covert interviewing to secure convictions and confessions, including the elaborate scenario techniques recently used in the Daniel Morcombe case.

Clive Harfield, ARC Centre for Excellence in Policing & Security, Griffith University, is an Adjunct Fellow & Associate Investigator at the ARC Centre of Excellence in Policing and Security at Griffith. Clive commenced his academic career in 2004 following a criminal justice practitioner career that included service in the UK National Crime Squad and the UK National Hi-Tech Crime Unit. He has taught and researched police and intelligence studies, criminal justice studies, transnational crime prevention, and criminal law at the John Grieve Centre for Policing and Community Safety, London Metropolitan University (UK); the Politshogskolen in Oslo (Norway); and at the University of Wollongong, NSW (Australia). In 2001 he held a Fulbright Police Research Fellowship at Georgetown University, Washington DC, (USA). With expertise in police intelligence management and covert investigation, particularly the management of informers, his publications include: Covert Investigation (with Karen Harfield, 3rd edition, Oxford University Press, 2012); Blackstone's Police Operational Handbook: Practice and Procedure (2nd edition, Oxford University Press, 2013); Criminal Law for Common Law States (with Donna Spears and Julia Quilter, LexisNexis 2011); Police informers and professional ethics Criminal Justice Ethics 31(2), 2012; The governance of covert investigation Melbourne University Law Review 34(3), 2010; and SOCA: a paradigm shift in British policing British Journal of Criminology 46(4), 2006.

Ms Kate O'Donnell, School of Criminology and Criminal Justice, Griffith University.Before commencing her PhD, Kate was a Director with the Queensland Department of Transport and Main Roads and was seconded to CEPS during 2011 as a Practitioner-in-Residence. Kate's public service career has been diverse and spans more than 25 years. Commencing her career as a nurse, Kate has held a variety of senior policy, change management and advisory positions in multiple Queensland government agencies. During the 2009 influenza pandemic Kate worked as the Chief of Staff to Queensland's Chief Health Officer and during 2010 as the Director of Transport Security. Kate's interests are in environmental activism, critical infrastructure protection and disaster and emergency management. Kate holds a Bachelor of Business (Health Administration) from QUT and a Master of Criminology and Criminal Justice (Hons) from Griffith University. Her PhD research focuses on the policing (public and private) of issue motivated groups which seek to disrupt critical infrastructure.

Professor Simon Bronitt joined the T.C. Beirne School of Law at The University of Queensland in 2014. From 2009-2013 he was at Griffith Law School where he was Director of the Centre of Excellence in Policing and Security (CEPS). Prior to that he was Professor of Law in the ANU College of Law in Canberra and Associate Director of the Australian Centre for Military Law and Justice, ANU. Between 2003-9 he served as the Director of the National Europe Centre – an EU funded Centre - in the Research School of Humanities at ANU. Drawing on comparative and interdisciplinary perspectives, he has published widely on criminal justice topics ranging across terrorism law and human rights, covert policing, family violence, and mental health policing. His principal publications include two leading textbooks, Principles of Criminal Law (3rd ed, Thomson Reuters 2010) and Law in Context (4th ed, Federation Press, 2012).

Professor Phillip Stenning is a Professor at the School of Criminology and Criminal Justice, and an Associate Investigator in the Centre of Excellence in Policing and Security, and in the Key Centre for Ethics, Law, Justice and Governance, at Griffith University, in Brisbane, Australia. Prior to this he was a Professor in Criminology at Keele University in the UK (2006-2010), Professor and Director of the Institute of Criminology at Victoria University of Wellington, New Zealand (2003-2005), and Associate Professor at the Centre of Criminology, University of Toronto, Canada (1968-2002). He obtained his doctorate in law at the University of Toronto in 1983. His research interests have included: public and private policing; the prosecution process; governance and accountability in the criminal justice system; firearms abuse and gun control; Aboriginal justice and policing; use of force by and against police; occupational safety and homicide of police officers and taxi drivers; gender-based violence against female university students; the governance of Vancouver's Downtown East Side (one of North America's most notorious 'skid row' areas); and relations between prosecutors and governments in a number of common law, civil law, and international private security. His most recent book is The Modern Prosecution Process in New Zealand (Wellington: Victoria University Press, 2008). He is currently Co-Editor (with Professor Anna Stewart) of the Australian and New Zealand Journal of Criminology.

Panel Facilitator: Damien Carrick, ABC Radio National 'The Law Report'

Thursday 4 December 2014

The Different Faces of Facebook

The last decade has witnessed the incredible rise of Facebook. Both the company and its network of users have grown exponentially. Facebook now has over a half a billion users. Facebook's growth has not been without controversy. Facebook's use of personal information has raised questions about the role of privacy and commercialisation. This panel will explore some of the many different faces of Facebook. Facebook as a sensor network that can use our information to predict our behaviours. Facebook as a branding infrastructure that shapes how advertisements are targeted towards groups and individual users. Facebook as a social connector that can aids communication particularly in times of crisis. Facebook as a regulator that sets standards which govern a populace far bigger than most countries. In examining the different faces of Facebook, the panel will identify the benefits and risks that are likely to arise from the continued expansion of Facebook.

Nicholas Carah is a Lecturer in Communication at The University of Queensland. His research examines the intersection between social media, branding and popular culture. In recent years he has examined, in particular, how alcohol brands use social media platforms like Facebook. He is the author of Pop Brands: branding, popular music and young people (Peter Lang) and has published in journals such as Television & New Media and Consumption, Markets and Culture.

Dr Jean Burgess is Associate Professor of Digital Media at Queensland University of Technology. Her research focuses on the cultures, politics, and methods for studying social and mobile media platforms. Her books include YouTube: Online Video and Participatory Culture (Polity Press, 2009), Studying Mobile Media: Cultural Technologies, Mobile Communication, and the iPhone (Routledge, 2012), A Companion to New Media Dynamics (Wiley-Blackwell, 2013), and Twitter and Society (Peter Lang, 2014). Over the past decade she has worked with a large number of government, industry and community-based organisations, focusing on the uses of social and co-creative media to increase participation, advocacy and engagement.

Dr David Rolph is an Associate Professor at the University of Sydney Faculty of Law. He specialises in media law, particularly defamation and privacy. He is the author of a number of books, most notably Reputation, Celebrity and Defamation Law (Ashgate, 2008), as well as a number of book chapters and journal articles. From 2007 to 2013, he was the editor of the Sydney Law Review.

Dr Lyria Bennett Moses is based at Faculty of Law, University of New South Wales. Lyria's research explores issues around the relationship between technology and law, including the types of legal issues that arise as technology changes, how these issues are addressed in Australia and other jurisdictions, the application of standard legal categories such as property in new socio-technical contexts, the use of technologically-specific and sui generis legal rules, and the problems of treating "technology" as an object of regulation. She has published extensively in international journals and edited collections on issues around law and technology.

Panel Facilitator: Antony Funnell, ABC Radio National 'Future Tense'

Friday 5 December 2014

Social Change Lawyering: What, Who and How

Social change lawyering is a term broadly used to describe the use of one's legal skills and knowledge to effect systemic change. Terms such as 'cause lawyering' in the USA and 'public interest lawyering' loosely fall into this category. The concept of social change lawyering challenges the traditional view of lawyers as neutral advocates of their clients' interests. This panel will consider the ethical, practical and definitional aspects of social change lawyering. Where do the boundaries lie: Can both progressive and conservative lawyers be regarded as social change lawyers? Is using the law for the benefit of effecting systemic change compatible with a lawyer's ethical and professional obligations to their client? What, if any, are the pre-conditions for effective social change lawyering in the Australian context?

Professor Mary Anne Noone is the Coordinator, Clinical Legal Education and Rights and Justice for Sustainable Communities Research Group, La Trobe Law School. She coordinates the Clinical Legal Education Program and leads the Rights and Justice for Sustainable Communities Research Team. Her current research focuses on integrated legal services and ethics in mediation. The thread drawing together Mary Anne's research, teaching, professional and community service activities is a passion for improving access to justice and enhancing legal professional responsibility. She is a specialist on the Australian legal aid system, an authority in clinical legal education and professional responsibility. Her research focuses on access to justice and the delivery of legal services, the Australian legal aid system, dispute resolution and clinical legal education. She co-authored a history of Australian legal aid system, Lawyers in Conflict. In recognition of her outstanding achievements and contributions as a lawyer, to teaching and legal aid research, Mary Anne has received a number of awards. In 2009, she received a Law Institute of Victoria President's Award for Access to Justice and 2010 she was inducted into the Victorian Honour Roll of Women. Mary Anne is a member of the Board of Carers Victoria and SouthPort Community Housing Group. She served 20 years on Management Committee of West Heidelberg Community Legal Service, 12 years on the Board of Victoria Legal Aid and was a part-time member of Social Security Appeals Tribunal for 12 years. She is admitted as a Barrister and Solicitor of the Victorian Supreme Court. Mary Anne is currently La Trobe's nominee on the Council of Legal Education.

Patrick Keyzer is Head of School and Chair of Law and Public Policy at La Trobe University, and a barrister at Four Selborne, Sydney. His books include Access to International Justice (Routledge, 2014, with Charles Sampford and Vesselin Popovski), Public Sentinels: A Comparative Study of Australian Solicitors-General (Ashgate, 2014, with Gabrielle Appleby and John Williams), Preventive Detention: Asking the Fundamental Questions (Intersentia, 2013). In Open Constitutional Courts (Federation Press, 2010), Patrick argues that the judicial review of legislative action that takes place in a constitutional case is properly characterised as an exercise of freedom to discuss governmental affairs, and, consequently, procedural rules that operate as obstacles to access to constitutional justice, including rules governing standing and costs, should be relaxed or removed to allow people to commence and participate in constitutional cases. Patrick was shortlisted for an Australian Human Rights Award in 2010 for his work representing prisoners in communications to the UN Human Rights Committee.

Simon Rice OAM, is Director of Law Reform and Social Justice, the Australian National University. Simon has worked and researched extensively in anti-discrimination law, human rights and access to justice issues. He has worked at Redfern Legal Centre in Sydney and he co-founded Macarthur Legal Centre. Simon was also Director of Kingsford Legal Centre whilst running the clinical legal education programs at the University of NSW. Simon is currently Chair of the Australian Capital Territory Law Reform Advisory Council, and an ad hoc Hearing Commissioner for the Northern Territory Anti-Discrimination Commission. He was previously Director of the NSW Law and Justice Foundation, President of Australian Lawyers for Human Rights, a Board member of the NSW Legal Aid Commission, a consultant to the NSW Law Reform Commission, and a part-time judicial member of the NSW Administrative Decisions Tribunal in the Equal Opportunity Division. In 2002 Simon was awarded a Medal in the Order of Australia for legal services to the economically and socially disadvantaged. In 2008 he was an invitee to the Australian Government's 2020 Summit.

Paula O'Brien, Senior law lecturer, University of Melbourne Law School. Her teaching and research interests are in the areas of public interest law, health law, and administrative law. She is currently completing a doctorate at the Melbourne Law School on the regulation of alcohol in Australia. She has been involved in the establishment of the 'Public Interest Initiative' at Melbourne Law School since 2011 and has taught in the MLS subjects, 'Social Change Lawyering' and 'Street Law'. In her previous position at La Trobe Law School, Paula taught 'Issues in Public Interest Law' in the Masters program. From 2003 – 2007, Paula was the Executive Director of the Public Interest Law Clearing House (PILCH) in Victoria, a community legal centre which engages in case work, advocacy and education to advance the public interest, in particular the position of marginalised and disadvantaged members of the community. For her work at PILCH, she was awarded the Women Lawyers 'Rising Star' Award in 2007. Paula has perviously worked in private practice in administrative law and health law.

Panel Facilitator: Paul Barclay, ABC Radio National 'Big Ideas'

PARALLEL SESSIONS

Listed alphabetically by Author

Intersectionality and Human Rights: Facilitating Expression of the Female Self

Ali, Amal

This paper considers the representation of women, their right to manifest their religious belief and inclusion in policy in the European Court of Human Rights (ECtHR). It will consider whether this institution represents women in a 'gendered' way within their discourses on religious freedom and gender equality. Drawing from intersectional theory, which argues that identity politics often replicate the exclusion of other groups; this paper will use intersectionality to identify shared assumptions and understandings of 'gender' which may continue to reassert traditional perceptions of women and religion. The paper will draw the example from the landmark case of Leyla Sahin v Turkey to highlight that the Court's current approach to gender equality is based on an incorrect assumption of sameness and leads to the double discrimination of women with religious beliefs. My second premise is that the management of plurality is gendered in terms of where women are located in the debate and is derived from the public-private dichotomy which has defined inter-state decision making and politics in liberal thought. When forced to make the decision between manifesting religious beliefs and remaining in the public sphere religious women may choose to remain in the private sphere and become disconnected from public life. Using a thematic framework derived from feminist critiques of political, cultural and religious thought within intersectionality, this paper will identify if the ECtHR has integrated underlying assumptions and representations of religious women into their discourse in a way which undermines its current gender equality jurisprudence.

Amal Ali is a doctoral candidate at the University of Sheffield. She has obtained an LLM in International and European Law at the same institution. Her research interests involve human rights in Europe, religious freedoms, gender equality, feminism and feminist legal theory specifically the theory of intersectionality. Her research focuses on the relationship between law, gender and religious beliefs in Europe and centers primarily on the jurisprudence of the European Court on Human Rights.

Co-operative Enterprise Solutions to Public And Private Problems - A Case for Rethinking Co-Operative Law in Fiji and Solomon Islands

Apps, Ann

Co-operatives are enterprises owned by the people they serve and they have the potential to solve problems in both the public and private sector. They have a place in the private sector where the problem is of no interest to companies, because the solution is not profitable. They have a place in the public sector where the solution to the problem is one which governments are no longer able or prepared to fund. In this sense, co-operatives have always operated in both domains as a participatory solution born of necessity. However, in a rapidly globalising world cooperatives are experiencing a revival as an enterprise of choice, where entrepreneurs seek a specific type of enterprise model which reconnects the economy with society.

In 2013, the co-operatives peak body, the International Cooperative Alliance (ICA) released its "Blueprint for a Cooperative Decade" outlining an ambitious plan for cooperative

growth, with a vision for 2020 that "the cooperative becomes the fastest growing form of business and the acknowledged leader in economic, social and environmental sustainability". However the ICA is also of the view that very few countries have adequate legislation for cooperatives and that regulatory frameworks create barriers to cooperative development and growth.

The shortcomings of existing co-operative laws in a country or region tend to vary depending upon the historical context of the legislation. In Fiji and Solomon Islands, the law for co-operatives is still based on a legal transplant of the early British co-operative business model. The British colonialists promoted co-operative enterprise in the belief that it was an appropriate vehicle to assist developing nations in all corners of the empire to transit from subsistence agriculture to market capitalism. It was assumed that strong traditions based on kinship and communal values were compatible with the imported model of co-operativism. Instead, the co-operative principles of autonomy and democracy were in conflict, not only with authoritarian chiefly rule and communal obligations, but with a paternalistic and dominating colonial administration.

Since independence or self-governance, co-operative law has received little attention and although the business model has had mixed success in Fiji, it has not flourished. In Solomon Islands, the co-operative has struggled to compete with alternative business organisations, including the "community" company. This presentation considers the impact of legal pluralism on cooperative development and growth in both countries and the need to rethink the design of the legal framework to recognise and embed the synergy between co-operative principles and the Melanesian 'way' and encourage participatory and innovative solutions to both local and global problems.

Ann Apps is a lecturer at Newcastle Law School and teaches contracts and business law. She also teaches conveyancing in the legal practice program at the Newcastle Legal Centre. Ann is a first year PhD candidate at University of Queensland's T C Beirne School of Law. Her provisional thesis title is "Realising Potential - A comparative study of the legal frameworks for cooperatives in Australia and the South Pacific." Her research interest in co-operative law has grown from a legal practice background as a solicitor in rural NSW and family involvement in a dairy co-operative as well as a personal and academic interest in sustainable development. Ann also has an interest in the scholarship of teaching and learning and has recently coauthored a chapter "Connecting Students with Clients in First year Law" in the book, Simulation and the Learning of Law in the Emerging Legal Education Series, (forthcoming Ashgate Publishing, 2014).

The Interface of Human Rights and Intellectual Property Rights - The Case of Access to Books for the Blind

Ayoubi, Lida

The copyright law regime imposes restrictions on the production and distribution of accessible print material for the blind and visually impaired. The low number of books available due to such restrictions (less than 5 percent of the global book production annually) has created the so-called "Book Famine". This phenomenon has been negatively affecting the human rights of the blind. Currently, the main providers of accessible textbooks and literary works are private bodies such as educational institutions, non-profit entities, and blind organisations.

Lack of access to books for the blind because of copyright restrictions demonstrates the complicated presence of the law in the public and private lives of the members of society. Copyright law is increasingly reaching into the private lives of the blind by limiting their ability to reproduce accessible copies of legally obtained titles. At the same time, many of the human rights responsibilities of states towards the blind are carried out by private sector.

Lida Ayoubi is a PhD candidate and tutor at the Victoria University of Wellington. Her research interests include human rights, access to knowledge and culture, intellectual property rights and particularly copyright law. Her doctorate investigates the case of access to copyrighted works for the blind and visually impaired persons as an example of the interface between intellectual property and human rights law. Lida holds a Bachelor of Laws degree from the University of Tehran and an LLM in International Human Rights and Intellectual Property Law from Lund University.

Trailblazing Women Lawyers: Personal Narratives Seen Within the Network Context

Baker, Louise

This paper seeks to illuminate the personal narratives of a small group of trailblazing women lawyers, within the social network context. While the perspective of an individual can provide the researcher with insightful material, my research goes a step further in analyzing the individual's experience through her relationships with other people, places and 'things'. In social network analysis these are identified as 'entities'. By utilizing the network approach to the study of individual and personal oral history narratives, this research develops ideas around the complexities of trailblazing women's personal and public lives. Just as ideas and materials flow through relationships, so too does the structure of relationships. I argue that while the composition of self contained elements of an individual's life matters, so too does how they are connected to the lives of others; their social network impacts on our understanding of the self as a productive public being.

Louise Baker is currently studying towards the degree of Doctor of Philosophy, through the ANU College of Law at The Australian National University. A member of both The International Network for Social Network Analysis and the Professional Historians Association (Australia), Louise has completed courses alongside her graduate research in the areas of social network analysis, statistics and data science, (including programming in R and python).

Public/Private Conceptions of Law and Legal Problems (and Why They Matter)

Balmer, Nigel and Pleasence, Pascoe

Building on theorising and empirical legal scholarship around law's presence in everyday life (e.g. Ewick & Silbey 1998) and how informal and private rules interplay with formal dispute mechanisms (Ellickson 1994), in this paper we explore boundaries between the private and public in people's perceptions of their legal problems, analyse what drives perceptions and importantly, analyse why perceptions matter.

The paper draws on data from the English and Welsh Civil and Social Justice Panel Survey, a large-scale national household survey of the public's experience of, and response to civil legal problems. The survey included new questions on how problems are characterised, as originally developed by Pleasence, Balmer and Reimers (2010). The paper illustrates how perception of problems as being in the private, social or legal spheres (as characterised by survey respondents themselves) varies between different demographic groups or problem types and explores what drives different forms of characterisation. We then show how this impacts on levels of problem 'lumping', advice seeking, problem outcomes and perceptions of the resolution fairness. We conclude by asking what this means to policy and practice in the 'access to justice' sphere, particularly with regard to the design of legal services and provision of public legal education initiatives.

Nigel Balmer is a Reader in Law and Social Statistics at UCL, joining in January 2010. He also works independently as a statistical and methodological consultant. Nigel is an expert in statistics and research methodology, and brings this expertise to bear on a broad range of projects in empirical legal studies, most notably the English and Welsh Civil and Social Justice Survey. He is also affiliated to the Centre for Empirical Legal Studies and Judicial Institute within the Faculty of Laws and is a fellow of the Royal Statistical Society. He has worked as an advisor on legal need research programmes in Australia and has presented his work worldwide. His research interests cover access to justice, statistics and research methodology, decisionmaking and risk, civil and criminal justice, issues around diversity and representation, social epidemiology, social policy and the public experience and understanding of the law. His research is multidisciplinary, spanning criminology, economics, epidemiology, political science, social policy, health and psychology. His survey work, in collaboration with Professor Pascoe Pleasence, has become central to the development of access to justice policy in England and Wales. He has also worked on large scale research projects on diversity and fairness in the jury system (for the Ministry of Justice), diversity in tribunals (for the Department for Constitutional Affairs) and judicial appointments (for the Commission for Judicial Appointments), and has conducted research for a broad range of clients, including Youth Access, Shelter, The Ministry of Justice, The Law Society, The Legal Services Board and The Government Equalities Office. He also publishes research in the field of sports science.

Pascoe Pleasence is Professor of Empirical Legal Studies and co-director of the Centre for Empirical Legal Studies in the UCL Faculty of Laws, as well as a fellow at the Law and Justice Foundation of New South Wales. Until recently he was Academic and Scientific Advisor at the Legal Services Commission, where he had previously headed the Legal Services Research Centre. He is a leading expert in empirical legal research methodologies. His substantive areas of research interest span the civil and criminal justice fields, but he has a particular interest in the public's understanding and experience of law, access to justice and decision making. He was responsible for the design and implementation of the English and Welsh Civil and Social Justice Survey (and its successor, the English and Welsh Civil and Social Justice Panel Survey), a large scale nationally representative survey of the public's experience of civil justice issues. All of his projects adopt an inter-disciplinary approach, and involve collaboration with researchers in fields such as criminology, economics, epidemiology, political science and psychology. He has published widely in the field of empirical legal studies, both in English and Japanese, and his work has been cited by the House of Lords in Callery v. Gray [2002] UKHL 28. His most influential work, a second edition of Causes of Action: Civil Law and Social Justice (2006: TSO), continues to be widely cited in relation to legal aid policy around the world.

Orwell, Jones and the New York Times: Conversations Shaping the Fundamental Rights of Privacy

Barleben, Dale

The conversations among Orwell's 1984, the Supreme Court decision in United States v. Jones, and the New York Times in 2011 compellingly illustrates the ways "law feeds and is fed by the world around it," as the Honorable Guido Calabresi once put it. Jones was a suspected drug dealer sentenced to life in prison at the trial level. On appeal, this decision was overturned. The U.S. Supreme Court had to decide whether using a GPS tracking unit on the accused vehicle violated the Constitution. Perhaps more fascinating, both lawyers and judges spoke often about whether this surveillance technique brought the U.S. nearer to an Orwellian state. The New York Times covered this story, adding its opinions and media sensationalism to the events. This paper explores the relationships between the law, Orwell's text, and the media at the nexus of privacy. One of the main issues debated in the case was whether a U.S. citizen might reasonably expect a GPS tracking unit to trace every move that he or she makes, and exactly where to drawn the line for that reasonable expectation of privacy. I argue that technology has far outstripped what even Orwell envisioned in his dystopian masterpiece, and that only conscious resistance and legal protection can reverse what has often and ironically become a "voluntary" surrendering of the right to privacy.

Dale Barleben received his commerce and law degrees from the University of Alberta, studied public international law at Cambridge and practiced law in Alberta. He completed his doctoral work in British modernist literature and the law in the Department of English at the University of Toronto, where he held a Canada Graduate Scholarship and won the Woodhouse Prize for best dissertation in 2008. He is currently Assistant Professor of Law and Literature at John Jay College, City University of New York. His book Manufacturing Guilt: Trials and Traumas in British Modern Literature and Law, is under consideration at Stanford University press. He has written articles on legal language and writing and British modernist authors. He is currently exploring the intersection of literature and law with privacy rights and identity politics.

Negotiating Grief and Trauma in the Performance of a Public Role

Baron, Paula and Trabsky, Marc

This paper is placed within the wider context of the lawyer well-being research, which evidences abnormally high levels of depression, substance abuse and suicide amongst the legal profession. It also draws upon the sociological concept of intimate citizenship to explore the intimate, affective and relational aspects of working in the Coroners Court. To date, no research has been undertaken amongst legal professionals in the Coroners Court, despite what would appear to be a unique jurisdiction and a profoundly difficult and stressful work environment.

The office of coroner is responsible under state and territory legislation for investigating all 'reportable deaths' in its jurisdiction. The office examines sudden, unexpected or violent deaths, seeking to determine both the immediate and the underlying causes of death. During the investigation process, legal personnel are likely to encounter representations of the dead in forensic reports and photographic evidence. They are also likely to liaise with family members of the deceased, who in seeking certainty and understanding from the inquisitional jurisdiction often experience trauma, loss and grief. Recent changes to the Coroners Court in Victoria, following recommendations of the Productivity Commission, may place even greater pressure upon

legal personnel of the Court to support the grief and distress of family and friends of the deceased.

Preliminary to an anticipated empirical study on this issue, this paper outlines the history and function of the Coroners Court and the recent changes to the Victorian Court. It places the functioning of the Coroners Court within the wider literature on lawyer well-being and intimate citizenship to suggest an hypothesis that, although legal professionals who work in this sector are likely to experience significant levels of distress, such professionals create informal communities that bridge public and private domains in order to better negotiate distress. At the same time, effectively segregating public roles from private lives is unlikely to be entirely successful. Hence, this paper will question the effects of the bureaucratization of death on the ways in which legal professionals manage the demands of the profession and the complexities of intimate relationships.

Professor Paula Baron is Chair of the Common Law at La Trobe University and has just finished a three year term as Head of the Law School. She has published nationally and internationally in the areas of contract law, intellectual property, legal professional ethics, legal education, company law and gender and the law. She is the General Editor of Law in Context. Her current work is in the areas of lawyer well being, legal ethics and intimate citizenship.

Mr Marc Trabsky is a Lecturer in the School of Law at La Trobe University. He is also completing a doctoral thesis at the Melbourne Law School. Marc writes in the intersections of legal history, theory and aesthetics.

Pregnancy, Refusal of Medical Treatment and Judicial Intervention – A Contextual Analysis

Bartal, Bronwyn

In principle all competent persons have the legal right to refuse medical treatment. English and Australian laws have not recognized an exception based upon pregnancy. However judicial intervention has been sought to compel pregnant women to undergo medical treatment against their wishes. The courts have upheld the rights of pregnant women to refuse medical treatment but nevertheless the medical treatment has been authorised and/or performed. An analysis of the judgments does not fully explain what would appear to be a difference between the legal principle and the application thereof; and, may lead to the conclusion that pregnant women have rhetorical rather than exercisable rights.

By way of exemplar, this paper focuses upon the cases of two pregnant women who did not consent to medical treatment and therefore became the subjects of applications for judicial interventions. The method adopted is to analyse the cases in the broader context in which they occurred. The paper identifies the roles of each participant and examines the issues, which may have either directly or indirectly influenced the outcome of the case. In doing so regard is had to potential multiple influences brought about by the woman's socio-economic status and situation in which the intervention in her life occurs. Similarly the socio-economic environment of the medical, legal and other professionals is examined to assess its influence on the outcome of the intervention. Finally, the paper concludes that the difficulties are not unique but reflect a worldwide problem.

Bronwyn Bartal taught the subject Criminal Law and other subjects at the Law School, University of Melbourne for several years and up until 2007.

Bronwyn is now studying fulltime for a PhD. The title of her thesis is Rights, Autonomy and Pregnancy. The paper, which she is keen to present at the conference, is based upon part of Chapter 4 – Medical Treatment.

During her career as an academic Bronwyn was a Visiting Fellow at Cambridge University in the United Kingdom on two different occasions. She was also a visiting academic at Ottawa University. Bronwyn's area of research at that stage involved work in respect of abused woman who killed their abusers.

In the past Bronwyn have presented several conference papers, published papers and co-authored the text Criminal Laws in Australia.

What Does Pro Bono Publico Mean to Lawyers? A Report on the Findings of the Pro Bono Values Project

Bartlett, Francesca and Taylor, Monica

The past decade has seen a steady growth in the quantification of pro bono work in Australia. The establishment of the National Pro Bono Resource Centre in 2002 and pro bono clearing houses in most Australian states has led to pro bono work becoming more measurable and visible than ever before. It has also created knock-on effects such as the establishment of tender schemes for the provision of government legal services which require law firms to demonstrate their commitment to undertaking pro bono work.

This paper argues that an overemphasis on pro bono 'measurables' runs the risk of overlooking the underlying motivations as to why lawyers undertake pro bono work. This paper will examine the personal values and private motivations of legal practitioners who engage in the provision of legal services pro bono publico: for the public good. The paper will report on the results of a questionnaire conducted in mid-2014 by the UQ Pro Bono Centre with Queensland lawyers who regularly undertake pro bono work; relevant findings will be shared and critiqued.

Francesca Bartlett is a senior lecturer at the UQ Law School and teaches contract law, the legal profession and ethics of lawyering. Francesca's research interests include the areas of lawyers' ethics and professional responsibility, regulation of lawyers, feminist jurisprudence and gender and judging. Before joining the Law School, she practiced for a number of years as a commercial solicitor at a major national law firm in Melbourne and Brisbane.

Monica Taylor is the Director of the UQ Pro Bono Centre. In this role she coordinates the UQ law school's Clinical Legal Education program, and is involved in pursuing pro bono legal opportunities for law students. Previously, she worked in the community legal sector advising clients across a range of areas of law including housing, disability, mental health and public space law. As a former clinic coordinator, Monica has taught students in clinical legal settings including the QPILCH Mental Health Law Clinic and the Homeless Persons' Legal Clinic.

Using Big Data for Legal Decisions: Testing the New Tools

Bennett Moses, Lyria and Chan, Janet

In the United States, the buzz associated with "Big Data" in the business and IT communities has begun to colonise both legal practice and the administration of justice. These analytical methods promise to provide ready answers to questions such as: What are the chances my client will succeed in litigation? What are the probabilities that a potential parolee will pose a danger to the community? Where are police resources most effectively employed? It has been suggested that, with sufficiently large datasets and the right analytics and machine learning techniques, we will have simple answers to traditionally difficult questions. Even though the analytics itself can only identify patterns in data, these patterns can be used to guide decisions. A low probability of success in litigation can lead to a different approach to settlement negotiations. Quantitative analysis that calculates the risk a prisoner will pose to the community can govern parole decisions. Empirically derived "hot spots" or "hot lists" of potential criminals can change policing strategies. In each of these cases, quantitative information about correlations and probabilities can be converted into real-world actions through its influence over human decisions. This paper is an attempt to evaluate the capability, relevance and vulnerability of Big Data analytics for decision-making in the legal and justice field, even though the diffusion of this technology is still at an early stage.

Lyria Bennett Moses's research explores issues around the relationship between technology and law, including the types of legal issues that arise as technology changes, how these issues are addressed in Australia and other jurisdictions, the application of standard legal categories such as property in new sociotechnical contexts, the use of technologically-specific and sui generis legal rules, and the problems of treating "technology" as an object of regulation. She has published extensively in international journals and edited collections on issues around law and technology.

Janet Chan is a multidisciplinary scholar with research interests in criminal justice policy and practice, sociology of organisation and occupation, and the social organisation of creativity. She is internationally recognised for her contributions to policing research, especially her work on police culture and socialisation, police reform, and the use of information technology in policing. Her major publications in this field include Changing Police Culture (Cambridge University Press 1997) and Fair Cop: Learning the Art of Policing (University of Toronto Press 2003). Janet has been awarded a number of major grants for criminological and sociolegal research, ranging from policing, juvenile justice, restorative justice, work stress and wellbeing of lawyers, to forthcoming projects on Big Data analytics for national security and law enforcement. She was elected Fellow of the Academy of Social Sciences in Australia in 2002 for distinction in research achievements.

Victimless Crimes: Public or Private Wrongs?

Bergelson, Vera

The term "victimless crime" refers to behavior that is proscribed by law but does not violate the rights of any particular person. There is no single, universally accepted definition of victimless crimes. Most commonly, the term is used to mean one or more of the following:

- 1. A prohibited act that does not involve any direct harm to others. The perpetrator is the principal bearer of the adverse consequences of his own actions (e.g., suicide);
- A consensual transaction between adult, rational individuals

 (e.g., gambling, prostitution sadomasochistic beating, assisted suicide);
- 3. Harmful acts whose costs are borne by society at large rather than a specific, identifiable victim (e.g., tax violations, insider trading); and
- 4. "Harmless Immorality" private acts that are prohibited despite their harmless nature in order to protect society

against "moral deviancy" (e.g., fornication, homosexuality, flag-burning).

The concept of victimless crimes is highly controversial. The essence of the controversy is the fundamental premise of a liberal state that coercive power may be used against an individual only in order to prevent harm to others.

In this paper, I consider arguments for and against criminalization of victimless wrongdoing. I explain the difference between various interpretations of "victimless crime," which is essential for clearing up the debate muddled by partisan rhetoric and imprecise use of terms. I then analyze different groups of victimless crimes from the perspectives of political legitimacy, moral fairness, and efficiency and conclude that criminalization of offenses in group (3) is entirely warranted while the offenses in groups (1), (2) and (4) should be decriminalized.

Vera Bergelson, Professor of Law and Robert E. Knowlton Scholar

Professor Bergelson earned her diploma in Slavic languages and literatures with distinction from Moscow State University and her Ph.D. in philology from the Institute of Slavic and Balkan Studies in Moscow, Russia. She earned her J.D. cum laude from the University of Pennsylvania Law School, where she was on the Law Review and was named to the Order of the Coif.

Professor Bergelson has been a lecturer at Moscow State University, the Polish Cultural Center, and the Literary Institute in Moscow. Before joining the Rutgers faculty in 2001, she was an associate with Cleary, Gottlieb, Steen & Hamilton in New York for six years. She is fluent in Russian and Polish and has a reading proficiency in Bulgarian, Belorussian, and Ukranian.

Professor Bergelson's book Victims' Rights and Victims' Wrongs: A Theory of Comparative Criminal Liability was published in 2009 by Stanford University Press. Forthcoming articles are "The Defense of Consent" in the Oxford Handbook of Criminal Law (2014) and "The Meaning of Consent" in the Ohio Journal of Criminal Law (2014).

Professor Bergelson was 2010-2011 chair of the Association of American Law Schools' Section on Jurisprudence. As a Fulbright Specialist, she visited Hebrew University Law School in November-December 2013, and as a Visiting Scholar, Melbourne University Law School in April-May 2014. Professor Bergelson is on the editorial boards of BdeF and Edisofer (Buenos Aires and Madrid) and Law and Philosophy.

The Shrinking Self: Aging in an Institutional Setting

Bird, Greta and Bird, Jo

The dominant legal ideology is that of the 'rights bearing individual.' However as Professor Thornton has demonstrated it is the privileged benchmark body that bears rights. As we age our bodies are often denied legal autonomy. A growing number of Australians are warehoused in institutions for the aged. Here in this highly regulated space bodies are disciplined. This governance extends to all bodily functions. The sector is poorly resourced by governments eager to reduce the burden of the aged on taxpayers. The institutional speech emphasises the 'privacy' of the resident. Especially for the majority, those suffering dementia, such privacy is illusory. The result of the private in this very public space allows practices to emerge that reduce the self. For example the overuse of 'anti-psychotic' medication as 'mood stabilisers' or, more accurately as disciplinary tools, is rife in some institutions. The institution and its nominated doctors become 'primary carer' to the aged person. The law it seems turns a blind eye to the shrinking self in the aged facility. Legal theory has also shunned the institutionalised aged- these mainly

female bodies are invisible to the wider legal community in which active citizens engage.

Greta Bird resigned from her full time position at Southern Cross University to take on the care of her aged mother, who was institutionalised with dementia. Her legal research is mostly based on data drawn from ethnographic methods; theory is tested and developed by critical reflection. Greta teaches postgraduate students at the University of South Australia.

Jo Bird has a PhD in law from the University of Melbourne. The area of her research for her thesis was bio-ethics, especially gender identity. She has worked in the Michael Kirby Centre for Bio-Ethics at Monash University. Jo has written a law unit, 'Aging and the Law' and is currently a research assistant on a large ARC grant held at the University of South Australia.

The Public/Private Dichotomy and the Right to Speak

Bird, Susan

Australian law does not provide a right to free speech. Indeed there are many laws that impede upon the 'right' to speak. In the economic realm there are the practicalities of wealth and power that limit speech in the 'public' domain to those with the means to pay for access to billboards and other media. They often have the economic power to prevent speech that does not suit them.

Among the restrictions on speech are the civil remedies able to be pursued by those subjected to 'hate speech'. While the remedy is mild the existence of these provisions reduces the incidence of hate speech. There are also criminal laws at state level that make it a crime to speak offensively. Much of the current debate surrounds the extent to which the state ought to support and extend free speech as a mark of citizenship in a democracy. In this paper I seek to look more broadly at speech. I will examine the increasing privatisation of space and the increasingly problematic borders of public/private and ask; 'For whom and in what space and how is speech restricted?' A number of case studies will be explored –from 'hate speech' to political speech in the form of graffiti and street protest.

Susan Bird is a PhD candidate and a lecturer in learning and teaching at Deakin University. Susan's thesis, 'Melbourne's Urban Wildscapes', is interdisciplinary and is supervised through the Faculties of Law and Arts. Susan is interested in marginalised voices, in governance and power structures, and the regulation of public space. She was recently appointed as a research assistant for the Victoria Multicultural Commission where she contributed to their submission into the repeal of Section 18C of the Racial Discrimination Act.

Intimacy, Anecdotes, Etiquette and the Law: A Feminist Reading of Madam Melba's Dealings with the Gramophone and Typewriter Ltd Company

Bowrey, Kathy

In 1904, the same year as the release of the first recordings by the 'World's Greatest Prima Donna', Mr Alfred Clark Esq (Victor Talking Machine Company, New York) and Mr SW Dixon, (Gramophone and Typewriter Ltd Company, London), exchanged numerous telegrams over the sending to Madam Melba of red carnations. Flowers had been sent to her room at the Ritz Hotel, Paris but she did not follow etiquette in sending a reply. As there was 'big money in the new Melba "Boom"' and her personal access to British and European royalty was anticipated to open up new markets for the Gramophone 'amongst the best County families in the Kingdom', her silence caused some distress. Perhaps insider knowledge of underhand dealings between the UK branch and Melba's former lover, Haddon Chambers, whose pressure had led her into the 1904 recording contract, also contributed to the company's level of anxiety over their ongoing dealings with the star.

Based on previously unpublished details revealed through research at the EMI Trust archive this paper unpacks the story of Melba's red carnations. I offer a feminist reading of Melba's early recording contracts and, more broadly, of law and the private sphere. I argue that private confidences, personal histories and etiquette come to underpin new international business networks that support consumer markets at the turn of the 20th century and these ultimately construct legal and relations in practice. Accordingly, private correspondence and personal histories provide more than supplementary knowledge about law and legal relations filling in the odd gap or silences in the formal record. A routine consideration of private sources is required in order to fully appreciate the social construction of legal relations and distributions of power in the development of new consumer markets.

Professor Kathy Bowrey's expertise primarily relates to intellectual property, media and information technology regulation, reflecting a broad range of interests pertaining to socio-legal history, media and cultural studies, cultural heritage and legal theory. She also researches on western laws affecting indigenous cultural and intellectual property. With her colleague Dr Catherine Bond, she is currently working on "Australian Made: A History of Australian Copyright Law and Creator Success 1868-1968". This project evaluates the role of copyright law in the development of Australian culture, involving an investigation of the experience of five iconic Australian creators in the arts: Nellie Melba, Norman Lindsay, Ken Hall, Albert Namatjira and Alfred Hill

Public / Private Tensions in the French and Belgian 'Burqa Bans'

Brems, Eva

France (in 2010) and Belgium (in 2011) adopted legislation banning individuals from going about in public with their face uncovered. Despite their neutral language, these laws -known as 'burga bans'- specifically target the small minority of Muslim women (estimated at max. 300 in Belgium and max. 2000 in France) who wear an Islamic face veil. In both countries, the bans were promoted by law makers and upheld by constitutional bodies on three distinct grounds, i.e. public safety, gender equality and normative ideas of appropriate social behaviour ('le vivre-ensemble'). From the public/private angle, the latter two offer interesting perspectives of analysis. The paper will show that the emphasis is on removing (perceived) symbols of gender oppression from the public sphere, rather than removing actual gender oppression in the private sphere. In addition, it will expose highly paternalistic claims of control by public authorities over private social behaviour in the public sphere.

A striking feature of the law making process in both countries, is the absence of any interest in the actual women concerned. We will confront the findings of empirical research based on interviews with women who wear the face veil in France (research by Open Society Foundation) and Belgium (research by ourselves) with the premises of the lawmakers and judges.Note: A challenge against the French 'burga ban' is currently pending before the Grand Chamber of the European Court of Human Rights (SAS v France). If the judgment is issued before the conference, it will be included in the analysis.

Eva Brems (Leuven, 1969) is a Professor of Human Rights Law at Ghent University. Before joining the Ghent University Law

Faculty in September 2000, she studied law at the universities of Namur (candidat 1989), Leuven (licenciaat 1992) and Harvard (LL.M 1995), and she was a PhD researcher at the University of Leuven (1995-1999) and a lecturer at Maastricht University (1999-2000). At Ghent University, she founded the Human Rights Centre.

Eva's research interests cover most areas of human rights law, in European and international law as well as in Belgian and comparative law, with a particular emphasis on the protection of the rights of non-dominant groups and individuals. She has a keen interest in multi- and interdisciplinary research.

Among the numerous research projects under her supervision, the most prominent ones are the projects 'Strengthening the European Court of Human Rights: More Accountability Through Better Legal Reasoning' (ERC Starting Grant 2009-2014 – see the blog www.strasbourgobservers.com) and 'The Global Challenge of Human Rights Integration – Toward a Users' Perspective (http://hrintegration.be/)).

Eva has been an activist in the board of several Belgian human rights NGOs, including as the chair of the Flemish section Amnesty International (2006-2010), and she was briefly active in politics (as a member of the Belgian federal Chamber of Representatives 2010-2014).

She lives in Leuven with her husband Piet and her sons Nathan and Ruben.

Regulating the Boundary between Work and Self: Emerging Legal Tensions around Social Media and the Workplace

Buchbach, Jacinta

Both law and business practice are struggling to grapple with the blurred boundaries of identity in social media which creates new legal challenges in the employment relationship. Existing legal frameworks, based predominantly on offline conceptions of private and public domains, are unable to adequately balance the interests of employers in managing their risk and reputation against the legitimate interests of employee autonomy. I argue that the current legal context is fraught with uncertainty and generally fails to adequately protect the interests of individuals who face a significant power imbalance against employers.

Employees are increasingly subject to control over their 'off work' online conversations. In a series of recent cases, employers have been successful in terminating the employment of individuals for comments made online – both pseudonymously or as 'private individuals' – and within ostensibly private social media networks. For employees, privacy laws are ineffective in these contexts, and free speech concerns are generally inapplicable to the private employment relationship. So far, the law has failed to reconcile the traditional sanctity of the private sphere with the hybrid nature of networked publics.

Resolving these issues at law requires a new conceptual framework to better evaluate employer risk and employee interests in online social contexts. Any such framework must be able to balance employer risk against employee autonomy. This paper proposes Boundary theory as a way to address the legal analysis of employee interests which has the potential to support the development of negotiated and consensual understandings of appropriate work-life conduct and reciprocal obligations between employees and employers.

Jacinta Buchbach is a PhD Candidate in Social Media Law at the Queensland University of Technology in Brisbane, Australia and is a member of the QUT Intellectual Property and Innovation Group. Her research examines the intersection of employee online interests against the legitimate interests of protecting business reputation and how to balance these competing interests. Professionally, Jacinta has 18 years experience in law enforcement and work-life policy development. Jacinta is also a member of the QUT Commercial and Property Law Research Centre where she researches local liability in Disaster Management and is a member of the Centre for Disaster and Emergency Management (CDEM).

Information Security Officers as Delegated Regulators

Burdon, Mark, Coles-Kemp, Lizzie and Siganto, Jodie, Makayla Lewis

Cyber security has become a major policy issue for all first world jurisdictions. The implementation of effective organisational information security measures are a vital component in the cyber security environment. Australia's legal framework is predicated on a patchwork of different statutory obligations centred on responsibilities to secure personal information arising from the Privacy Act 1988 (Cth). These obligations are predicated on the concept of principles-based regulation (PBR).

PBR requires the use of broad-based principles to achieve desired regulatory objectives. PBR thus signifies a shift from traditional rule-based, deterrent oriented, command and control regulatory structures to consensual, delegated processes of compliance (Baldwin & Black, 2008). The use of PBR therefore envisages a different type of relationship between founding legislative requirements, regulators and regulated entities (Black, 2008). The PBR model thus delegates the burden of regulation to regulated entities.

Australian information security practitioners are consequently required to develop and to implement regulatory solutions in their own organisations in order to ensure the integrity of Australia's cyber security environment. However, very little research has been conducted into whether and how Australian information security practitioners understand their role as delegated regulators and how they construct and sustain social networks of relationships to carry out that role. This paper attempts to fill that gap in the literature and presents findings from interviews conducted with public and private sector information security practitioners in Brisbane, Sydney and Melbourne. The paper therefore examines how Australian information security practitioners construct their role as delegated regulators and thus critiques the application of PBR in Australia's cyber security framework.

Dr Mark Burdon's primary research interests are privacy law and the regulation of information sharing technologies. Mark has researched on a diverse range of multi-disciplinary projects involving the reporting of data breaches, e-government information frameworks, consumer protection in e-commerce and information protection standards for e-courts.

Dr Lizzie Coles-Kemp became a Senior Lecturer in 2011 and now leads the Security Management module on the ISG's Information Security MSc. Since 2008, Lizzie has developed a strand of creative security research that uses qualitative and creative research methods to focus on topics of culture and security. Her main focus is the interaction between communities and security and privacy technologies, how each influences the other and the communities of practice that emerge. She set up Possible Futures Lab within the ISG to focus specifically on participatory research approaches to information management and often works with marginalised and hidden communities.

Ms Jodie Siganto graduated in law from the University of Queensland in 1984 and after 8 years in private practice became in-house counsel for Tandem Computers Australia and New Zealand followed by roles with Unisys Asia and Dell Financial Services based in Singapore. She returned to Australia in 2000, co-founding Bridge Point Communications (specialists in data networking and security). She is currently a director of IT Security Training Australia, an (ISC)² educational affiliate, specialising in the delivery and development of IT security and network related training courses around Australia.

Makayla Lewis' interests in human-computer interaction specifically user experience, social networks and web accessibility encouraged her to complete a PhD in human-computer interaction at City University London Centre for HCI Design in 2012, where she was funded by EPRSC to research online social network (social media) experiences and challenges focusing on change management from a perspective of end users with motor impairments especially those with cerebral palsy. Makayla is now a post-doctoral research assistant on the Cyber Security Cartographies (CySeCa) project at Royal Holloway University of London Information Security Group.

It's a Matter of "Common Sense": Judicial Cognition and Nudging Judging

Burns, Kylie

Judges use 'common sense' assumptions about the world, society, and human and institutional behaviour as part of the judicial reasoning tool kit. Judicial assumptions based on 'common sense' fill gaps where parties have not provided adequate factual evidence, are used to measure and evaluate adjudicative facts about the parties, provide background to judicial reasoning, and are used to predict the consequences of legal liability. This may often present little difficulty- for example the common sense assumption that most parents love their children is easily accepted. However, common sense assumptions may also be empirically wrong, outdated, or reflect particular cultural worldviews to the exclusion of others. 'Common sense' may also be the route through which inappropriate racial and gender stereotyping enters the law, and through which the perspectives of groups traditionally under-represented in the law continue to be excluded. This paper argues that a deeper understanding of judicial cognition throws light on how and why judges 'construct' common sense assumptions. It also argues we need to start a conversation about how judging can be 'nudged' to ensure 'common sense' assumptions are not used inappropriately in judicial reasoning.

Dr Kylie Burns is a senior lecturer in the Griffith Law School. Kylie has research and teaching expertise in negligence and accident compensation, judicial reasoning and law and social science. She teaches negligence and accident compensation. She is a co-author of the leading Australian torts textbook (with Luntz, Hambly, Dietrich and Foster) Torts: Cases and Commentary. Her current research examines judicial and use and construction of social facts particularly in the Australian High Court. She is the author of a feminist judgment on the wrongful birth case Cattanach v Melchior in the forthcoming The Australian Feminist Judgment Project: Righting and Re-writing the Law. Kylie is also very passionate about learning and teaching and student engagement. She has published in legal education and has been the recipient of teaching awards and grants.

Conceptualising Legal Culture and Lawyering Stress

Chan, Janet

Recent evidence of the prevalence of stress and mental health issues among lawyers have led to calls for legal culture to be changed to promote better work–life balance and wellbeing for practitioners. However, the concept of legal culture, its definition, measurement, utility, strengths and weaknesses have long been a subject of debate in the socio-legal research literature. In this literature, legal culture has been a diverse and sometimes contested concept. This paper aims to unpack the notion of legal culture and examine its significance for understanding lawyering stress. Drawing on Bourdieu's theory of practice and findings from an empirical study of the Australian legal profession, it investigates the relationships between the demand of legal work, the culture of legal practice, and work stress. The paper concludes with a discussion of the implications of this kind of analysis for reforming the legal profession.

Janet Chan is a multidisciplinary scholar with research interests in criminal justice policy and practice, sociology of organisation and occupation, and the social organisation of creativity. She is internationally recognised for her contributions to policing research, especially her work on police culture and socialisation, police reform, and the use of information technology in policing. Her major publications in this field include Changing Police Culture (Cambridge University Press 1997) and Fair Cop: Learning the Art of Policing (University of Toronto Press 2003). Janet has been awarded a number of major grants for criminological and sociolegal research, ranging from policing, juvenile justice, restorative justice, work stress and wellbeing of lawyers, to forthcoming projects on Big Data analytics for national security and law enforcement. She was elected Fellow of the Academy of Social Sciences in Australia in 2002 for distinction in research achievements.

Sacrificing Equality at the Altar of Privatisation

Clark, Cristy

The most contentious issue in the ongoing debate around the obligations imposed by the human right to water has been the compatibility of the right with private sector participation (PSP) in the delivery of water services. In 2010, the United National Special Rapporteur on the human right to water released her report into this issue and categorically concluded that the right was compatible with the private sector provision. The Special Rapporteur went on to outline a considerable number of obligations imposed on states parties by the human right to water, including the obligation to protect by regulating providers involved in service delivery and the adoption of any necessary supplementary measures to ensure the affordability of services. She emphasised, when the State does not directly provide services, its role nevertheless remains obligatory and critical. This presentation will use of a number of international case studies to demonstrate that the economic ideology that underlies the push towards increased PSP in basic service delivery (neoliberalism) is not compatible with the kind of state intervention that the Special Rapporteur outlines as being necessary to ensure that the state complies with its human rights obligations. It will also highlight the fact that PSP is most commonly recommended in locations where the institutional capacity does not exist to effectively regulate multinational service providers or to hold them accountable to citizens.

Dr Cristy Clark has a PhD in Human Rights Law (with a focus on the human right to water) and a Masters in International Social Development from the University of New South Wales, and a BA/LLB (hons) from the Australian National University. In 2014 she took up a position as an Associate Lecturer at the Southern Cross University School of Law and Justice.

Prosecutorial Practices, a Comparative Analysis

Colvin, Victoria

When a private citizen makes a complaint of criminal conduct, the public prosecutor's decision whether or not to proceed with charges may mean the end of proceedings. Prosecutorial services argue that such decisions are made on the basis of the strength of the case and the public interest, while critics suggest that they are often arbitrary or poorly founded. This paper comparatively examines how the discretion to prosecute is structured by considering published policies by prosecution services across English-speaking commonwealth jurisdictions, including Australia, Canada, and England. It argues that neither view is accurate. While the decision to prosecute is generally structured by widely accepted prosecutorial practice, there are points of uncertainty in the process where practice is not welldefined. Most notably, this includes the weight to be given to the interests of victims and other private parties in the decisionmaking process. Such points of uncertainty are a critical issue. They lead to unpredictability in the decision-making process and may weaken public confidence in the process by which these critical decisions are made.

Victoria Colvin is enrolled in her PhD at the UQ Law School. Prior to commencing my PhD she was prosecutor with the Ministry of the Attorney General, Criminal Justice Branch, in Vancouver, British Columbia, Canada. From 2010 to 2012 she was a Senior Teaching Fellow at Bond University, specializing in teaching Canadian Administrative Law. Her research interests are in the areas of criminal law and criminal procedure, evidence, and administrative law. She is a member of the International Association of Prosecutors and the Australian and New Zealand Society of Criminology.

Customary laws in Solomon Islands - Public or Private?

Corrin, Jennifer

In small Island countries of the South Pacific, indigenous customary laws are generally still very strong. Many of these countries have given constitutional or, at least, statutory recognition to indigenous customary laws in both public and private spheres. However, indigenous customary laws do not rely only on this State recognition for their validity. At the village level, their binding force stems from acceptance by members of the community that these are their laws. This paper explores the recognition of indigenous customary laws, in two Melanesian countries, Solomon Islands and Vanuatu. It considers whether the public versus private dichotomy is relevant and meaningful in the context of indigenous customary laws operating either as part of the State legal system or at the local community level.

Professor Jennifer Corrin is Director of the Centre for Public, International and Comparative Law and a Professor in the TC Beirne School of Law at The University of Queensland. She is an Australian Research Council Future Fellow researching on law reform and development in plural legal regimes, and is a partner investigator in an international research collaboration on Indigenous law and legal pluralism funded by the L'Agence Universitaire de la Francophonie. Jennifer has published in the areas of South Pacific law, indigenous customary laws, human rights, court systems, evidence, civil procedure, family law, land law, constitutional law and contract. Jennifer's most recent publications include a third edition of Introduction to South Pacific Law; and articles on legal pluralism and questions of proof, family law in the South Pacific, and complexities of legal pluralism.

Small Justice

Crowe, Jonathan

Life is lived mostly on a small scale. It is full of fleeting joys, small disappointments, simple pleasures, minor setbacks, modest triumphs and flashes of passion. However, there is something in the human outlook that yearns for wider horizons. Literature, philosophy and art have long sought to make everyday life seem grander than it is. As it is with life and art, so it is with justice. Ask someone for examples of injustice and they will often start by listing the gravest cases. However, we should not allow the large injustices in life to devalue the small. Many injustices do not involve systematic plans or even flawed institutions. They just involve ordinary people, treating one another poorly.

This paper is about small justice. It outlines a conception of justice that focuses on interpersonal relationships, showing how everyday interactions between individuals give rise to broader judgments of value. The paper explores this topic through the work of Emmanuel Levinas. Many commentators have puzzled over whether Levinas's ethical theory, which focuses on the interpersonal, can provide an adequate foundation for an account of just institutions. I hope to show that this criticism is misconceived. Levinasian ethics is already a theory of justice, albeit of an unfamiliar kind. Justice, on this view, always begins on a small scale. We do well to bear its modest origins in mind.

Jonathan Crowe is an Associate Professor in the T. C. Beirne School of Law at the University of Queensland. His research centres on the philosophical relationship between law and ethics. He has published widely on natural law theory and existentialist ethics, particularly the work of Emmanuel Levinas. His work has appeared in leading international journals, including the Modern Law Review, the Oxford Journal of Legal Studies and the Journal of the British Society for Phenomenology.

What's Wrong with Cartels?

Crowe, Jonathan and Jedlickova, Barbora

Public law prohibits cartels which influence private lives in many ways. In particular, cartels have a significantly negative impact on consumer welfare. Anti-cartel competition law tries to tackle this negative impact through its basis in economic theories. Nevertheless, the prohibition of cartels is often supported on moral grounds - for example, it is commonly stated that cartels are deceptive, unfair or engaged in a form of cheating. The academic literature currently lacks an integrated account of the wrongness of cartels that employs both economic and moral factors to explain civil and criminal remedies. The present paper aims to fill this gap. We offer a consequence sensitive deontological account of the wrongness of cartels that emphasises both the economic harms of cartelisation and the relationship of cartels to the moral duty to promote the common good. Cartels are wrong both because they lead to suboptimal economic outcomes and because they undermine the role of open and competitive markets as a salient response to an important social coordination problem. The paper concludes by exploring the conditions under which participants in cartelisation may be held legally accountable for their role under civil or criminal remedies. The resulting account offers a robust justification for prohibiting cartels under civil law, as well as potentially by criminalisation.

Barbora Jedlickova joined the TC Beime School of Law as an Associate Lecturer in February 2011. Previously, she worked as a Lawyer in the Czech Republic and as a Contracts Officer/Assistant Contracts Manager at both the University of St Andrews and the University of Glasgow in the UK. In 2009, she was a trainee (a blue-book "stagiaire") of DG Competition at the European Commission in Brussels and she was a visiting scholar at the University of Iowa in the USA. She holds degrees from the University of Glasgow in the UK (PhD in Law, 2012; and LL.M. with Commendation in International Competition Law and Policy, 2007) and from Masaryk University in the Czech Republic (2004). She defended her PhD thesis 'The Law of Vertical Territorial and Price Restraints in the EU and in the USA: A Critical Analysis of Vertical Territorial and Price Restraints - an Argument Against Legalisation' in 2012.

Barbora"s research interests lies in the field of comparative competition law; primarily, in the area of vertical restraints. She is involved in a number of individual and collaborative research projects. She is currently working on a research monograph "Vertical Restraints in EU Competition Law and US Antitrust Law: Resale Price Maintenance and Territorial Restrictions". The most common theme of her current research projects is jurisprudential aspects of competition law. For example, her monograph will, among others, explore potential jurisprudential theories setting the concept in the framework of two jurisprudential values: fairness and economic freedom; and the economic value essential for effective competition: economic efficiency. She is involved in a collaborative research project which aims to justify the prohibition of cartels from the jurisprudential point of view, rather than the more commonly used economic justifications. Another collaborative project, she has been involved in, analyses transactional resolutions of antitrust proceedings in Australia in connection with the due process and fundamentals rights of the parties.

Barbora is a Fellow of the Centre for Public, International and Comparative Law at the TC Beirne School of Law and an Editor of the LAWASIA Journal.

Jonathan Crowe teaches legal theory, constitutional law and international humanitarian law. He holds a PhD in law and philosophy from the University of Queensland, as well as honours degrees in both disciplines. His research examines the philosophical relationship between law and ethics, looking at issues such as the nature and foundations of legal obligation and the role of ethics in legal reasoning. He has published widely on natural law theory and existentialist ethics, particularly the work of Emmanuel Levinas. He has also published research on constitutional law, international humanitarian law, criminal law, family law, corporations law and alternative dispute resolution.

Jonathan has contributed articles to leading international and Australian journals, including the Modern Law Review, the Oxford Journal of Legal Studies, the Journal of the British Society for Phenomenology, the Melbourne University Law Review, the Sydney Law Review and the Australian Journal of Legal Philosophy. He is the author of Legal Theory (2nd ed, Thomson Reuters, 2013), co-author with Suri Ratnapala of Australian Constitutional Law: Foundations and Theory (3rd ed, Oxford University Press, 2012) and co-author with Kylie Weston-Scheuber of Principles of International Humanitarian Law (Edward Elgar, 2013). He is currently working on a book on the natural law tradition in ethics and jurisprudence.

Refusals of Care and Medical Treatment by Pregnant Women: The Common Law Position

Curnow, Katherine

Recent Australian judicial decisions have confirmed that, except where the lives of third parties are endangered, a competent adult's rejection of specific or all care or medical treatment must be complied with even if the refusal may, or is likely to, result in their death or injury. These cases have given precedence to an adult's autonomy over any state interest in preserving life.

However, no Australian case has adjudicated on a contemporaneous refusal of care or medical treatment by

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a competent adult pregnant woman where the refusal may negatively impact upon the foetus. Obiter references in Hunter and New England Area Health Service v A (2009) 74 NSWLR 88 suggest a state interest in preserving the life of a viable foetus exists that may override a pregnant women's autonomy.

This paper analyses British, Canadian and Australian judicial decisions to draw conclusions about the common law position in Australia in relation to a refusal of care or medical treatment by a pregnant woman where the refusal may negatively impact upon the foetus. On the basis of that analysis, it is argued that a common law state interest in preserving the life of a viable foetus does not exist in Australia and that a contemporaneous refusal of care or medical treatment by a competent pregnant woman must be treated as any other refusal, unless legislation provides otherwise. This paper then considers the potential impact of statutory provisions conferring legal status on foetuses on the current common law position.

Katherine Curnow is an Associate Lecturer at The University of Queensland and a PhD candidate at Monash University. Her research interests are generally in the area of dispute resolution and health law with a particular focus on the resolution of health related disputes and the rights of competent adults to refuse care and medical treatment.

The "Private Choice" to Terminate a Pregnancy

Doherty, Pamela

It is estimated that half of the 200,000 unplanned pregnancies in Australia each year will result in an abortion. However the legal status of abortion and affordability of abortion services differ markedly between the states and territories. Abortion law in Queensland is vague and ambiguous. Abortion offences are contained in the state's 1899 Criminal Code (sections 224-226), which sets out criminal penalties for doctors providing abortion, for women accessing it and those supporting. However, section 282 of the Code defines a lawful abortion and this in combination with case law provide lawful abortion provision when it is performed to prevent a serious threat to the life or the physical or mental health of a pregnant woman.

The law has a significant impact on women's private lives and reproductive rights as women must rely on limited expensive private abortion clinics with public provision accounting for only 1% of all procedures (2010).

Disadvantaged women experience significant barriers to services particularly young women, ATSI women and those in rural or remote regions. The law diminishes a woman's' right to reproductive choice and privacy due to the financial, geographic and social barriers to access services. The legal framework also results in the decision to terminate a pregnancy resting with the doctor. Whilst abortion remains within the criminal code and the privatisation of abortion services remains severe inequity for disadvantaged women will remain.

This presentation will discuss this impact on Queensland women and the lack of equity across the state to reproductive health services.

Pamela Doherty has been the education and training coordinator with Children by Choice since 2009. In this role she delivers professional development across the state and delivers the Children by Choice sexuality education program to young people. Pamela has a strong interest in the rights of young pregnant and parenting women and has presented on this issue at the Queensland State Young Affairs Conference and the Public Health Associations Australia's First National Sexual Reproduction Health Conference. She is a management committee member of the Young Parents Program in Brisbane and a member of the National Young Pregnant and Parenting Network.

Pamela has a degree in public and social policy and masters in community development from the National University of Ireland. She has previously worked as a community development coordinator both in the not-for-profit and local government sector.

Children by Choice is a Brisbane based pro-choice community organisation, funded by the Department of Communities. We have been supporting Queensland women since 1972, providing non-directive counselling, information and referrals for all options with an unplanned pregnancy. For more information about what we do visit us online at www.childrenbychoice.org.au

The Dangerous Impact of Criminalisation: Coerced Pregnancy and Abortion

Doherty, Pamela and Kerr, Katherine

Children by Choice is a non-profit pro-choice organisation, providing Queensland-wide counselling, information and education services on all unplanned pregnancy options. Nineteen per cent of contacts in 2012-13 to our counselling and information team identified experiencing domestic violence (DV). One element of DV frequently reported by those clients is reproductive coercion: behaviours relating to reproductive health deliberately used to maintain power and control in a relationship such as sexual assault, forced intercourse, birth control sabotage, and coerced pregnancy. Coerced pregnancy is a deliberate strategy of control in DV relationships resulting from reproductive coercion: forcing a woman to remain in an abusive relationship by further eroding her capacity to leave, and ensuring an ongoing role for the perpetrator in that woman's life.

Women in these circumstances seeking an abortion often do so to avoid bringing a child into a DV environment or to avoid coparenting with a perpetrator, as part of their attempt to avoid the perpetrator's intended outcomes of the coerced pregnancy. The barriers to accessing termination services which arise through Queensland's criminalisation of abortion are further compounded for these women.

This workshop will present the initial outcomes and recommendations of a 2014 research partnership between Children by Choice and the T.C. Beirne School of Law UQ Pro Bono Centre on the topic of coerced pregnancy. This includes a focus on the particular necessity of abortion law reform for these women to prevent existing barriers to provision from placing pregnant women in DV relationships at greater risk, and impeding their access to a safe future.

Pamela Doherty has been the education and training coordinator with Children by Choice since 2009. In this role she delivers professional development across the state and delivers the Children by Choice sexuality education program to young people. Pamela has a strong interest in the rights of young pregnant and parenting women and has presented on this issue at the Queensland State Young Affairs Conference and the Public Health Associations Australia's First National Sexual Reproduction Health Conference. She is a management committee member of the Young Parents Program in Brisbane and a member of the National Young Pregnant and Parenting Network.

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Katherine Kerr has completed a Bachelor of Social Work and Bachelor of Arts at UQ. After working in the domestic violence sector as a DV Court Support advocate and crisis counsellor, Katherine returned to study law – motivated by an awareness of the many barriers to justice in Queensland. Katherine currently works in reproductive health providing unbiased unplanned pregnancy decision-making counselling, and recently published a feminist critique of abortion laws in Queensland.

Domestic Violence, Cross-Orders and Alcohol Use

Douglas, Heather and Fitzgerald, Robin

Alcohol use has long been linked to claims of domestic violence although there continues to be debate about whether it is a cause of the violence, exacerbates the violence or is simply present in around 40 percent of claims of domestic violence. There have been some studies that show the presence of drinking makes a difference to a victim's decision to report violence and to police in their decision whether to arrest. This research draws on a study of applications for domestic violence cross-orders in Queensland courts to consider how the police and courts respond in applications where drinking is alleged by one or both of the parties. The paper considers whether there are gender differences in drinking patterns, whether alleged violence differs depending on the presence of drinking, and whether police respond differently depending on the presence of alcohol.

Professor Heather Douglas researches and teaches in the law School, The University of Queensland. She has significant research expertise in the fields of criminal law and evidence. In particular, she has conducted a number of research projects on domestic and family violence, and indigenous people and criminal justice responses.

Dr Robin Fitzgerald is a lecturer in criminology. Her research focuses primarily on statistical analyses of issues related to social inequality, criminal and deviant behaviour, and criminal justice responses to juvenile and adult offenders and victims. Robin was a Senior Researcher, Canadian Centre for Justice Statistics, Statistics Canada, 2000-2009She has recently completed work for BOCSAR and the NSW Department of Education and Communities to design a proposed study measuring delinquency in NSW schools.

Affirming Why Australia Does Not Need a Legal Right to be Forgotten

Douglas, Michael

The 'right to be forgotten' is in vogue, at least in Europe. In May the European Court of Justice delivered judgment in Google v González.* The Court interpreted an EU Directive and Charter giving effect to the right,* effectively compelling Google to remove links revealing personal data relating to González. The decision affirms one conception of a legal right to be forgotten: the right to have data revealing personal information removed when no longer needed for legitimate purposes.*

Australia approaches the issue differently. In its inquiry into Serious Invasions of Privacy, the ALRC considered a proposal requiring APP entities* to (1) provide mechanisms for individuals to request destruction or de-identification of personal information, and (2) take reasonable, timely steps to comply with requests.* It emphasised that 'the proposal is significantly different from the [EU's] "Right to be Forgotten".'*

This paper will explain how the ALRC's proposal is different, contrasting international legal conceptions of the right to be forgotten to the current position under Australian law. It will examine arguments supporting recognition of a legal right, particularly those appealing to self-autonomy and a right to privacy. It will focus on arguments against recognition of a legal right to be forgotten, including its impact on freedom of speech, the 'workability' of enforcement,* and the market's current response to the issue. The paper will affirm that 'there is no demonstrated need for a legislated' right to be forgotten in Australia.

Michael Douglas is a young Perth-based academic. Prior to joining Curtin he worked in litigation and media law in a large Perth firm. He holds a Bachelor of Arts with Honours in Philosophy, a Bachelor of Laws and a Master of Laws with Distinction from the University of Western Australia. He is admitted in the Supreme Court of Western Australia and the High Court.

Sovereignty in the Modern Era

Duncanson, Ian

...the primary epiphenomenon of any religion's foundation are the production and flourishment of hypocrisy, megalomania and psychopathy and the first casualties of a religion's establishment are the intentions of its founder. Louis de Bernieres, Birds Without Wings, London, Vintage (2005), 157.

The argument of my paper is that, like religions, political forms can swiftly become victim to the vices identified by de Bernieres. Both divine right and the general will, for example, require personification. Historically, political formations have generally driven their subjects to worship a fetish, much as the schoolboys in Martin Golding's Lord of the Flies the dead pilot whom they discovered among the wreckage of a plane crashed on the island on which they have themselves been marooned. The novel's pilot, by virtue of the sovereign position he is given by the boys' leaders, makes demands interpretable only by the leaders and those whose support they obtain.

The only antidote seems to be the existence of what Foucault, following others, terms in Society Must be Defended, political society, the space in which the limits of authority can be freely discussed. Thus in lying to its citizens about its Air Forces' having mistakenly destroyed an Italian airliner during a period of political tensions, according to the leaflet issued by the Museo per la Memoria di Ustica "some parts of the state itself privilege(d) the ties of international alliances over the loyalty to their own citizens". This particular reversion to authoritarianism is an unfortunate reminder of how easily signals from the 17th and 18th century about the need to limit authority can be overlooked.

Ian Duncanson read law as an undergraduate at Southampton University, wrote a BCL thesis at the University of Durham, Equitable Estoppel and the Enforcement of Promises, an historical examination of contract in equity and common law, and a PhD at Melbourne University. He began his academic career in Newcastle upon Tyne and was subsequently at the University of Keele in Staffordshire, where he specialized in jurisprudence and the history of legality. He was appointed to the former multidisciplinary Department of Legal Studies at La Trobe University in Melbourne and left in 2002, when Sociolegal studies came temporarily to an end at La Trobe. He is now adjunct professor in the Socio-Legal Research Centre at Griffith University. He has written nearly 50 peer-reviewed articles on legal education, the Australian treatment of refugees and critical essays on the shortcomings of mainstream jurisprudence, latterly using historical and postcolonial perspectives. His

monograph, Historiography, Empire and the Rule of Law: Imagined Constitutions, Remembered Legalities, was published by Routledge in 2012.

Do Intellectual Property Rights in Traditional Knowledge and Expressions of Traditional Culture Fall Into the Public or Private Domain?

Farran, Sue

In many indigenous societies the use, management, and transfer of traditional knowledge and traditional expressions of culture are regulated by custom and customary law. In many respects this would be regarded as private, personal law. However, the state and thus public law is increasingly intervening in this area either through the impact of trade treaties concluded at state level and consequent obligations incurred which impact on the intellectual property regimes which may be introduced, or as a result of state driven initiatives to commercialise or exploit traditional knowledge and/or traditional cultural expression.

This paper focuses on contemporary issues being raised in Pacific island states where aid for trade developments are increasingly challenging the role and realm of custom and customary law in regulating traditional knowledge and traditional cultural expression. At the same time, the formal recognition of custom and customary law in many legal systems of the region mean that this area of interest is subject to plural legal regimes. In one, rights and obligations may be communal to the extent that, at least from an external perspective, any intellectual property rights are seen as being public property, in the other, intellectual property is seen as being something that confers exclusive individual rights firmly located in the private domain. In developing economies these two approaches create and reflect tensions between different ways of doing and thinking. There are more grey lines than bright ones and one of the aspects that makes finding answers challenging is the uncertain border between the public and the private and therefore determining the legal framework which might be most effective in meeting competing agendas.

Sue Farran is a Professor of Laws at Northumbria University, England, and an Adjunct Professor at the University of the South Pacific. Her research interests use case studies from the island countries of the South Pacific region to focus on issues of human rights, legal pluralism, the challenges of development and sustainability, globalisation and legal colonialism. In particular she is interested in the interface between legal systems and normative frameworks within states and between states, and the relationship between national, regional and international players in shaping and developing legal responses to contemporary issues. Details of Sue's publications can be found at: http:// srn.com/author=1935328; www.Academia.edu and http://nrl. northumbria.ac.uk

Native Title Groups: Private versus Public

Frith, Angus

When native title is recognised by Australian common law, by statute the court must determine a corporation to manage it, which gives the native title group legal personality under Australian law. Through their corporation, the native title group can now make contracts, hold interests in land, and better engage with the broader economy, just like any other private entity.

While such a native title corporation is a private entity with which the state and private businesses can deal, it also encloses a whole native title group, which is a distinct polity, defined by and operating under its own traditional laws and customs, distinct and separate from Australian law and society. In this sense, it is at once both private and public. From the outside it is a private entity with ordinary private rights and obligations. From the inside, it reflects the will of a polity in a manner similar in principle to that occurring in the Australian state.

This paper examines the interaction of these private and public functions of native title corporations, focussing in particular on the fact that the required use of corporations imposes the assumptions and theoretical underpinnings of the corporate form, developed in Western law over centuries, on relationships between Aboriginal people, their country and their law that have existed for thousands of years.

Angus Frith has recently completed a PhD thesis at the University of Melbourne entitled 'Getting it Right for the Future: Aboriginal Law, Australian Law and Native Title Corporations'. The thesis examines the operations under both Australian and Aboriginal laws of the prescribed bodies corporate that manage native title and includes a case study of two native title corporations. He is also a member of the Victorian Bar who has practised in native title law for over a decade on behalf of Aboriginal groups across Australia.

Private Litigation to Address a Public Wrong: A Study of Australia's Regulatory Response to 'Hate Speech'

Gelber, Katharine and McNamara, Luke

Australia has had a long experience - nearly 25 years - with an unusual version of hate speech laws in which hate speech is primarily defined and regulated as a civil wrong rather than a crime. The consequence of this is that the responsibility to enforce the standards contained in hate speech legislation rests not with any state agency, but with the individuals from the group maligned by the hate speech. In this paper we argue that hate speech is best conceptualised as a public wrong, and that this phenomenology ought to have empirical consequences, namely that the civil regulatory scheme ought to recognise and attempt to redress the public nature of the wrong incurred. We draw from data from a large study into the impact of hate speech laws in Australia since their introduction to show that, although some elements of the regulatory scheme acknowledge the public nature of the wrong incurred by hate speech, in others there is a dissonance between the public wrong that hate speech embodies and the nature of the regulatory scheme designed to address it. We substantiate these claims with qualitative data obtained from interviews with three key litigants in hate speech tribunal/court cases. The paper concludes with recommendations for amendment of the civil laws to address better the public nature of the harms of hate speech.

Katharine Gelber is Professor of Politics and Public Policy, and an ARC Future Fellow, at the University of Queensland. She researches in the areas of free speech and speech regulation, and has published widely in journals including the Melbourne University Law Review, Australian Journal of Human Rights, Australian Journal of Political Science and Political Studies. Her most recent book, Speech Matters (Uni of Queensland Press, 2011) was a finalist in the 2011 Australian Human Rights Awards (Literature Non-Fiction).

Luke McNamara is Professor in the School of Law, and a member of the Legal Research Intersections Centre, at the University of Wollongong. In addition to collaborating with Professor Kath Gelber on a study of the impact of hate speech laws in Australia, his other current research, in collaboration with Dr Julia Quilter, focuses on the regulation of public order, including activities such as swearing, drinking and busking.

Fahrenheit 451 and Facebook: Employee Surveillance and Personal Online Profiles

Hendrick, Veronica

Like characters in Raymond Bradbury's Fahrenheit 451, employees are becoming "friends" with individuals whose sole purpose is to monitor their behavior. The Orwellian threat that "Big Brother is watching you" is uncomfortably true; however, many remain unaware of the public extent of private online profiles. As irritating as it is that online purchases are tracked so that internet ads can target consumers, far more concerning are the ways in which employers are misusing social media to track employees. A waitress in North Carolina was fired for disparaging customers after complaining on Facebook. A costume wearing mascot for the Pittsburg Pirates was fired after using Facebook to criticizing players' contract offers. And, a teacher in South Carolina was fired after spewing racially charged methpores on Facebook while describing her public school students. In each of these examples, the user of Facebook named their employer and either directly or through a web of connections, provided evidence for their termination. In one instance, much like the figure of Captain Beatty, an individual from a corporation posed as a false friend to investigate the employee. This paper investigates the questionable business practice of utilizing personal online personal profiles to monitor and at times dismiss employees. Like characters in Raymond Bradbury's Fahrenheit 451, employees are becoming "friends" with individuals whose sole purpose is to monitor their behavior. The Orwellian threat that "Big Brother is watching you" is uncomfortably true; however, many remain unaware of the public extent of private online profiles. As irritating as it is that online purchases are tracked so that internet ads can target consumers, far more concerning are the ways in which employers are misusing social media to track employees. A waitress in North Carolina was fired for disparaging customers after complaining on Facebook. A costume wearing mascot for the Pittsburg Pirates was fired after using Facebook to criticizing players' contract offers. And, a teacher in South Carolina was fired after spewing racially charged methpores on Facebook while describing her public school students. In each of these examples, the user of Facebook named their employer and either directly or through a web of connections, provided evidence for their termination. In one instance, much like the figure of Captain Beatty, an individual from a corporation posed as a false friend to investigate the employee. This paper investigates the questionable business practice of utilizing personal online personal profiles to monitor and at times dismiss employees.

Veronica C. Hendrick is an Associate Professor for Literature and Law at John Jay College of Criminal Justice (CUNY). Using an American lens, Hendrick focuses on law related to minority groups with special interest in labor law and practices. Her first book, Servants, Slaves, and Savages: Reflections of Law in American Literature (Carolina Academic, 2013), looks the laws that created and ever increasing divide between groups of bound laborers in early America. Her second book is Toni Morrison: Tracing American Legal Changes through Literature (Routledge, Forthcoming). A recent Fulbright Scholar to Shanghai, China, Hendrick has begun to incorporate Asian American Literature into her body of work and to investigate the legal situation of Chinese workers in the American west.

'I Don't Give My Consent to Make this Interview Open' – Public Interest, Private Narratives and Trailblazing Women Lawyers in Australia

Henningham, Nikki

While The Trailblazing Women and the Law (TBWL) project incorporates archival research in its analysis, the project primarily relies on a database of specially commissioned oral history interviews. This dependency, with regard to the informatics/ social network analysis, seems obvious but it is equally true in the analysis of public and private understandings of what it means to be a 'trailblazer'. The 'facts' of a trailblazer's career and the catalogue of their success may well be publicly accessible but the opportunity to engage with the background to that success is limited without access to the trailblazer's narrative. Oral history testimony reveals a complicated relationship between what is publicly discoverable about trailblazing women lawyers in Australia and what is privately experienced.

This paper will discuss this relationship through reference to case studies of interviews undertaken for the TBWL project. In particular, I will identify narratives that highlight the impact of the Internet in defining the relationship between what is publicly and privately knowable. What, if any, difference has becoming 'knowable' in the 'post-Google' age made to the way trailblazers tell their story?

Dr Nikki Henningham is a historian with a focus on Australian women's oral history and writing the lives of the living for online publication. She has undertaken many oral history projects for the National Library of Australia's Oral History and Folklore Branch. At the EScholarship Research Centre at the University of Melbourne she has been building the Australian Women's Archives Project as the Executive Officer since 2003, and more recently has worked on the first online encyclopedia of Australian Women and Leadership. Dr Nikki Henningham received the National Archives of Australia's lan McLean award in 2005 for her work in locating records relating the experience of migrant women in Australia.

Standing at the Intersections: Do the Identities of Judges Matter?

Hilly, Laura

Diversity, or rather the lack of it, in the judiciary has become a hot topic in recent years in many common law and civil law jurisdictions. The project of judicial transformation is driven by a desire for those that hold significant judicial power to be more reflective of the communities whom they serve. This project has largely been driven by arguments for the inclusion of previously excluded identity groups – predominately women and racial excluded groups. However, has this focus on 'single axis' identity groups been at the expense of those who are the most marginalized from judicial office as a result of their intersecting identities?

For example, the South African judiciary has made great gains in the past two decades in terms of racial transformation, but not in terms of gender transformation. Some argue that it was necessary to focus on 'one problem at a time' and 'race first', but what implication has this had upon the increases participation by black women judges? In addition, does the focus upon diverse 'identity groups' at the expense of a more subjective inquiry into 'diverse experiences resulting from identity' have problematic consequences by essentialising its subjects? Will judicial transformation that is focused upon 'single axis identity' only undermine the spirit of the project?

This paper will draw upon new empirical evidence drawn from interviews with senior appellate judges in South Africa, the United Kingdom and Australia. It is rooted in feminist standpoint theory, which requires greater focus upon the holistic lived experiences of the individual, and self-reflection upon this experience, before assuming that an individual's 'identity' will make any substantive impact of the quality of justice provided by a court.

Laura Hilly is currently undertaking a DPhil in Law at the University of Oxford and is a Visiting Research Student at the Australian National University. Her research project is supervised by Professor Nicola Lacey and Professor Sandra Fredman. It employs a qualitative empirical approach in order to consider the impact of gender diversity on appellate courts in common law jurisdictions. Laura has interviewed more than 30 judges from final appellate courts in South Africa, Australia and the United Kingdom as part of this research.Laura completed her BA/LLB at the Australian National University, graduating with first class honours; the University Medal in Law; and the Supreme Court Judges' Prize. She then worked at the Federal Court of Australia as an Associate to the Honourable Chief Justice Black AC: and as a litigation solicitor at Blake Dawson (now Ashurst). Laura was admitted to practice in Australia in 2007 and the United Kingdom in 2013. With the support of a Rhodes Scholarship she came to Oxford in 2009, completing the BCL with distinction in 2010, and her MPhil thesis entitled A Woman's Contribution: Gender Diversity and the Judicial Process in 2011. Her DPhil research is supported by a Clarendon Scholarship. She has also worked with various community legal organisations such as the Welfare Rights Centre in Canberra, the Victorian Women's Legal Service in Melbourne and the Women's Legal Centre in Cape Town. Laura tutors undergraduate students in European Human Rights Law and Administrative Law at Oxford. She is the Managing Editor of the Oxford Human Rights Hub Blog and the former Chair of Oxford Pro Bono Publico.

Just Interests: Connecting Crime Victims to their Status as Citizens

Holder, Robyn

The victim of crime is said to seek private justice and so is formally excluded from the realm of public justice. Underpinning the argument is the claim that crimes, whether committed in a private or a public space, are offences against the State. What can be learned about this private/public dichotomy from that minority of individuals who do mobilise the criminal law following an incident of violence against them? This paper explores the motivations and expectations of thirty three men and women interviewed on three occasions after turning to the law in order to re-evaluate what is private and what is public. Peoples' reasoning is found to reveal ideas drawn from public discourse and resting on public criteria from which they then articulate multiple 'justice goals' (Gromet & Darley 2009). These goals connect to a justice trilogy of victim, offender and community. The paper argues that these constitute citizen interests in justice, and that involvement in the justice process is a citizenship activity. The citizen first perspective invites reconsideration of the relationship between people as victims and the state entities of criminal justice.

Dr Robyn Holder commenced with Griffith University in May 2014 from the ANU in Canberra. She joins Professor Kathleen Daly to work on the ARC Discovery Project, Reconceptualising Justice Following Sexual Violence. Dr Holder's most recent research dealt with violence against Syrian women in Iraqi Kurdistan. In 2013-14 she was also part of teams examining access to justice for women in The Philippines and justice responses to violence against Aboriginal women in the Northern Territory (Australia).

Her PhD research examined the idea of justice from lay and legal perspectives.

Dr Holder has nearly 30 years' experience in research, public policy and law reform in Australia and the UK. She is a specialist in the research-policy nexus, and in system reform. She has led and managed over 20 projects across subjects in law and justice, law enforcement, violence against women, crime and victimisation, crime prevention, community development and higher education. Her areas of research interest include law and society; citizenship and political theory; criminal legal theory and history; legal and law enforcement institutions, governance and law reform; feminist and critical criminology; and victims and justice.

Boundaries of the Legal Self in a Hyper-Connected World

Horton, Fabian

The social media and instantaneous (just-in-time, my time) world is eroding the foundations of the legal world. This is a dual assault waged on both the rule of law and the very concept of where the 'legal self' begins and end. Who we are publicly and privately, in reality or virtually has morphed as technology has been incorporated symbiotically into our lives. Our private and public lives are becoming so blurred that the concepts of the legal self and the rule of law are hard for the individual to contextualise. The new paradigm that is our hyper-connected world is reframing who we are as legal entities and how we see ourselves within the greater legal schema. The paper will look at the effects of this new paradigm in 3 parts. The first part will review the rule of law in the context of a hyper-connected world. It will consider the work of scholars such as Hart and Delvin and contrast their work with what more contemporary writers such as Lessig and Bingham have noted are recent manifestations of the issues. The second part will reframe what can be described as the legal liberalism verses legal moralism debate re-enlivened because of our hyper-connectedness. It will explore the argument that in the absence of a consensus on what the rule of law is in our hyper-connected world individuals will seek out alternate modes of framing their actions. Finally the paper will consider whether or not the rule of law can continue to deliver any benefits considering the ubiquitous nature of social media, instantaneous communications and hyper-connectivity. This part will consider issues such as the loss of the private self, hyper-virtual reality and connected wearable technologies and the impact that these have on the notion of what it is to be a legal entity.

Fabian Horton is a lecturer in the Practical Legal Training program at the College of Law, Victoria. Fabian is a solicitor with extensive experience in legal technologies, online legal applications and social media. He has acted in a variety of legal positions both in government and private practice. He now operates his own private virtual firm. Fabian is currently undertaking his PhD at Southern Cross University. His research focus is on how the Internet influences the way people view and interact with the law. Fabian currently sits on the Future Focus Committee of the Law Institute of Victoria. This committee advises the LIV Council on issues such as technological developments in the law, disrupt innovations and future graduate requirements. Fabian also sits on the LIV Social Media Task Force. Fabian Horton is a HDR student and lecturer at the College of Law, Victoria.

Governing Aboriginal Lives through Legal Recognition

Howard-Wagner, Deirde

Historically, and in the present moment of Constitutional Recognition, the Australian state has adjudicated Australia's First Peoples' recognition in law, adopting western liberal solutions to reconcile the many dimensions of settler colonial injustice. The paper considers Australian indigenous-specific law and Constitutional Recognition as acts of liberal recognition. Through various points of reference, the paper demonstrates how Australian law aimed at addressing historical injustice can create further injustice, for example, through imposing western structure on indigenous peoples and failing to understand and embed appropriate mechanisms within the law that account for indigenous kinship, culture and knowledge systems. It demonstrates, as Glen Coulthard argues, how such acts can 'reproduce the very configurations of colonial power that Indigenous demands for recognition have historically sought to transcend (2007). The paper makes this argument through an analysis of the operation of various indigenous-specific Australian statutes in conferring Indigenous justice, redistribution, rights and recognition.

Deirdre Howard-Wagner is an Australian Research Council Discovery Early Career Research Fellow and President of the Law and Society Association Australia and New Zealand. She earned a PhD in Sociology at the University of Newcastle and a Bachelor of Arts with first class honours from the Australian National University – where she also received the George Zubrzycki Prize - Biennial Award for Best Result in Sociology IV (2001). While completing her PhD at the University of Newcastle, she was the Deputy Director of the Justice Policy Research Centre in the School of Law (2004-2006). Prior to commencing her PhD and concurrent with her undergraduate studies, she worked as a senior policy officer in the Australian federal government, including the Department of the Prime Minister and Cabinet.

Dr Howard-Wagner's work on state governmentality and indigenous rights is having the greatest impact both internationally and nationally. Her publications are historical and comparative in nature, connecting present federal indigenous laws and policies to temporal, spatial and racial narratives that came before and Australia's history of race relations. Her current ARC DECRA project builds on this work, but takes it in new directions. For example, rather than focusing on the intent of laws and policies, it engages empirically with Aboriginal peoples' standpoints and experiences to explore state governance, self-determination, and Aboriginal engagement in contemporary Australia.

Autonomous from the Start: Single Mothering by Choice

Kelly, Fiona

Single mothers have been a consistent feature of the familial landscape for centuries. In the past three decades, however, a new type of autonomous mother has emerged: single women who actively choose to conceive or adopt a child. These women, referred to as single mothers by choice (SMCs), become mothers with the intention from the outset of being the child's sole parent. While single mothering by choice is on the rise throughout the West, almost no legal and minimal social science research addresses the issue. Because the phenomenon is so new, the majority of existing research focuses on demographics, the decision-making process, and the reality of the women's lives once a child is born. Despite the value of this research, two areas called for additional exploration. First, given the selfidentification as single mothers by choice, it seems important to explore this notion of choice, particularly in the context of neoliberalism. Second, given the presumption in law that in most circumstances children will have two legal parents, what is the relationship between SMCs and the law? This paper discusses these questions in the context of a small interview-based study with SMCs living in a large city in western Canada.

Dr Fiona Kelly joined La Trobe University Law School in 2013. Previously she was an Associate Professor in the Law School at the University of British Columbia, Canada. Dr Kelly's research interests are primarily in the area of Family Law and, in particular, the regulation of legal parentage. She has published extensively in Canadian and international journals in a variety of areas of family law, including the judicial and legislative treatment of lesbian and single mother by choice families, the legal regulation of parentage in the context of assisted reproduction, the use of supervised access orders in custody and access decisionmaking, and the ethics of sperm donor anonymity. She published her first refereed book, Transforming Law's Family: The Legal Recognition of Planned Lesbian Families in 2011, and a second co-authored book on autonomous motherhood will be published by the University of Toronto Press in 2015.

Self-Appointed Representatives of the Marginalized

Keyzer, Patrick

How do lawyers (who are not employed in the community law centre sector) get involved in pro bono work? What are the patterns and connections between these lawyers and their clients, and how are they established? What motivates these lawyers to get involved in this activity? Are these people just busybodies, or do-gooder ambulance chasers? Exploiting new focus group research and in-depth interviews, this paper will explore the motivations of an under-researched subculture of Australian legal practitioners.

Professor Patrick Keyzer is Head of School and Chair of Law and Public Policy at La Trobe University Law School. His recent book, Access to International Justice (Routledge), explores the potential for national and international institutions to help realise human rights.

Divorce Law and Public Policy in Victorian England

Kha, Henry

Although divorce law traditionally falls into the category of private law, public policy and morality tend to exercise a more significant influence upon family law reform debate than any other areas of private law. The state has generally held a vested interest in influencing the legal consequence of divorce. This is the corollary of the popular understanding of the public/private dichotomy. In Victorian England, the prevailing view of the state was one of ensuring each divorced or separated wife was properly afforded alimony by the husband. The divorce law was structured so that the parties would be financially and morally responsible for their own welfare and not the state. Moreover, divorce law in Victorian England was particularly susceptible to the trifecta of public controversy, namely religion, sex and politics.

The paper investigates the interaction between public policy and the introduction of civil divorce under the Matrimonial Causes Act 1857 in England. The competing demands of the Church of England, Victorian morality and the campaign for law reform ultimately shaped public policy and in turn the nature of the nascent English civil divorce system. Many of the legal and cultural challenges of the Victorian era divorce law reform debate continue to be present in the debate surrounding contemporary family law.

Henry Kha graduated from the University of New South Wales with a Juris Doctor in 2014, where he was named in the Dean's List for Excellence in Academic Performance. Henry has also graduated from the University of Sydney with a Bachelor of Arts (Advanced) (Honours) in 2011. His research interests are in the field of private law and legal history. He is currently a PhD candidate in the School of Law, University of Queensland and is researching the legal development of divorce and matrimonial property law in Victorian England.

Challenging the Public Orthodoxies of Criminal Law: Victim Personhood and the Right to Substantive and Procedural Justice

Kirchengast, Tyrone

Victims of crime were largely removed from systems of criminal justice as they emerged into the 20th century. Increasingly, common law systems have been confronted by the need to reconsider the needs of victims through modes of participation but have been generally unwilling to allow that participation to impact on substantive outcomes of decisions made. The imperative seems to be that criminal law be preserved in the public domain, devoid of the private influences of victims. This paper examines the trend toward affording victims voice in criminal proceedings beyond mere procedure, by allocating victims' rights of substantive participation across multiple phases of the criminal trial process, from arrest and pre-trial processes through to sentencing and appeal. International approaches will be considered with a view to offering victims greater levels of substantive participation in criminal proceedings in accordance with the constraints of adversarial justice. Trends toward enforceable rights, private counsel for victims, the role of statutory office holders and commissioners for victim rights, and the victim's right to natural justice unabrogated by law, will be considered. Tensions between conceptualising the victim as essentially private and repugnant to the inherently public interests of criminal justice will be explored.

Tyrone Kirchengast is a Senior Lecturer in Criminal Law at the University of New South Wales, Australia. His research focuses on various facets of criminal law and justice, including victims of crime, law and governance, and the development of institutions of criminal law and justice. Tyrone is the author of The Victim in Criminal Law and Justice, Palgrave Macmillan, UK, 2006, The Criminal Trial in Law and Discourse, 2010, Palgrave Macmillan, UK, and Criminal Law in Australia, 2014, Butterworths LexisNexis (with L Finlay).

Privacy on the Public Record: Uncovering Women's Public Agency in their Claims for Control Over the Use of their Photographic and Cinematic Images in Early US 'Privacy' Cases

Lake, Jessica

In 1900, seventeen-year-old Abigail Roberson discovered her face on advertisements for flour and brought an action for 'breach of privacy' in the New York Supreme Court. She lost, but the case catapulted her into public notoriety and American legal history. Roberson v Rochester Folding Box was the first superior court case in the United States to consider a 'right to privacy' and led to the enactment of the first 'privacy' laws in the common law world. Despite being described by the court as a 'modest and retiring' young woman, Roberson subsequently wrote a feisty open letter to the Chief Justice, published by New York Times, condemning the decision against her. The question I discuss is: was this first 'privacy' case really about maintaining her 'privacy'? Drawing on US court and legislative archives, this paper argues that 'a right to privacy' was, from the beginning, less about individuals seeking to be 'let alone' and more about women attempting to control the use of their photographic and cinematic images. I also demonstrate the importance of gender to nineteenth century debates over a 'right to privacy' in the US, an analytical dimension lacking in the seminal Harvard Law Review article 'A Right to Privacy', published by Warren and Brandeis in 1890. Paradoxically, the doctrine of 'a right to privacy' put women's protests on the 'public' record. This new account of the history of privacy law can also be used to illuminate current debates about the legal regulation of the unauthorised circulation of women's images online.

Dr Jessica Lake is currently a Visiting Research Fellow at the Centre for Media and Communications Law at Melbourne Law School. Her 2013 PhD degree was completed jointly at Melbourne Law School and the School of Culture and Communication at the University of Melbourne. Her thesis, 'Privacy and the Pictures: The Photographed and Filmed (Women) Who Forged a Right to Privacy in the United States (1880-1950)' was an interdisciplinary, archives-based project, examining the evolution of a common law 'right to privacy' in the United States within the context of late nineteenth and early twentieth century developments in photography and cinema, with a particular analytical focus on gender. She is also a qualified lawyer, and practiced for a number of years in the area of media and entertainment law and commercial litigation at Holding Redlich law firm in Melbourne. She has taught media law, contract law and cinema studies at the University of Melbourne, worked as a research assistant in American History and has presented at conferences in Australia and the United States. Her work has been published in refereed journals locally and internationally as well as in daily newspapers.

Reasonable Grounds for Believing in Sexual Consent: An Objective Standard?

Larcombe, Wendy

The Victorian government is planning to introduce amendments to the sexual offences provisions of the Crimes Act 1958 (Vic) later this year. One of the options being considered would introduce a new 'fault' standard for rape that would be met if the prosecution proves that the accused had no reasonable grounds for believing that the complainant was consenting to sexual penetration. This reform would bring Victorian rape law into line with other Australian jurisdictions as well as the law in the UK and NZ. However, the increasing adoption of the 'reasonable grounds' standard in rape law raises questions including: what are reasonable, and unreasonable, grounds for believing in sexual consent? Are grounds for belief more or less reasonable depending on factors such as the prior relationship between the parties, their states of intoxication, or their individual attributes? Whose view of 'reasonable grounds' prevails?

This paper discusses research on the operation of the 'reasonable grounds' standard in comparable jurisdictions before reporting preliminary findings from stakeholder interviews investigating the likely interpretation and impact of 'reasonable grounds' if adopted in Victoria. In particular, the paper investigates the 'objectivity' of the reasonable grounds standard as it operates (or is likely to operate) in practice. While criminal law theory posits that requiring 'reasonable grounds' for a belief in sexual consent introduces 'a purely objective' fault element for rape, empirical research into the operation of the standard suggests that, in practice, it may offer an open door to subjective beliefs and values.

Dr Wendy Larcombe is an Associate Professor at Melbourne Law School, The University of Melbourne. In addition to teaching Legal Theory and Legal Method and Reasoning in the Juris Doctor program, Wendy conducts research in the fields of law, gender and sexuality, and legal education. She has particular research interests in theories of subjectivity, autonomy and consent and their application in a range of regulatory and institutional contexts. She has published widely on sexual violence and rape law reform in respected journals such as Violence Against Women, Feminist Legal Studies and the Australian Feminist Law Journal. Wendy's doctoral research comparing the scripting of female sexuality and subjectivity in criminal law and popular culture was published as Compelling Engagements: Feminism, rape law and romance fiction (Federation Press, 2005).

Her current research projects investigate: the criminalisation of marital rape through common law development; evolving jurisprudence on 'reasonable grounds' for a belief in consent in rape law; the use and value of empirical research in law reform; and the role of educational institutions and academics in supporting university students' mental health.

Constitutional Silences

Lee, Constance Youngwon

A constitution, like any document, leaves certain things unsaid. What is the significance of things too powerful to gain mention? Constitutional silences are open to interpretation by judges and other officials in ways that leave their subjects vulnerable. The power of declaration is therefore conjoined with a reciprocal duty to define the things that are left unspoken. This paper utilises Jean-Francois Lyotard's notion of the differend to expose the potential for injustice latent in constitutional silences. The differend captures the situation where a plaintiff is unable to make her claim heard because the dominant discourse deprives her of the means to voice her argument. I apply this notion to three sites of silence in Australian constitutional law: freedom of speech, judicial integrity and voting rights. I argue that the constitutional silences for plaintiffs.

Constance Youngwon Lee is a Tutor and LLM candidate in the T. C. Beime School of Law at the University of Queensland. Her research interests lie in socio-legal theory, comparative constitutional law and the intersection of law and the humanities. She is admitted to legal practice in Queensland and has worked in a range of fields of law, including commercial law, family law, criminal law and immigration law.

Consent – Private and State Authorisation

Livings, Ben

Heidi Hurd offers a powerful and widely cited characterisation of the 'moral magic' of consent in legitimising otherwise wrongful conduct:

[C]onsent can function to transform the morality of another's conduct—to make an action right when it would otherwise be wrong. For example, consent turns a trespass into a dinner party; a battery into a handshake; a theft into a gift; an invasion of privacy into an intimate moment; a commercial appropriation of name and likeness into a biography.[1]

To say that a person 'consents' may signify any of a range of mental states, such as desire, permission, or acquiescence; or it may denote the communication or expression of these. Consent's transformative power is closely related to, and derives from, the important liberal concept of personal autonomy, which has been described as 'the unifying principle that underpins the concept of consent'.[2] For Feinberg, 'the kernel of the idea of autonomy is the right to make choices and decisions',[3] and this includes 'what contacts with my body to permit'.[4] Feinberg writes of consent as supportive of autonomy in that it entails 'personal sovereignty'.[5]

Whatever the moral force of consent in denoting acquiescence or desire, and creating private authorisations between individuals, criminal law is ostensibly concerned with public wrongs and harms. Since a crime is nominally committed against the State,[6] the consent of the person who suffers injury is of questionable importance. This paper examines the dichotomy that arises between the private authorisation that consent is usually held to represent, and the State authorisation that criminal law mandates.

- [1] Heidi Hurd, 'The Moral Magic of Consent' (1996) 2 Legal Theory 121.
- [2] 231
- [3] Joel Feinberg, Harm to Self (Oxford University Press, 1986) 54.
- [4] Joel Feinberg, Harm to Self (Oxford University Press, 1986) 54.
- [5] Joel Feinberg, Harm to Self (Oxford University Press, 1986).
- [6] See: Grant Lamond, 'What is a crime?' (2007) Oxford Journal of Legal Studies 609.

Ben Livings is a Senior Lecturer in Law at the University of New England. Prior to this, he has held academic posts in the UK and France.

A Private Law Remedy for Constitutional Delicts of Public Bodies: An Appraisal

Liyanage, Udapadie

This paper examines whether violation of fundamental rights by public bodies can be questioned and remedied through private law action. Generally matters pertaining to public authorities are governed by public law. In Sri Lanka, violation of fundamental rights by the executive can be questioned under article 126 of the Constitution of 1978 and therefore, it is presumed that any other action in this regard is barred by the Constitution. Violation of fundamental rights could be challenged only in the Supreme Court. However, it is argued in this paper that a private action based on delict can be brought against a public body considering its breach of duty of care. Public bodies have no blanket immunity against private litigation. This paper argues that public bodies are legal entities established through legislation in which give rise to legal duties owed by them towards the public. Generally, these duties are connected to public welfare, health and public safety. It reflects basic rights of the people which are guaranteed by the Constitution. These duties are provided for the protection of specific legal rights of people in a community. The said legal right enables individuals who are affected by an act of a public body to challenge the wrongfulness of the act in a primary court. It is further stressed in this paper that the private action in this regard is more efficient today, due to the blend of human rights application in the common law in modern jurisdictions. The paper will look into two comparative jurisdictions with Sri Lankan law on this issue.

Udapadie Liyanage is a senior lecturer in the Department of Private and Comparative Law, Faculty of Law, University of Colombo, Sri Lanka. She is an Attorney –at –Law by profession. Currently, she is reading for her PhD in the area of personal injury law. Her disciplines of specialization are delict/ tort and environmental law. She has participated in many national and international law conferences by presenting research papers. She has contributed to the national development of the country by educating undergraduate and post graduate students as well as professionals on medico-legal aspects, environmental protection and liability relating to the field of construction in state and non-state sector. She has been a Visiting Academic at the UQ Law School in 2014.

Revolutionising the Concept of Pro Bono in Law: Promoting Partnerships

Maguire, Rowena, Field, Rachael and Shearer, Gail

This paper critiques traditional approaches to the provision of pro bono work by the Australian legal profession. It explores the contemporary challenges to, and gaps in, the traditional model. The paper argues that this model must be rethought to keep pace with the needs of the recipients of the benefits of pro bono work. In particular we argue that law firms should consider becoming funding partners with community legal centres, providing cash rather than services. Such an approach would provide recipients with autonomy and self-determination, acknowledge that the recipients are the experts in their own organisation's needs, and contribute to the building of a stronger culture for the expansion of access to justice and social justice.

Dr Rowena Maguire is a lecturer in the School of Law at the Queensland University of Technology and a research affiliate at the Cambridge Climate Change Centre for Mitigation Research. Rowena's principal research interests and publications concern international climate and forest regulation and indigenous and community groups rights and responsibilities in connection with environmental management. Her PhD research was concerned with the international regulation of sustainable forest management and this work has been recently published: Global Forest Governance: Legal Concepts and Policy Trends (Edward Elgar 2013). Rowena was awarded a Queensland and China Government Climate Change Fellowship in 2011 to undertake research on forest regulation in China. Presently Rowena is part of a Cambridge research team supporting the Kenyan government to prepare for Reduced Emissions from Deforestation and Degradation (REDD+) and climate smart agriculture investment.

She is a member of both the Environmental and Resource Management Research Programme and the Crime and Justice Research Centre's within the Faculty of Law at QUT. Rowena was the co- chair of the Shifting Global Powers Colloquium hosted by the QUT law faculty in November 2011; on the steering committee of the Rethinking International Law and Justice Conference hosted in Istanbul in September 2012 and the cochair of the Environmental Justice workshop hosted by the QUT law faculty in November 2012.Rowena is a co-editor on two collection emerging from the Shifting Global Powers Colloquium: Rowena Maguire, Bridget Lewis and Charles Sampford: Shifting Global Powers: Challenges and opportunities for International Law (Routledge 2013 forthcoming) and Rowena Maguire and Angus Francis, Protection of Refugees and Displaced Persons in the Asia Pacific Region (Ashgate 2013 forthcoming).

She teaches law in context, international law and environmental and planning law at the undergraduate level and international aid and development at the postgraduate level. Rowena is working with the Environmental Defenders Organisation Queensland to offer QUT students valuable exposure to environmental community legal organisation experience and she was part of a team that received a QUT Engagement and Innovation Grant in 2012 for this purpose. Other service related work includes consultation on a number of of donor funded consultancy projects such as designing and delivering environmental training programs for groups from Kenya, China, Vietnam and the Pacific.

Rachael Field has been an Associate Professor in the Law School since 2012. Her key teaching interests are in the first

year experience and dispute resolution. She was a University Teaching Fellow for 2005 focussing on the development of blended models of teaching delivery. Rachael was also the co-Program Leader (with Prof Sally Kift) of the Scholarship of Higher Education Learning in Law and Justice Program in the Faculty's Law and Justice Research Centre until 2011. Rachael was awarded an Australian Learning and Teaching Council Citation in 2008 and was made an ALTC Teaching Fellow in 2010. In 2010 Rachael worked with Professors Sally Kift and Mark Israel on the development of the Threshold Learning Outcomes for Law. In 2013 Rachael and Prof Nick James published a first year law text entitled "The New Lawyer". In 2014 Rachael co-authored a text (with James Duffy and Anna Huggins) aimed at promoting positive knowledge, skills and attitudes in law students called "Lawyering and Positive Professional Identities". Rachael has been a member of the First Year in Higher Education Conference organising committee since 2007 and will chair that committee from 2014.

Rachael has published widely in her areas of research interest which include dispute resolution, legal education, women and the law and family law. Rachael was the Chair of the Faculty Equity Committee between 2003-2005. Rachael has also been a member of the Women's Legal Service, Brisbane Management Committee since 1994 and has been President of the Service since 2004. Rachael completed her PhD through the Faculty of Law at the University of Sydney under the supervision of Professor Hilary Astor in 2011. Her thesis explored the notion of neutrality in mediation and offers an alternative paradigm based on professional mediator ethics.

Gail Shearer is a research assistant based at QUT.

Gender as a Hate Crime: Opening the Floodgates?

Maher, JaneMaree, McCulloch, Jude and Mason, Gail

The development of hate crimes legislation in recent decades has engendered discussions about the inclusion of gender in hate crime frameworks. Although the role of gender hatred in systematic crimes against women is well established, concerns about the dilution of effective responses to intimate partner violence, in particular, have been raised given the difficulty of prosecuting hate crimes. This paper explores the opportunity of a more limited and strategic application of a hate crimes approach to public crimes that demonstrate clear gender hatred of women. The ubiquity of gendered family violence, and the need to recognise this violence of the private sphere as a public issue, is an on-going legal and social challenge. Here, we consider the value of extending hate crime frameworks to offences against women where gender hatred is evident, as another avenue for public recognition of gendered violence.

Based on research in partnership with Victoria Police aimed at advancing understanding and implementation of prejudice motived crime strategies, the paper examines gender as a protected category in Australian jurisdictions. It focuses on the potential of legal and policing frameworks to sentence hate crimes against women as aggravated offences, when they are motivated by misogyny/ prejudice against women. This paper argues that there is value in advancing a fuller realization of gender as a protected category under hate crime frameworks, as part of a suite of challenges to crimes against women.

Associate Professor JaneMaree Maher works in the Centre for Women's Studies and Gender Research at Monash University and is Director of the Social & Political Sciences Graduate Research Program. She is currently researching public health approaches to childhood obesity and maternal responsibility and, with Professor Sharon Pickering (Monash), Professor Gail Mason (Sydney) and Professor Jude McCulloch (Sydney) is working on an ARC Linkage project with Victoria Police on prejudice motivated crime. With Sharon Pickering and Alison Gerard, she is the author of Sex work: Labour, mobility and sexual services (Routledge: 2013). Other recent publications include Consuming Families: Buying, Making, Producing Family Life in the 21st Century with Jo Lindsay (Routledge: London & New York 2013) and Vanity: 21st Century Selves with Claire Tanner and Suzanne Fraser (Palgrave MacMillan: London 2013) and the edited volume, The Globalization of Motherhood (Routledge: 2010) with Wendy Chavkin.

Professor Jude McCulloch is a Professor of Criminology.

Prior to working in universities, Professor Jude McCulloch worked as a lawyer for 16 years.

Her practices as a lawyer involved providing legal services to disadvantaged members of the community, running test cases, involvement in law reform, and developing legal policy at all levels.

Professor McCulloch has degrees in Law, Commerce and Criminology

Gail Mason is Professor of Criminology in the Sydney Law School, University of Sydney, Australia. Her research centres on crime, social justice and exclusion, particularly: racist and homophobic violence; hate crime law and punishment; cyberracism; and resilience amongst former refugee communities. Gail is co-ordinator of the Australian Hate Crime Network and is currently engaged in an international comparison of hate crime laws.

A Comment on the Recent Implementation of Tax Arbitration Courts in Portugal

Martins, António

As a private mechanism for conflict resolution, arbitration has been gaining ground in many places. It has its supporters and detractors. Tax litigation is an area that states have been resistant to transfer from public courts to the private resolution domain.

The purpose of this paper is to present an analysis of the rationale for setting up, in 2011, tax arbitration courts in Portugal. Usually, tax cases were seen as a litigation area where arbitration presented special complexities, and the state was cautious in accepting alternative avenues. The paper will focus on the following topics: What legal and economic boundaries were defined in the implementation of tax arbitration courts? Are criteria for selection of arbiters appropriate? Do appeal rules seem adequate? Are decisions (in terms of winning and losing cases for taxpayers and tax authorities) comparable to regular public tax courts?

To discuss these issues the paper will offer a review of arbitration trends and an appreciation of tax arbitration court rules in Portugal. The particular situation of case backlog in state tax courts and its impact on investors' perception of the business context in Portugal, was paramount in creating arbitration courts. Additionally, the Portuguese external assistance program, in the wake of the euro crisis, was an important factor in speeding up the use of alternative ways of dispute resolution in the tax area.

The paper will analyze the Portuguese situation in the light of pros and cons suggested by international literature. Statistical data related to the outcome of arbitration courts, in comparison with regular public tax courts, will also be discussed.

António Martins has a Degree in Economics (1985) and PhD in Management (1999) from the University of Coimbra (U.C.), Portugal. Assistant Professor of Taxation in the School of Economics of U.C.. Member or chairman of various tax reform committees in the Portuguese Ministry of Finance (1998, 2005, 2009, 2013). Expert in civil courts and arbitration courts in matters of corporate finance and tax Director of the MSc in Accounting and Finance, School of Economics U.C., 2001-2004. Author of papers published in the following journals: European Taxation, Intertax, Journal of Applied Accounting Research, International Journal of Law and Management, Management of Environmental Quality, Journal of Human Resource Costing & Accounting, Journal of Financial Reporting and Accounting

Emptiness of Self; Emptiness of Law. Interconnectedness and Its Implications for Restorative Justice

McDonell, Mark

Law is a cultural construct, the product of the worldview of its creators. In one sense, law is the pinnacle of its culture of origin: the expression, in theory and practice, of the ontological and philosophical knowledges of that culture as it asserts its reality on transgressors and insiders alike.

The legal systems derived through the tumultuous histories of Europe are this as much as are those of any other part of the world.

But law is not static, and it's assumptions and realities can and do change over time - as do those of its parent cultures - often through the influence of ideas (the constructed reality of its creators) from the world's diversity of cultures and peoples.

And according to one stream of these ideas, law's definition of self, and the self's definition of law, are as empty as each other.

Dr Mark McDonell received his PhD (The politics of justice: Buddhist Tibet and the West in conversation) in criminology/ comparative law from Southern Cross University in 2005. Since that time Mark has worked in many roles in government, as is presently employed in the Queensland Public Service.

Constructing the Community in Offensive Language Crimes

Methven, Elyse

In New South Wales, it is a crime to use offensive language in or near, or within hearing from a public place (s 4A of the Summary Offence Act 1988 (NSW)). Similar offences exist throughout Australia and New Zealand. In judging offensiveness, a court must have regard not only to the views of the so-called reasonable person, but also to whether the language offends current community standards.

In this paper I explore constructions of the community and 'community standards' in two offensive language case studies and in parliamentary debates. I employ tools from critical discourse analysis (CDA), particularly the research of Norman Fairclough and Theo van Leeuwen, to uncover linguistic strategies that have become naturalized in criminal justice discourse on offensive language. I also reveal how power relations and ideologies are constructed through such discourse. In particular, I examine the creation of categories such as 'the public', 'right-thinking members of the community' and 'the community', and how these categories delineate boundaries around the public to both include and exclude. I critique how politicians and judges construct an imagined, homogenous community with unified values on language use (particularly swearing), in order to justify the imposition of criminal punishment.

Elyse Methven: I am an associate lecturer and Quentin Bryce doctoral scholar in my fourth year of a full-time PhD at the Law Faculty, University of Technology, Sydney. The construction

of community is a significant component of my thesis, which examines criminal justice discourse on offensive language crimes. My supervisors are Dr Thalia Anthony, Dr Penny Crofts and Professor Katherine Biber.

'We will Decide Who Comes to this Country and the Manner in which they Behave': A Critical Reading of the Asylum Seeker Code of Conduct

Methven, Elyse and Vogl, Anthea

In December of 2013, Immigration Minister Scott Morrison announced that asylum seekers living in the community would be subject to a new Code of Behaviour. In early 2014, the Code quietly came into force and appeared in full on the department's website. All so-called "illegal maritime arrivals" who apply for a bridging visa must sign the code, and thereafter become bound by a "list of expectations" about how they should behave at all times while in Australia. Alongside the stipulation that asylum seekers must obey existing law, the code forbids them from engaging in "antisocial" or "disruptive activities" that are "inconsiderate or disrespectful, or threaten the peaceful enjoyment of other members of the community". They must not bully, spread rumours, spit or swear in public, or persistently "irritate" anyone.

This paper conducts a close reading of the Code and reviews its operation since coming into force. We argue that the core aim of the Code is a rhetorical one. It constructs "illegal maritime arrivals" as not only pre-criminal, but also as racialised "others", who must assimilate and adopt imagined standards of Australian behaviour and civility. We also argue that while the aims of the Code are primarily rhetorical, in practice it functions to add another level of precarity and surveillance to the lives of refugees subject to its terms.

Anthea Vogl is a Quentin Bryce Scholar and an associate lecturer in the final year of her PhD in Law at UTS and the University of British Columbia (jointly enrolled). Her doctorate examines the role of narrative in the reception and assessment of refugee applicants' first person oral testimony. Her areas of research are migration law, gender and law and literature.

The co-author of this paper, **Elyse Methven**, is an associate lecturer and Quentin Bryce doctoral scholar in her fourth year of a full-time PhD at UTS Law Faculty. Her research examines criminal justice discourse on offensive language crimes. Her areas of research are offensive language and swearing, criminal law, and language and the law.

Appointments to the High Court of Australia: The Role of the Print Media and its Reporting of Merit

Mudford, William

This paper explores the involvement of the media in appointments to the High Court of Australia with a particular focus on the reporting of the topic of 'merit'. It does so to explore the possibilities for greater public involvement in this important liberal democratic institution, currently undermined by the largely undisclosed appointments process undertaken by the executive government.

The paper utilises quantitative and qualitative research on 1419 newspaper articles over the period 1997 to 2013 covering the last 10 appointments to the High Court. The research finds that despite the stated importance of merit to the appointment process: a) the reporting of merit is inadequate as it does not

provide sufficient information about the complex meaning and content of merit; b) the media does not subject executive applications of merit in the selection of High Court Justices to sufficient public scrutiny; and c) the overall reporting rate of merit within the articles examined is low, but increases have correlated with the gender of appointees.

The limited reporting about merit appears to result from the media deeming appointments, and merit, to be of limited news value. The insufficient analysis in newspapers reinforces the perception that High Court appointments are not worthy of public scrutiny and debate. The media could contribute more to debate if the formal selection process were more transparent. It is suggested that this could occur through the executive providing detailed public articulation of the merit criterion and a list of candidates nominated. This would allow the media greater access to information to report on to the public.

William Mudford has just completed a Bachelor of Arts (Sociology) and a Bachelor of Laws (Hons) at the Australian National University under the supervision of Professor Margaret Thornton. For his honours thesis William conducted original research regarding the media reporting of the topic of merit in regard to appointments to the High Court of Australia. This involved developing social science research methodologies for the purpose of the research topic. William's research addresses a knowledge gap on the extent of informal public participation in, and accountability of, the appointment process that occurs through the media.

Place Matters: Gender, Community Context and the 'Rural' Legal Practice Experience

Mundy, Trish

It is apparent that community context significantly shapes the legal practice experience. In the case of 'rural' practice, it is widely acknowledged that increased visibility and reduced anonymity and privacy are corollaries of rural community life. Thus, the negotiation of personal and professional roles becomes a central challenge of the rural legal practice experience.

Building on the scholarship of rural 'space' and 'place', this paper explores the theme of public/private lives in the context of a phenomenological study of women's lived and imagined experience of legal practice in RRR communities in Queensland. The study involved in-depth interviews with 23 practitioners about their experience of RRR practice as well as twelve final year law students about their 'imagined' experience. It finds that not only is community context and the negotiation of personal and professional roles central to the legal practice experience, but that rural practice can deliver particular experiences and challenges – both lived and imagined - for women. It argues that women's experience of RRR legal practice must be understood within the context of its place, thus requiring an engagement with geography.

The paper will provide an overview of the research project and explore participants' accounts of their lived and imagined experience of 'community' with a particular focus on its relevance for the attraction and retention of women to practice in RRR communities.

Dr Trish Mundy is Lecturer and Head of Students within the School of Law at the University of Wollongong. Her current research is focused on legal practice and legal education issues as they relate to rural, regional and remote contexts.

Why We All Want to Save the World – The Motivations Behind Pro Bono Work

Murphy, Julian R.

This paper will analyse the different motivations that drive the individual providers of pro bono legal advice and representation. It will ultimately be suggested that in the Australian legal environment today there are many forces driving the provision of pro bono legal advice, some more honourable than others. Nevertheless it will be asserted that, in the majority of cases, the motivations for pro bono work are of little importance so long as a high quality of legal advice is maintained. In order to reach such a conclusion this paper will conduct a historical survey of the provision of pro bono legal advice. The historical study will begin with the figure of the Roman jurisconsult, an aristocrat who provided legal advice free of charge but who accrued considerable prestige in doing so. Then the focus will be turned to fifteenth-century England where, in certain circumstances, legal counsel would be allocated to parties at the public expense. This selective narrative of the pro bono lawyer will conclude with a discussion of the pro bono boom in the second half of last century. This contextual background will provide the basis on which to identify exactly why lawyers continue to provide free legal advice in today's market-driven world and how important this phenomenon is.

Julian Murphy completed his BA and LLB at the University of Melbourne, graduating with first class honours in both disciplines. While completing his studies Julian published and presented in the areas of literary criticism and art history. You can find his writing in Australian and international journals and magazines, including Arena, EXEGESIS, The Millions and TEXT. In 2014 he returned to the legal profession and is currently a criminal defence lawyer with the Northern Territory Aboriginal Justice Agency.

Advocating for Social Justice – Somebody's Got to Do It!

Nielsen, Jennifer

In its draft report, Access to Justice Arrangements (April 2014), the Productivity Commission described the provision of legal assistance services to the community as 'essential for the operation of the civil justice system' (610). Noting the lack of 'incentives for private lawyers' to work towards 'broad based reforms' (622), the Commission also concluded that strategic advocacy – what the sector describes as law reform and advocacy – 'should be a core activity of Legal Aid Commissions (LACs) and community legal centre (CLCs)' (625).

This work, the Commission said, is 'an important part of a strategy for maximising the impact of the LACs and CLCs work' (p 625). However, in practice, the Liberal-National coalition government is stripping the sector of its capacity to engage in strategic advocacy. After it election, the coalition promptly delivered promised funding cuts in the order of \$43.1 million to the community legal sector by defunding the peak ATSIL body, the National Aboriginal and Torres Strait Islander Legal Services, defunding all law reform and policy positions in ATSI legal services (Aust, 17/12/2013), and by stripping EDOs nation-wide of \$10 million of federal monies (SMH, 17/12/2013). In the wake of the 'age of opportunity' budget announcement, the federal Attorney General's office broadcast further cuts in the sector as well as a new term in funding agreements to preclude funding being applied to law reform or policy advocacy work.

This defunding holds great portent for access to justice throughout Australia's communities: as Duffy points out, 'Australia will have no access to informed, evidence-based frontline advice in regards to the effectiveness of the justice system' which will ultimately become 'more ineffective, inefficient and increasingly costly' (Shane Duffy, NATSILS' Chairman, Aust, 17/12/2013).

This paper will explore the function of strategic advocacy in civil society to discern its value and to question whether it is a private or a public activity – or perhaps, whether it is both.

Jennifer Nielsen teaches law in the School of Law & Justice at Southern Cross University. Alongside her work in the legal academy, she is a long term participant in the community legal sector, primarily as a management committee member with both the Northern Rivers Community Legal Centre and the Nimbin Neighbourhood and Information Centre. She has completed a number of research projects related to access to justice, with a specific focus on justice issues in rural, regional and remote communities.

"The Weight of Their Penmanship": Writing and (De)Righting Reality- Law, Psychiatry and the Incredible

Oppermann, Mariana

For the record (three haikus by 'Kate')

Bound in border lines Within the tomes kept on me Always another's

Trapped within their words Already discredited Why bother to speak

Just for the record, The weight of their penmanship, Does not create truth.

This paper explores a young woman's attempts to seek public accountability for discrimination and abuse within psychiatric care. It brings together quotes from her, the Mental Health Tribunal, medical records and a complaint to the Human Rights Commission to argue that the legal system supports a constitutive disempowering, rather than protection, of people with a mental illness.

Embedded in psychiatric practice is the notion that patients have pathological private selves that need to be cured or contained. Law is instrumental in empowering psychiatry not only to indefinitely detain and treat, but also to demand access to the most private parts of a person's self and insist upon the 'writing' of a new personal narrative. In this process the patient's own understanding and conception of self is made inherently incredible, as is their understanding of society and psychiatry (Goffman 1961, 1967; Rosenhan 1973).

Law claims not only to protect individuals (and the public) from the effects of mental illness, but also to protect them from potential abuse by the mental health system. Yet this case illustrates the manner in which Law usurps this young woman's ability to write her own narrative, at the same time as de-righting her by denying the credibility and public voice that is required to obtain legal citizenship and protection.

I conclude by pondering what a different system could look like.

Mariana Oppermann is a Canberra-based lawyer specialising in mental health law and human rights protection. She graduated with an anthropology degree and first class honours in law from the Australian National University in 2005. She is also a current graduate student in the Culture, Health and Medicine program at the ANU, focusing on the interaction between law, psychiatry and the rights of people with a mental illness. Mariana has set up Incredible Voices, an organisation that seeks to promote private voices that have been excluded from public discourse.

Public, Communal or Private: The Ritual of Voting Under Law

Orr, Graeme

The act of voting is constructed, by the secret ballot, as a private moment. Yet it is a private moment for the most public of purposes, electing those who would wield governmental power. Poet Les Murray described the ballot box as 'a closet of prayer' - as if the vulnerable voter is engaged in an appeal to the distant political gods. On average once every year, Australians troop into cardboard voting compartments, to make their pencilled marks on paper forms. They do so under pain of law.

In a secular society, this ritual of polling is the only time the social whole literally comes together. Tellingly, we are herded back (mostly) into schoolyards, those places designed to guide children into the status of citizens. Yet 'convenience voting' laws, freeing up postal and early balloting, are undermining the uniqueness of polling day.

The way the law and electoral institutions construct this ritual is telling, but under-evaluated. This paper will interrogate the ritual (both experiential and symbolic) aspects of the key elements of voting: the compulsory and secret ballot, its location and timing. It draws on my manuscript Ritual and Rhythm in Electoral Systems (commissioned for Ashgate publishing's Election Law, Politics and Theory series).

Graeme Orr: The law of politics, in particular electoral law, is Graeme's primary research expertise. He has authored The Law of Politics (2010), co-edited Realising Democracy (2003) and Electoral Democracy: Australian Prospects (2011), edited three symposia on the law of politics, and written a doctoral thesis on electoral bribery. In this field, he does consultancy/pro bono work, and regular media commentary, with opinion pieces in outlets such as the Australian Financial Review, Sydney Morning-Herald, Age, Courier-Mail, Canberra Times and major online outlets.

Graeme's current projects include ARC funded work with Ron Levy on deliberative approaches to the law of democracy, including a book for Routledge. He is also working on a book on ritual and rhythms in electoral process. Graeme has published extensively in labour law, the law of negligence and on issues of language and law.

An Associate in the Federal Court of Australia and solicitor of the Queensland Supreme Court, prior to joining The University of Queensland Graeme was an Associate Professor at Griffith University, where he taught for over 13 years. International Editor of the Election Law Journal and board member of the Australian Journal of Labour Law, Graeme was formerly managing editor of the Griffith Law Review, columnist with the Alternative Law Journal on sport's links to law, and employment law columnist with the Australian Journal of Administrative Law. He currently authors the entry on Australia for the Annual Register, a 255 year old almanac of world affairs.

Directors' Duties and Law-Made Gods: Towards a Theo-legality of the Corporation

Peters, Timothy

Giorgio Agamben, in his recent work Opus Dei, identifies the proximity between the 'ontology of command' and the 'ontology of office'. He states that '[b]oth the one who executes an order and the one who carries out a liturgical act neither simply are nor simply act, but are determined in their being by their acting and vice versa. The official—like the officiant—is what he has to do and has to do what he is: he is a being of command.' What Agamben thus defines as the ontology and politics of modernity finds its location in this understanding of one acting on the command of another. Yet, how is this dynamic understood when the person that the officer has to obey is a purely legal person such as a corporation? This paper seeks to explore the role and duty of directors and officeholders of corporations within the context of Agamben's political theology. In particular, it seeks to argue that something that is taken for granted within corporate law—the duty of the director to the corporation—in fact encompasses a theo-legality: that is, the directors acting on behalf of a purely legal person encompasses the recognition of a theological entity which does not exist aside from the actions of its agents.

Timothy D Peters holds an LLB and a Bachelor of Commerce from Griffith University. Having worked in Banking & Finance for a number of years, he is now a Lecturer at the Griffith Law School, Griffith University, Queensland, Australia. He has recently completed a PhD on the intersections of legal theory, theology and popular culture. Tim is also a Managing Editor of the Griffith Law Review and the secretary of both the Law, Literature and Humanities Association of Australasia and the Law and Society Association of Australia and New Zealand.

The E-Health Records Cloud – How and Why the Law Must Change to Promote Better Health Care

Phillips, Bianca

The introduction of new health records legislation in Australia last year was seen as a potential advancement in healthcare. It had been 14 years since The Institute of Medicine published a report entitled 'To Err is human' whereby it was proclaimed that between 44,000-98,000 people die due to preventable medical errors in hospitals. The author argues that the legislation holds potential to reduce medical mistakes, however, at the cost of personal privacy. The legislation is not fit and ready for consumer use, with various design flaws and inherent interpretation issues.

Bianca Phillips is a lawyer and sessional academic teaching at La Trobe Law School and Swinburne University of Technology. She is the lecturer of the subject Marketing Law at Swinburne University of Technology. Bianca has taught and examined over 12 law subjects across various specialities, however, her primary interest is health and medical law. She is a candidate of a Masters of Health and Medical Law at Melbourne Law School. Bianca also undertakes health and medical law contract work, with previous roles including as a legal consultant and researcher at the Cancer Council of Victoria and assisting a Medical Law Barrister with project work. There is an intersection between telemedicine and genetic screening, and therefore Bianca also researches the topic of genetics and the law. Bianca has for the past two years guest lectured on the topic of gene patents at La Trobe Law School. She is currently writing a series on telemedicine and the law for LexisNexis Australia. She has presented her work as a speaker at the Swinburne University eResearch Symposium and the 23rd Annual Medico Legal Congress in Sydney.

The Censorship of Copyrights and Its Effect on Public Lives

Platz, Christina

This paper will argue that the concept of censorship has played an important role in the development of copyright law in the West in the eighteenth century and remains inextricable from contemporary regimes of copyright protection in the twenty first century. The first part of the presentation will describe the situation of the English author in the eighteenth century that is to say before and after the enactment of the Statute of Anne 1710. This description will show how the control exercised by the Crown affected what authors could produce and disseminate in the public sphere.

The second part of the presentation will draw parallels between early formulations of copyright law and modern intellectual property law regimes. I will suggest that government censorship as exercised by the Crown through the development of copyright protection still affects what is disseminated in the public sphere. In the eighteenth century, for example, the Crown ultimately controlled through copyright law which books were available to the public and by doing so limiting creativity, freedom of speech and the free flow of information.

Finally, I will give examples that emphasise the link between censorship, copyright and subsequently how it affects society and public lives.

Christina Platz earned her Bachelor and Master of Laws at the University of Southern Denmark specialized in copyright law, international conflict resolution and contract law. She is currently enrolled in the PhD program at La Trobe University in Victoria with the theme international enforcement of copyright law.

Governing Justice: Exploring the Role of the State in a Privatised Criminal Justice System

Ransley, Janet and Wallis, Rebecca

Queensland's Commission of Audit Final Report 2013 and the Keelty Review into Queensland Police and Emergency Services both provide strong arguments in support of mass privatisation/ contestability of criminal justice services in Queensland. For many, this is seen as a step too far; the administration of criminal justice is a fundamental function of government and cannot be relinquished. We argue that any debate about privatisation in this context must start with a careful consideration of the role of government and non-government agencies in contemporary governance. Only after this has been clarified can we imagine how best multiple actors can contribute to a criminal justice system that maximises personal dominion.

Associate Professor Janet Ransley is Head of School, School of Criminology and Criminal Justice, Griffith University. Her research expertise includes the governance of crime and policing, and the development, implementation and evaluation of criminal justice policy. Specific research topics have included third party policing, police accountability, political misconduct, Indigenous people and court processes, asylum seeker and mental health detention, and miscarriages of justice.

Rebecca Wallis is an academic within the School of Criminology and Criminal Justice at Griffith University, where she teaches courses focused on legal and political frameworks underpinning the criminal justice system in Australia. She is currently in the final stages of her PhD which is examining the contribution children make to the life course of imprisoned mothers. She holds a Bachelor of Arts and a Bachelor of Laws from the University of Queensland and completed a Master of Criminology and Criminal Justice (Honours First Class) at Griffith University in 2009. Rebecca is also admitted as a solicitor to the Supreme Court of Queensland and the High Court of Australia, and she retains a keen interest in issues of law reform.

Defining Family Violence in Parenting Cases: Intersections of Social Science and Family Law

Rathus, Zoe

In 2011 the Family Law Act 1975 (Cth) was amended in ways aimed at improving the family courts' response to family The amending Act included a detailed definition of violence. family violence and a range of other legislative changes targeting sections which had been considered problematic in these cases. This paper examines those changes and considers the impact of the 'typology' social science literature about family violence in formulating the definition. It draws on an empirical study conducted by the author and a colleague about how social science research is being used in the Australian family law system. Five focus groups (three with lawyers and two with nonlegal practitioners) were conducted in Queensland in 2012 and 2013 to gain an understanding of practitioners' experiences. A clear finding is that social science literature is an integral part of the fabric of practice of lawyers, judges and other professionals in the family law system. While this may bring many advantages, the paper argues that insufficient attention has been given to the potential disadvantages for parties when lawyers introduce social science into the court room. Some cases will be examined to demonstrate how social science categorisation may sometimes work to disadvantage victims of family violence, including children who have lived with family violence. It is contended that legal definitions and social science categories are guite different in nature and should not be conflated.

Zoe Rathus AM is a senior lecturer at the Griffith Law School. She has worked in private practice and in community legal centres - as the co-ordinator of the Women's Legal Service in Brisbane from 1989 to 2004. She has been chair of the Queensland Domestic Violence Council and Deputy Chair of the Taskforce on Women and the Criminal Code as well as serving on a number committees and other advisory boards. During the 1990's she spent time in South Africa working on gender issues in the legal system and violence against women. Her research interests are in family law, family violence and women's experiences within the legal system.

Unearthing Bureaucratic Legal Consciousness: Government Officials' Legal Identification and Moral Ideals

Richards, Sally

This paper posits a series of underlying ideals connected to the way that government officials think about law in the formation of differing legal identification narratives. Through the construction of a heuristic that positions bureaucratic legal identification in relation to broader moral ideals, it argues that as government officials' identification with law increases so too does their idealisation of intellect, accountability, professionalism and impartiality. Conversely, as the officials' identification with law decreases, their idealisation of experience, truthfulness, intuition and empathy increases. The enquiry is conducted empirically; through content analysis of 40 open ended interviews with government officials in the Refugee Review Tribunal of Australia. To introduce and illustrate the heuristic the paper focusses on the relationship between idealisation of experience, intellect and bureaucratic legal identification. This study continues the Aristotelean tradition of concrete value realisation, unearthing the metacognitive ideals that structure law's operationalisation at the coalface of meaningful administrative decision- making.

Sally Richards is a PhD candidate and sessional lecturer at the University of New South Wales. Her PhD is on the legal

consciousness of government decision makers. Sally holds a BA, LLB (Hons) from the University of Sydney and was Visiting Student at the Centre for Socio-Legal Studies at the University of Oxford in 2013. Sally has volunteered for many years in refugee welfare organisations, worked for a judge at the Supreme Court NSW and practised as a litigation solicitor.

The Internet as the Public Domain

Rolph, David

One of the most significant defences to a claim for breach of confidence and misuse of private information is that the information has entered the public domain, thereby losing its confidential or private quality. This paper argues that, in order for a judge to determine whether information has entered the public domain, he or she has to construct implicitly a notion of what constitutes the public domain. Traditional mass media outlets, such as newspapers, radio and television, are readily taken by courts to form part of the public domain. Examining some recent Australian and English cases, this paper explores the idea that conception of the public domain and considers the theoretical, principled and practical implications of this conceptual difficulty.

Dr David Rolph is an Associate Professor at the University of Sydney Faculty of Law. He specialises in media law, particularly defamation and privacy. He is the author of a number of books, most notably Reputation, Celebrity and Defamation Law (Ashgate, 2008), as well as a number of book chapters and journal articles. From 2007 to 2013, he was the editor of the Sydney Law Review.

How Does Being a Lawyer Enable Women to be Active Citizens and Productive Public Beings?

Rubenstein, Kim

Women lawyers stand at the professional forefront of women's participation in Australian civic life. As Mary Jane Mossman wrote of the first women lawyers in the late nineteenth and early twentieth centuries, while 'the role of women doctors could be explained as an extension of women's roles in the 'private sphere'; by contrast, women lawyers were clearly 'intruding on the public domain explicitly reserved to men'. This 'intrusion' into the legal profession is far from complete and the last 100 years has seen many new women pioneers at the 'rolling frontier' of the Australian legal profession, as they enter previously male-only areas of practice, adopt new ways of practicing, take up elite legal positions and enter the profession from increasingly diverse socio-political, ethnic and religious backgrounds.

Nevertheless, Australia is far from achieving an equality of women's participation in the legal landscape and is still working towards full citizenship for women in the civic legal world. In 2002, for example, Justice Michael Kirby observed that only six women had 'speaking parts' before the High Court that year (Kirby, 2002: 148). Within the court system, women judges make up only 33% of the total bench (AIJA, 2011). In the commercial sectors too, women 'remain clustered at the lower paid, lower status end of the legal professional hierarchy' (Hunter, 2003a: 93; Thornton and Bagust, 2007), despite women law students now entering universities in greater proportions than men (CLE, 1998; Patterson, 2006). As a result, these women leaders in the legal profession, 'trailblazers at the legal frontier' are, as Harrington (1994: 7) writes, 'virtually at the centre of the struggle... because the law is powerfully implicated in the ordering and the reordering

of the society, both as conservator of the old and formulator of the new'.

This paper examines how being a lawyer has enabled the women interviewed to see themselves as active citizens and as productive public beings.

Kim Rubenstein is Professor and Director of the Centre for International and Public Law (CIPL) in the ANU College of Law. As the foremost expert on Australian citizenship law, Kim worked as a Consultant to the Department of Immigration, Multicultural and Indigenous Affairs, advising on the restructure of the Australian Citizenship Act 1948. The 2007 Australian Citizenship Act came into force on 1 July 2007. She was also a member of the Independent Committee appointed by the Minister for Immigration and Citizenship to review the Australian Citizenship Test in 2008. Her work on trailblazing women lawyers and oral history evolved from her interest in biography through her work in progress on the story of Joan Montgomery AM, OBE and Presbyterian Ladies' College and through her work on gender and constitutional law. In 2012 Kim was listed in the first batch of The Australian Financial Review and Westpac's '100 Women of Influence' for her work in Public Policy, and in 2013 Kim won the Edna Ryan award for 'Leadership for leading feminist changes in the public sphere'. Kim was also an enthusiastic participant in the Feminist Judgment project and thoroughly enjoyed writing the judgment in the constitutional law case, R v Pearson; Ex parte Sipka [1983] HCA 6.

How Can a State Control Swallowing?: Medical Abortion and the Law

Sheldon, Sally

Medical abortion has brought about a revolution in abortion provision, contributing to a significant decrease in maternal mortality worldwide and now accounting for a large proportion of terminations in many countries. Given that it provides a readily available, very safe, highly effective means of procuring a termination, with little need for technical assistance from third parties unless complications arise, its implications seem radical. This paper represents an attempt to think through some of the consequences for the role of the state in regulating abortion and for legal frameworks grounded in the technical possibilities and assumptions of an earlier age.

Most fundamentally, when combined with the possibility of online purchase, medical abortion drugs pose serious challenges for the enforcement of any prohibition, including very late in pregnancy. 'How', asks one commentator, 'can a state control swallowing'? Further, online provision poses public health concerns around abortion in a more modern frame: in sourcing drugs from an unknown, online supplier, women are clearly risking their health. Yet what responsibility, if any, does a state have to help them guard against such risks when the drugs are sought with the intention of subverting existing domestic law?

Sally Sheldon is a professor in Kent Law School. Her research interests are primarily in health care law and ethics, and the legal regulation of gender. She has published widely in the area of medical ethics and law, including a book on abortion law ('Beyond Control: Medical Power and Abortion law', 1997) and a co-edited collection of essays on Feminist Perspectives on Health Care Law (1998). Together with Richard Collier of Newcastle Law School, she has also co-authored a socio-legal study of fatherhood ('Fragmenting Fatherhood', 2008) and co-edited 'Fathers' Rights activism and Law Reform (2007). She is on the editorial board of the journal, Social & Legal Studies, and is a trustee of the reproductive health charity, bpas. She is currently working on an AHRC-funded project on medical abortion.

Hierarchies of Wartime Rape

Simić, Olivera

While rape and other forms of sexual violence have attracted considerable local and international attention, this recognition is predicated on an 'ideal' victim subject. This paper examines the excluded or silenced narratives of wartime sexual violence among women belonging to so-called 'perpetrator' war-torn nations. In the paper, although these denials and silences are contextualised more generally, I specifically focus on the silence surrounding Bosnian Serb women's experiences of wartime sexual violence within academic, legal and public discourses. I argue that the current discourse on wartime sexual violence results in the construction of a problematic victim hierarchy that excludes and 'misrecognises' 'other' women's experiences of sexual violence during and after armed conflict.

Dr Olivera Simić is a Lecturer with the Griffith Law School, Griffith University, Australia. Her research engages with transitional justice, international peacekeeping and international human rights. Olivera has published in journals such as International Journal of Transitional Justice, Law Text Culture, Women' Studies International Forum, International Peacekeeping as well as in books and book chapters. Her latest collection, The Arts of Transitional Justice: Culture, Activism, and Memory after Atrocity (with Peter D Rush), has been published by Springer in 2014. Olivera's monograph Surviving Peace: A Political Memoir was published by Spinifex in August 2014.

Feminist Judgments?: International Criminal Law and Peoples' Tribunals

Simm, Gabrielle

Since the early 1990s, international criminal law has been the focus of much feminist activism and contestation. The substantive law, rules of evidence and victim-centred procedures are often compared favourably with domestic laws on sexual violence. International Criminal courts and tribunals established by states and international organisations have a higher representation of female judges than all other international courts and tribunals (with the exception of the European Court of Human Rights). While there is a danger that focusing on sexual violence risks diverting feminist attention from other issues, Janet Halley claims that the effectiveness of feminist activism in shaping the ICTY and ICTR shows that 'feminism rules.'

This paper examines the relationship between official international criminal courts and tribunals and unofficial or women's tribunals that address international crimes related to sexual violence. It seeks to locate unofficial tribunals, which include a series of world courts of women, in the context of the Feminist Judgments projects undertaken in Canada, the UK, Australia, Ireland and the US and International Law Feminist Judgments project currently underway at the University of Leicester, UK. This paper aims to consider what challenges unofficial tribunals present to the idea of international criminal law developed in official courts and tribunals as exemplary feminist doctrine on sexual violence.

Dr Gabrielle Simm is a lecturer at Macquarie Law School, Macquarie University. She is also a Visiting Fellow at UNSW Law School where she worked as a Senior Research Associate in the Australian Human Rights Centre. She has taught law at UNSW, the Australian National University and the University of British Columbia. Prior to commencing her PhD, she worked as an international lawyer at the Department of Foreign Affairs and Trade and the Attorney-General's Department in Canberra. She has also worked as a refugee lawyer in Melbourne at Victoria Legal Aid and in a voluntary capacity at the Refugee & Immigration Legal Service.

Public /Private , State / Donor – Challenges in Higher Education in Cambodia

Smith, Rhona

On 30 March 2014, the Cambodia Minister of Education announced a moratorium on the establishment of new universities in the country. It was quoted that there were over a hundred universities at that time, in a country of c.14 million people. Higher education, like many aspects of Cambodian life, has been influenced by the vagaries of donors ebbing and flowing since the transitional authority in 1993. Private universities outnumber public universities more than three to two. Student numbers are booming, but the core capacity of academic staff has not kept pace with these changes. Consequently, the focus is turning to increasing the quality of the education on offer, ensuring that Cambodian graduates have a high level learning experience delivered by international level professors. Capacity development is key. This paper will focus on the presenter's personal experience of human rights education capacity building within the higher education sector in Cambodia.

The paper will trace the recent history of higher education in Cambodia, focussing on legal education. It is within law that human rights education is being introduced, albeit that a more general programme has been introduced in civic education at all school levels. Challenges identified in universities will be discussed, some drawn from personal experience, others identified by the Minster of Education and or heads of universities. Current initiatives to address these problems will then be outlined. The paper will conclude with tentative comments on the future of higher (legal) education in Cambodia and outstanding challenges to be addressed.

Dr Rhona KM Smith is Professor of International Human Rights at Northumbria University in the UK and Visiting Professor at Pannasastra University in Phnom Penh, Cambodia. She has experience of capacity building projects in the higher education sector, primarily in Asia, though also in Africa. These projects are generally funded by Scandinavian institutions; her work in Cambodia is under the auspices of the Raoul Wallenberg Institute of Sweden (with Swedish development funding). She previously worked extensively in China on human rights capacity building in higher education and professional legal sectors. She has also written textbooks on international human rights and published across a range of related topics.

Too Much Law! Too Few Sanctions! The Clash of Private & Public Regulatory Regimes

Snider, Laureen

This article is an in-depth look at the challenges of law enforcement in contested terrain, where regional specificities, turf wars, historical differences and inter-provincial rivalries compound the now well documented – and enormous - challenges of governing powerful economic actors.

Empirically, the comparative focus in financial crime, specifically stock market regulation in Canada, the only country in the developed world without a central financial regulatory agency. Canada has 13 competing regulators, one in each province and territory, plus a central coordinating agency with no statutory power. The largest is the Ontario Securities Commission (OSC), followed by commissions in Quebec (which operates in French), Alberta (now a key oil power) and British Columbia. Consecutive federal governments have struggled for decades to establish a national regulator analogous to the Australian Securities and Investment Commission (ASIC), Britain's Financial Services Authority (FSA), or the Big Daddy of them all, the Securities Exchange Commission (SEC) in the United States. The latest setback is surely the most definitive: a unanimous 7-0 decision by Canada's Supreme Court on December 22, 2011 declaring that financial regulation was constitutionally a provincial, not a federal responsibility.

This leaves Canada's reputation as a haven for financial criminals unchallenged, since rogue actors denied trading privileges in one province can merely shift operations to the one next door. Indeed, statistics show that the OSC, the agency with jurisdiction over most large international firms, prosecutes ten times fewer securities law violations per firm and twenty times fewer insider trading violations than the much-criticized Securities and Exchange Commission (SEC) in the United States. And its average fines per insider trading case are seventeen times smaller. Add all the self-regulatory semi-private regulators of stock exchanges and investment dealers, and one has a massive legal stew.

Laureen Snider is an Emeritus Professor of Sociology at Queen's University, Kingston, Ontario. Recent publications include: The Surveillance-Industrial Complex: Towards a Political Economy of Surveillance, 2013 (edited, with Kirstie Ball); "The "Great Unwatched" and the "Lightly Touched"*: Surveillance and Stock Market Fraud", (with Adam Molnar) in K. Ball & L. Snider, eds., The Surveillance-Industrial Complex: A Political Economy of Surveillance, London: Routledge: 2013: 122-138; "Examining the Ruggie Report: Can Voluntary Guidelines Tame Global Capitalism?", S. Bittle & L. Snider, Critical Criminology 2013: 21: 177-92; and "The Conundrum of Financial Regulation", Annual Review of Law & Social Sciences. Chicago: University of Chicago Press (2011).

Responding to the Environmental Emergency with New Legal Pluralism: A Case Study of the Forest Stewardship Council

Stacey, Jocelyn

Environmental issues confront us as an ongoing emergency from the perspective of the problem they pose for the rule of law. The epistemic features of serious environmental issues - the fact that we cannot reliably distinguish ex ante between benign policy choices and choices that may lead to environmental catastrophe - are the same features of an emergency. This means that, like emergencies, environmental issues pose a fundamental challenge for the rule of law: responding to environmental issues is incompatible with legal governance strictly through legal rules. This paper explores one axis along which emergencies and environmental issues seem to diverge. While emergencies lead to over-zealous state action that ignores constitutional norms, in the environmental context we are faced with the problem of state inaction. Thus, in recent decades we have seen the rise in environmental governance regimes in which the state plays a minor, or even nonexistent, role in regulating the environment. This paper argues that the concept of the environmental emergency, which the author has developed elsewhere, offers a framework for understanding the relationship between governance and legality that is far more nuanced that then law/governance and public/private dichotomies often cited in environmental literature. Rather, the environmental emergency leads us to a 'new legal pluralism' that marries the insights of common law constitutionalism with democratic experimentalism. The author develops this argument using the Forest Stewardship Council's British Columbia standard, an example of how non-governmental regulation attempts to respond to a specific example of the environmental emergency.

Jocelyn Stacey is a Doctor of Civil Law Candidate in the McGill Faculty of Law and a Visiting Scholar at the TC Beirne

School of Law at the University of Queensland. Her thesis is on environmental law and legal theory, arguing that serious environmental issues constitute emergencies for the purpose of understanding the role of law in environmental decision-making. She holds a Joseph-Armand Bombardier Canada Graduate Scholarship. Jocelyn completed her LLM at Yale Law School, while holding a Viscount Bennett Scholarship, and was the silver medalist in her LLB class at the University of Calgary. Prior to completing her LLM, she clerked for the Honourable Justice Marshall Rothstein at the Supreme Court of Canada.

Concepts of Public and Private in the Criminal Law: Their Role in Legitimising Criminalisation and Suppressing Subaltern Perspectives on Place

Spiers Williams, Mary

The 'normal' construction of 'place' in Australia is that of the public and private. When issues arise that concern the public and private, critics normally do not challenge the categories, and instead engage with responses (usually the State, an individual, or a particular cohort) to those two states of place, or otherwise seek to understand these two categories in different ways.

In this paper, I consider some implications of this 'normal' construction of space/place as either 'public' or 'private' for the criminal law.

I examine how the concepts of the private and the public affect three areas of the criminal law (policing, offence construction and sentencing), using three quite different case studies (or sets of case studies). The first case study concerns the exercise of police powers in the context of a raid on an Alice Springs town camp in 2008, and explores how these concepts contribute to the legitimation of that exercise of power. The second examines the summary offence of going armed in public, the process of charging through to conviction, exploring how these concepts legitimise the construction of an offence and mask alternative purposes for the creation of that offence. Finally, I examine how the concepts of public and private have influenced the changing sentencing jurisprudence and legislative response to the sentencing indigenous men for violence against women and children.

These case studies shed light on otherwise sublimated assumptions about the nature of the private and the public, and expose the infrastructure of their cultural construction. Locating this analysis in the context of case studies with a nexus to indigenous people exposes, perhaps inevitably, the way that colonialism annexes these concepts to serve its objectives, and how the phenomenon of colonisation reiterates itself. These case studies also encourage us to consider that there is at least a third or a parallel domain in the Australian landscape, that is, ngurra.

Mary Spiers Williams is a doctoral candidate at the Australian National University. Her PhD topic is 'Legal Concepts of culture and their effect on sentencing.'

A criminal law practitioner for various legal aid organisations in NSW and the Northern Territory and the NSW Office of the Director of Public Prosecutions, Mary was also senior policy officer for the NSW Attorney General's Criminal Law Review Division for three years and has conducted legal education and advocacy for Aboriginal peoples in remote and regional central Australia, and facilitated law and justice projects with Warlpiri people.

She has taught at the Universities of Sydney, Adelaide, Monash and New South Wales and the Australian National University, primarily criminal law and procedure and criminology, as well as sentencing, evidence, advocacy, and penology. She is now teaching Evidence and Lawyers, Justice and Ethics.

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"Home" and the High Court of Australia: Hit and Miss

Steer, Charlotte

Three recent cases in the High Court of Australia reveal conceptions of "home" that continue to reflect the dichotomies of public/private and male/female. These dichotomies can be applied in ways that disempower women, and that trivialise, or deflect attention from, the harm done to them as individuals. Alternatively, the dichotomies can illuminate harms that are either specific to women or are experienced differently by women. Recognising the dichotomies and differences enables judges to better reflect the realities of women's lives, and to develop judicial reasoning in ways that protect women's rights to autonomy, dignity, safety, and home.

In S134, a refugee woman's opportunity to make a home for herself and her children in Australia, and her homelessness as a refugee, were never addressed in the discourse of the judges.

In Munda, a case of (wo)manslaughter by domestic violence, the judges noted with distaste the failure of the man to provide a safe and protective defacto relationship. This paints the familiar picture of the weak and passive female victim. Alternatively the judges could have noted that the woman, killed in her own home, had been denied her rights of autonomy, dignity, safety and home.

In Monis, offensive material sent through the post was discussed in terms of the right to freedom of political communication, not whether it was reasonable to be offended. However, all the judges discussed the added incivility of sending the mail to a private home. The six judges split on gender lines: the male judges took a strict rights-based approach, giving the implied freedom of political communication an almost unrestricted scope. The female judges took a much more nuanced and contextualized approach to proportionality, validating the sanctity of the home.

Is this fuel for the arguments that being a woman makes a difference? Not necessarily.

Charlotte Steer has lectured in Federal Constitutional Law, Administrative Law, Public Law, Housing Law, Torts, Social Security Law, Property and Equity, Legal Ethics, Legal Research and Writing, and Foundations of Law and has a Graduate Certificate in University Learning and Teaching. Ms Steer has worked as a Tribunal Member at the Consumer, Trader and Tenancy Tribunal, a Conference Registrar at the Administrative Appeals Tribunal, a solicitor at the Legal Aid Commission of NSW and the NSW Anti-Discrimination Board, and as Associate to Justice McHugh AC on the High Court.

Free, Prior and Informed Consent: The New Standard for Indigenous State Relationships when Resource Developments occurs on Indigenous Lands

Stephenson, Margaret

Resource development projects frequently occur on the territories of Indigenous peoples. On a global scale, States and development proponents engage with Indigenous traditional land owners impacted by their operations and in so doing apply various guidelines. The principle of "free, prior and informed consent" (FPIC) has been given recognition in international law as a standard underlying dealings with Indigenous traditional land owners. A recent articulation of FPIC is found in the 2007 United Nations Declaration on the Rights of Indigenous Peoples. The concept of consultation finds expression in ILO Convention 169 (Indigenous and Tribal Peoples) with guidelines as to how consultation with Indigenous peoples should be conducted.

Driving current interest in the FPIC standard is the adoption by the International Finance Corporation (IFC) of the FPIC values as a Performance Standard on Social and Environmental Sustainability. The FPIC norm has also been adopted by the 79 Equator Principle Financial Institutions, including key financial institutions such as the World Bank. With the International Council on Mining and Metals also endorsing FPIC principles in 2013 resource developers are being required to give consideration to implementing FPIC standards.

Understanding and implementing FPIC principles is a challenge for States, resource proponents and Indigenous communities alike, given FPICs inconsistent applications and the inadequately defined concept of "consent" - a concept subject to differing and conflicting interpretations. This paper will identify and define the requirements of FPIC and will reflect on the meaning, origins and application of free, prior, and informed consent as well as the assumptions underlying its application to Indigenous lands. It will review States' approaches to developing consultation and negotiation policies with their Indigenous communities and will identify what influence FPIC has had or may have on such policies.

Prior to commencing an academic career **Margaret Stephenson** practised as a solicitor in Property Law in Brisbane. Margaret currently teaches in the areas of Property Law, Native Title and Comparative Indigenous Legal Issues. Her teaching experience has also ranged over the following areas: Contract Law, International Law and Introduction to Law. Margaret has developed and taught a number of courses on native title and indigenous rights both at undergraduate and postgraduate level, including a postgraduate Comparative Indigenous Masters OnLine course. In 2001 Margaret Stephenson was Visiting Professor at Indiana University School of Law, Indianapolis, Indiana, USA. Margaret's research interests include real property law, native title and comparative indigenous rights and she has published and delivered conference papers, both nationally and internationally, in these areas. She has compiled and edited three books, Mabo: A Judicial Revolution, Mabo: The Native Title Legislation and Australia Republic or Monarchy, and is a co-author of Land Law.

Redeeming a Constitutional Promise: Equal Justice and Free Legal Aid in India

Sudhir, Abhishek

The purpose of this paper is to demonstrate that the large unmet legal need in India can be satiated by institutionalising a pro bono culture. In order to achieve this purpose, the paper is divided into four principal sections. The first section chronicles the genesis of the right to legal assistance in India, starting from judicial pronouncements and culminating in the incorporation of Article 39A into the Constitution of India, whereby legal aid was accorded the status of a 'directive principle of state policy'. The second section examines the functioning of the formal legal aid sector in India, central to which is the National Legal Services Authority (NALSA) Act operationalised in 1995. Relying on various official reports the section concludes that NALSA has not been very successful in meeting the legal needs of disadvantaged groups in India. The focus of the third section is the informal pro bono sector, where the contribution of key participants such as law schools, students and law firms are examined on the basis of various empirical studies. On the basis of these studies, the section concludes that the hitherto followed model of voluntary pro bono work has failed to inspire. Thus, the fifth and final section makes concrete suggestions for reform, prime amongst which is pro bono commitments being incentivised by the bodies that regulate law schools as well as lawyers, so as to ensure that no Indian is denied the opportunity of securing justice because of a socio-economic disability.

Abhishek Sudhir is Assistant Professor & Assistant Director, Centre for Public Law and Jurisprudence at the Jindal Global Law School. He holds a master's degree from University College London with a specialisation in corporate law, intellectual property law, jurisprudence and civil litigation. He has deposed before the Parliamentary Standing Committee on Law and Justice on the Judicial Appointments Bill. He qualified as a Barrister-at-Law during his time in England and has also been admitted to the Bar in India. While a student he participated in and won national debate and moot competitions. He worked as a volunteer in the United Kingdom's pro bono sector with organisations such as the Bar Pro Bono Unit, Personal Support Unit and Free Representation Unit.

His areas of academic interest include constitutional law, the civil procedure code and the criminal procedure code. He writes a weekly column titled "Constitutionally Speaking" for The Political Indian. Additionally, he has contributed to the Economic and Political Weekly, India's foremost academic publication since 1949. He has also made Op-ed contributions to national newspapers in addition to being published in academic journals. He offers an elective titled "The Making of India's Constitution" and is currently working on a book titled "Revisiting the Constituent Assembly Debates: Lessons for Contemporary India".

When Public and Private Lives Collide: Religious Exceptions in Australian Discrimination Law

Sweeney, Laura

The preservation of the public / private divide is one of the tacit objectives of Australian discrimination law. The scope of antidiscrimination legislation is typically limited to 'public sphere' areas, including employment, provision of goods and services and education. Exceptions for discrimination in the areas of private accommodation, domestic employment and religion reinforce the public / private distinction and reflect the liberal conception of family, home and religion as 'private sphere' activities. Drawing on feminist legal scholarship, this paper focuses on the exceptions for religious organisations to explore the impact of the public / private divide on the ability of anti-discrimination legislation to eliminate discrimination and promote equality.

Laura Sweeney works at the ANU College of Law as a Research Associate in the Migration Law Program and Executive Officer of the ACT Law Reform Advisory Council. The Council is currently inquiring into the scope and operation of the ACT Discrimination Act. Immediately prior to joining the ANU College of Law Laura was the A/g Executive Director of A Gender Agenda, a support and advocacy organisation for transgender, gender diverse and intersex people.

Laura holds a Bachelor of Arts and first class Honours in Law from the Australian National University (ANU) and is currently completing a Master of History at ANU, focusing on Australian legal history. She wrote her honours thesis under the supervision of Professor Margaret Thornton on the origins, nature and consequences of the religious exceptions in the Sex Discrimination Act 1984 (Cth).

Reasonableness in Everything; Reasonableness in Nothing: A Feminist Call for National Consistency in the Laws of Self Defence

Tarrant, Stella

The paper makes a feminist argument for national consistency in the laws of self-defence. The inconsistency between the Commonwealth, States and Territories legislation is itself an obstacle to justice for women. Specifically, it is argued that the primary structure of self-defence as formulated in the Model Criminal Code (and now enacted by the Commonwealth, New South Wales, the Northern Territory and the Australian Capital Territory) should be enacted in all Australian jurisdictions. The difference between this model and the model in other jurisdictions lies in where the "reasonableness" requirements arise. It is argued that, while "reasonableness" itself is at the heart of feminist critiques of self-defence, the different ways it is expressed in these legislative models has no bearing on substantive justice for women. A national approach is needed. The paper considers two further, related issues. First, feminist method consistently focuses on the particular, not the general; feminist critiques generally insist that claims about what is true need to take account of particular social contexts. The paper accounts for the apparently anti-feminist method in this argument that a general, national law of self-defence should overtake the different, statebased constructions. Second, the central idea in the article, that legislative consistency itself (not only the content of laws) is a substantive justice issue, also underpins some justifications for general codification of the criminal law. The article speculates on how the specific argument about consistency in the structure of self-defence may relate to a more general project of formulating an Australian Feminist Criminal Code.

Associate Professor Stella Tarrant is a graduate of the University of Western Australia (B.Juris (Hon, first class) and Yale University (LLM)). She began her career as Associate to Justice Toohey of the High Court of Australia and as a solicitor in the Land and Heritage Unit of the Aboriginal Legal Service of Western Australia. She studied as a Harkness Fellow and a Fulbright Scholar in the United States before joining the Law Faculty at the University of Western Australia from 1996-2002. After raising her two sons in their early years, Associate Professor Tarrant returned to teaching at UWA Law School in 2009 and resumed her research career in 2013.

Government Regulation of Indigenous Identity

Thompson, Ruth

What is more private than the answer to the question: "who am I?" For Indigenous people in Canada a great deal of the answer to the question is subject to intrusion by public institutions. Federal legislation in the form of the Indian Act still regulates Indian status for First Nations people. The Supreme Court of Canada recently decided that Métis are, for the purposes of the Constitution Act, Indians. Long ago the same court decided that Inuit people are not constitutional Indians, but in the interim the Constitution Act recognized the Indian, Inuit and Métis as the Aboriginal peoples of Canada. The Métis and Inuit have signed agreements with the government that endorse the idea of one Indigenous identity per person.

Ruth Thompson is the Director of the Program of Legal Studies for Native People (PLSNP) at the University of Saskatchewan Native Law Centre. She holds a B.A. (Honours) from the University of Regina, an LL.B. from the University of Saskatchewan, and an LL.M. from Dalhousie University.

She has been involved with the Program of Legal Studies for Native People, in both teaching and administrative roles, since 1982. She developed a skills-based curriculum for the PLSNP between 1985 and 1989 which had a significant impact on the PLSNP's success rate. She revised the PLSNP's substantive course content in 1993- to encourage law schools to give students credit for the program. As a result, most Canadian law schools recognize it as equivalent to their first year property course.

She has taught international law, legal writing and academic support at the University of Saskatchewan College of Law. She coached its Jessup international law moot team to a world championship. She currently team teaches a course in international and comparative Indigenous rights involving professors and students from universities in Canada, the US, Australia and New Zealand, and supervises graduate students in Aboriginal and international law.

Labour Law, Social Media Policies and the Chilling of Voice

Thornthwaite, Louise

The increasing pervasiveness of web-based technologies has presented employers with particular challenges in terms of employee voice and resistance, as well as surveillance, privacy and discipline. This paper is concerned with the implications for labour law of social media and the social media policies that employers increasingly are developing to regulate employee online behaviour. The object of this paper is to consider the limits which labour law imposes on the content of employers' social media policies under national labour laws in the Australia and the United States. In the United States there is also a growing body of litigation in relation to the protected concerted action provisions in the National Labor Relations Act (NLR Act). To regulate employees' online behaviour, it is increasingly common for employers to establish detailed social media policies with wide-ranging prohibitions on the use made of social media. In the United States, the National Labor Relations Board has commented extensively on the capacity of such policies to chill collective voice and action, thus contravening the NLR Act. In Australia, the national industrial tribunal, Fair Work Australia, has recently criticised several social media policies for being overly broad and punitive. The object of this paper is to consider the limits which labour law imposes on the content of employers' social media policies under national labour laws in the Australia and the United States. More broadly, through its focus on the implications of social media policies for the regulation of employees' online behaviour outside the workplace, this paper is concerned also with the purpose and scope of labour law, including the effects of such regulation on employer regulation of employee conduct when off-duty and, by association, the scope of employees' implied contractual duties to employers.

Louise Thornthwaite: I am an Associate Professor, Department of Marketing and Management, Macquarie University. I have published widely across the fields of labour law, industrial relations, human resource management and public policy - on subjects as diverse as employer associations and their influence on industrial relations, work/family balance, discrimination and EEO law and practice. My most recent work has dwelt on workers compensation law in NSW, superannuation governance, and social media and the law. In 2013, the Australian Journal of Labour Law published my article on 'Social Media, Unfair Dismissal and the regulation of employees' conduct outside work'. I continue to work on issues to do with the the public/ private distinction as well as on the impact of social media on trade unions and employer groups.

The Statutory Guillotine: The Inadequacy of Adoption Laws in Relation to Step-parent Adoption

Thorpe, Karen

Adoption is generally perceived as a way to provide 'good' homes and families for infants who do not have them. However, adoption laws are not only used to provide 'good' homes for Australian children. Adoption laws are just as frequently used for a lesser known type of adoption called step-parent adoption (SPA). Rather than an unrelated couple adopting an infant, SPA involves the child's birth parent and step-parent jointly pursing a private action to adopt the child. This action is almost exclusively pursued jointly by the child's birth mother and stepfather. As early as the 1970s strong concern was expressed about adoption laws being used for a purpose far removed from providing a vulnerable infant with suitable home and instead being used to sever a child's existing links with his or her paternal family. Whereas, the Commonwealth had for many years been encouraged to take over responsibility for all adoptions laws from the States for the benefit of children, these pleas were rejected. However, in 1992 legislation was put before the Parliament of the Commonwealth of Australia to make SPA a Special Federal Matter. The aim of these laws was to ensure that only applicants who were first granted leave by the Family Court of Australia could seek an adoption order in a State jurisdiction. A review of contemporary SPA cases highlights some unexpected incongruence between expressed public policy ideals and the views expressed by the Family Court of Australia. The review of case law, suggests that SPA maybe more closely aligned with replicating the ideal of the family exemplar than it is concerned with pursuing the best interests of the child.

Karen Thorpe

- In 2010 I was admitted to practice as a lawyer in the State of Queensland
- I am a Member of the Queensland Law Society
- Worked in the areas of medical, mental health and insurance law
- More than a decade in Community Legal Sector

Education

- Admitted to Master of Laws (Adv) 2013 (UQ)
- Graduated from Master of Laws 2009 (UQ)
- Graduated from Juris Doctor 2005 (UQ)
- Graduated from Master of Arts 1997 (UWS)
- Graduated from Bachelor of Arts 1992 (UQ)

Interests

- Human Rights Law (Eur)
- Adoption Law
- Employment Law
- Medicine and the Law
- Insurance Law

I am currently a graduate student at UQ enrolled in the Master of Laws (Adv). My abstract is based upon the findings of my dissertation which will be complete in June 2014.

Law as Code

Turner, Christian

"The" law at any place and time is a cultural quality of that moment, not the pre-programmed expression of a singular human will. We find ourselves governed by the constraints of the various communities of which we are a part, some recognizing one another, others strangers. These include the laws of nations and provinces, local zoning ordinances, the terms of our employment , the constraints imposed by family, the norms of neighborliness, the terms of the various contractual agreements, and other limitations of which we are hardly aware. We are the subjects of a cacophony of authorities, each, through these mutually allocated constraints, granting us entitlements, the negative space we call property. How can there be order in all this? How can law can be a field of intricately pursued purpose rather than a field of warring, coercive claims? There are some obvious solutions: law as hierarchical combinations of lawmakers, law as product of hermetically separated zones of authority among lawmakers, law as might makes right. I propose a model to understand the plethora of interactive legal systems as an interacting system of information-exchanging institutions that speak an objectoriented language and maintain their own systems of primary and secondary rules. Public and private, understood relative to the legal system in which they are embedded, are the primitive institutional types, each of these categories containing many sub-types. The model shows, among other things, how pluralistic legal systems can be understood without assuming a hierarchy.

Christian Turner is an associate professor at the University of Georgia School of Law, where he teaches courses in regulation, property, land use, and legal theory. His research interests include the public/private distinction, the regulation of information and knowledge, and theories of legal systems. Christian previously served as a visiting assistant professor at Fordham Law School, an associate at the Wiggin and Dana law firm in Connecticut, and a law clerk for Judge Guido Calabresi of the U.S. Court of Appeals. He graduated with a J.D. in 2002 from Stanford and with a Ph.D. in mathematics from Texas A&M University in 1999.

Reconceptualising the Subject of Lawrelation Inter-subjectivity under the CRPD

Weller, Penelope

The feminist analysis of the public/private divide in the 1970s conceptualised law and legal discourse as an exercise of public power relegating women (and children, the elderly, and those with disabilities) to a social realm beyond law. Much of the human rights movement since that time has been concerned with the extension of the rule of (human rights) law as a universal right. In parallel, scholars inspired by Foucault have drawn attention to mechanisms that 'govern from a distance' operating beyond, beneath and within the law. More recently, legal scholars have augmented the governmental analysis by observing that law and legislation reinforces the governance of populations in the modern regulatory states, albeit within recourse to different modes of governmental power. Paradoxically, the overlapping dynamics of modern society have fuelled an increase in coercive legislative frameworks for individuals with disabilities justified on rights based grounds. This has prompted the criticism that the neo-liberal paradigm co-opts rights base augments to extend the coercive power of the state. This paper identifies and addresses the 'rights paradox' in the context of law reform debates about the public/private divide surrounding the United Nations Convention on the Rights of Persons with Disabilities (CRPD). The CRPD is hailed as a paradigm shift in the international approach to human rights, bringing people with disabilities out of the shadows (beyond law) into the light (of regulation). This paper explores the consequences for disability law of the re-conceptualisation of the atomistic rational subject of classical legal theory with a relational inter-subjective being.

Dr Penelope Weller is Senior Lecturer in Law in the Graduate School of Business and Law at RMIT University. She served as the Deputy Director of the Centre of the Advancement of Law and Mental Health in the Faculty to Law at Monash University form 2008-2013. Recent publications include the monograph New Law and Ethics in Mental Health Advance Directives: The Convention on the Rights of Person with Disabilities and the Right to Choose (New York: Routledge, 2013) and Rethinking Rights–Based Mental Health Laws (Hart 2010) co-edited with B. McSherry.

The Reshaping Game: Constructing Gendered Ideals in Drug Courts

Wilson, Amanda

In the criminal justice context, therapeutic jurisprudence is transforming the way justice is "done" by providing a framework for non-adversarial pursuits such as problem-solving courts. These courts direct their focus to the individual, attempting to address the underlying cause(s) of their offending. Drug courts aim to break the cycle of drug-dependency and crime by utilising a combination of court-mandated treatment, close monitoring and the provision of services and supports. Within this context, judicial officers and other team members actively engage in the practice of reshaping individuals through discourse and being prescriptive about the way that people live their lives. Gender is fundamental to the self. If drug courts are engaged in the practice of "remaking" people, then it is important to consider how gender plays out in this process. Drawing on observation and interview findings from a comparative study of drug courts in Australia and Canada, this paper illustrates how drug courts are both gendered and gendering and how women participants conform to, resist and negotiate the constructions of gender placed on them. By focusing on the discursive practices of drug courts in

constructing gendered ideals we can begin to realise the plight of gendered subjects in a therapeutic jurisprudence context.

Amanda Wilson has worked as a consultant Criminologist since 2007 and has taught social science and criminal justice in the Faculty of Arts and Social Sciences and the Faculty of Law at the University of New South Wales since 2008. She has held research positions on various projects at Australian universities and has been employed as a consultant by a number of agencies including NSW Police, the Department of Attorney General and Justice, Legal Aid NSW and Housing NSW. She is a member of the Australian Drug Law and Reform Initiative and the International Network on Therapeutic Jurisprudence. Her research interests include: therapeutic jurisprudence, gender and criminal justice, socio-legal inquiry and research methodology, and social justice. Amanda is the co-developer and convenor of a new Masters course titled Therapeutic Jurisprudence: From Conception to Application which was run for the first time in Semester 1, 2014 by the Faculty of Law at UNSW.

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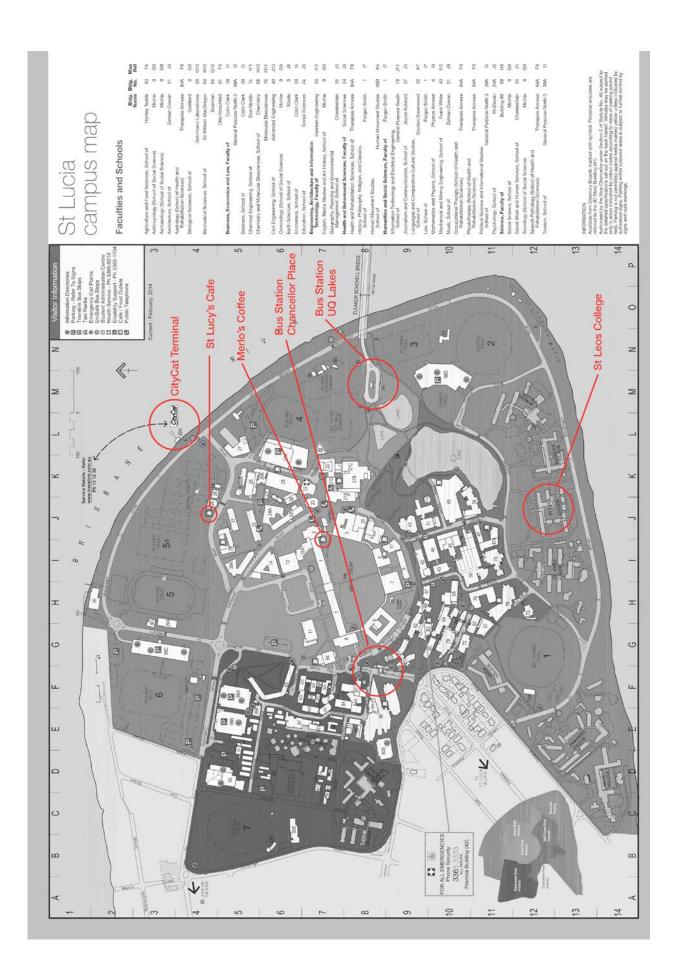
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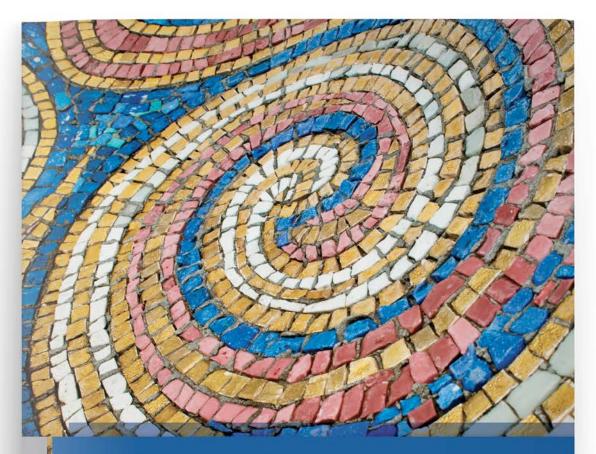


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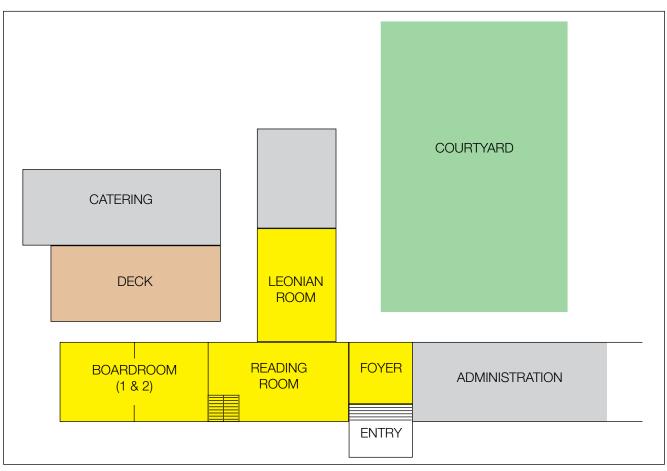
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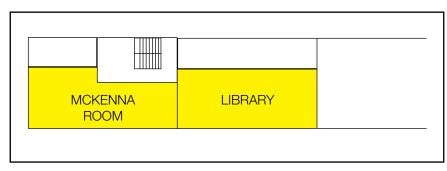
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