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GENERAL CONFERENCE INFORMATION

Venue information
The conference is being held at Flinders University, Victoria Square,
182 Victoria Square, Adelaide SA 5000.
Information about Flinders University’s Victoria Square campus is available at www.flinders.edu.au/victoriasquare/victoriasquare_home.cfm

Emergency contacts
Contact Victoria Square Security:
Monday to Friday from an internal phone press the Security speed dial button
or from a mobile: 0427 611 106
Weekends from an internal phone dial 12 880
or from a mobile: 8201 2880
Conference questions should be referred to All Occasions Group:
www.aomevents.com/LSAANZ2015/Contact

Registration and name tags
When arriving at the conference, please collect your name tag from the All Occasions staff at the registration desk, located in the Foyer of level 1, 182 Victoria Square, Adelaide. Please ensure you wear your lanyard for all conference sessions on all days as entry to conference sessions will be by lanyard.

Conference dinner: Regattas, Adelaide Convention Centre
Regattas Restaurant is located in the Adelaide Convention Centre on North Terrace. Overlooking the picturesque southern bank of the River Torrens, Regattas is a classy yet relaxed family restaurant that serves modern Australian food with South Australian wines and beers. The conference dinner will be held on Wednesday 2 December 2015 from 6.30pm. Dinner tickets are available at $65 per person.
Flinders University enjoys a well-justified reputation for its excellence in teaching and research. It has a long-standing commitment to enhancing educational opportunities for all. Flinders is proud of its achievements in innovative research, in high quality teaching and in community engagement. We have led the way in providing access to higher education for individuals who did not traditionally aspire to university. We have attracted students from over 100 countries and our alumni have built careers and lives that enrich communities across Australia and throughout the world. Flinders’ achievements are underpinned by the strong external links that we have developed with our stakeholders and with the communities we serve. We commit to being a university that is outwardly engaged, continuing to build the supportive and valued relationships that will be vital for the future.

Traditional owners
We acknowledge the Kaurna people, the traditional owners of the lands and waters where the city of Adelaide has been built.

Flinders University was established on the lands of the Kaurna Nation with the main Flinders campus located near Warriparinga. Warriparinga is a significant site in the complex and multi-layered Dreaming of ancestral being Tjilbruke. For the Kaurna Nation, Tjilbruke was a keeper of the fire and a peace maker/law maker. Tjilbruke continues to be part of the living culture and traditions of the Kaurna people. His spirit lives in the land and waters, in the Kaurna people and in the glossy ibis (known as Tjilbruke for the Kaurna). Through Tjilbruke the Kaurna continue their creative relationship with their country, its spirituality and its stories.

Flinders University’s city presence at Victoria Square/Tarndanyangga is located at an important meeting place for Indigenous people past and present. The area, a former campsite for the ‘Dundagunya tribe’ serves today as the focal point for many political and community-based Indigenous events that draw people from all over. Tarndanyangga is also the site at which the Aboriginal flag flies permanently in Adelaide. The name ‘Tarndanyangga’ derives from the Kaurna words tarnda ‘red kangaroo’ and kanya ‘rock’.

Flinders University recognises the unique position of all Indigenous Australians as First Nations people, and aims to provide all our students and staff with an understanding of and respect for traditional and contemporary Indigenous cultures.

Flinders University is also committed to closing the gap in Indigenous education and health outcomes, respecting and recognising Indigenous perspectives, facilitating participation rates of Indigenous peoples, and significantly increasing the numbers of Indigenous students and staff.
## SESSION TIMETABLE

**Tuesday 1 December 2015**

<table>
<thead>
<tr>
<th>Time</th>
<th>Session</th>
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<tbody>
<tr>
<td>9.30–10.30am</td>
<td>Registration and coffee</td>
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<tr>
<td>10.30–11.00am</td>
<td>Welcome to country and opening</td>
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| 11.00–12.30pm | **Keynote: Is law inside or out? And why does it matter?**
<p>|               | Lynn Mather                                                             |
|               | Room: 1.1                                                               |
| 12.30–1.30pm  | Lunch                                                                   |
| 1.30–3.00pm   | Concurrent Session 1                                                    |
|               | <strong>Disability and Social Insurance</strong>                                     |
|               | Room: 2.1                                                               |
|               | Chair: Bridgette Toy-Cronin                                             |
|               | <strong>Mariana Oppermann</strong>                                                   |
|               | Madness inside and out the National Disability Insurance Scheme:       |
|               | structural impacts of the NDIS on social constructions of psychosocial |
|               | disability                                                             |
|               | <strong>Genevieve Grant &amp; Emilie Friberg</strong>                                    |
|               | Diagnosing justice? Claimant encounters with officials in the Swedish   |
|               | social insurance system                                                 |
|               | <strong>Warren Forster &amp; Tom Barraclough</strong>                                   |
|               | Who gets to decide that your injury was caused by anything?             |
|               | <strong>Reason, Medicine and the Self</strong>                                       |
|               | Room: 2.2                                                               |
|               | Chair: Katherine Curnow                                                 |
|               | <strong>Chris Dent</strong>                                                          |
|               | Frankenstein’s monster and the nineteenth century rise of the legal    |
|               | construct                                                              |
|               | <strong>Colleen Davis</strong>                                                       |
|               | Medical killings inside and outside the law of homicide                 |
|               | <strong>Sue Jarrad</strong>                                                          |
|               | Older persons and decision-making capacity: adaptations of law in the   |
|               | medical setting                                                         |
|               | <strong>In and Out of Prison</strong>                                                |
|               | Room: 2.3                                                               |
|               | Chair: Julian Murphy                                                    |
|               | <strong>Jeremy Ryder</strong>                                                        |
|               | Artist, criminal, both? What impact does prisoners’ artwork have on the|
|               | outside?                                                                |
|               | <strong>Carol Lawson</strong>                                                        |
|               | Civil oversight: one size fits all? Insights from prison visitors in     |
|               | Japan and the ACT                                                       |
|               | <strong>James Roffee</strong>                                                        |
|               | Baseline sentencing: elite interviews and counter narratives             |
|               | <strong>Legal Geographies 1</strong>                                                 |
|               | Room: 1.2                                                               |
|               | Chair: Mary Spiers-Williams                                             |
|               | <strong>Susan Bird, Malin Fransberg &amp; Vesa Peipinen</strong>                         |
|               | Urban wildscapes in Helsinki: exploring legal geographies in a DIY       |
|               | sauna                                                                   |
|               | <strong>Kim Economides</strong>                                                      |
|               | Connecting law’s internal and external spaces                           |
|               | <strong>Shaun McVeigh</strong>                                                       |
|               | Encounters of law and place – on the transport for London Bus Route     |
|               | number 68 from Norwood to Euston Station, taking in ‘The BP exhibition:  |
|               | “Indigenous Australia: Enduring Civilization” at the British Museum      |
| 3.00–3.30pm   | Afternoon Tea                                                           |</p>
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<tr>
<th>Time</th>
<th>Concurrent Session 2</th>
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<tbody>
<tr>
<td>3.30–5.00pm</td>
<td>Justice at the End of Life Room: 1.2 Chair: Kathy Mack</td>
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<tr>
<td></td>
<td>Susannah Sage-Jacobson &amp; Sue Jarrad Resolving disputes under the Advance Care Directives Act (SA)</td>
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<td>Katherine Curnow End of life decision-making: barriers to access to justice at a health provider level</td>
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<td>Pam Oliver ‘All I want is to die peacefully’: regulating for risk in assisted dying laws</td>
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<td>Rape and Sexual Violence Room: 2.1 Chair: Jane Wangmann</td>
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<td>Rachel Hirsch ‘Don’t mention the war’: legal excising of footballer gang rape</td>
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<td>Robyn Holder &amp; Kathleen Daly Money: exploring the meaning of financial assistance for survivors of sexual victimisation</td>
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<td>Heather Douglas Evidence and victim experience in sexual and domestic violence cases: the approach of the feminist judge</td>
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<tr>
<td>5.00–5.30pm</td>
<td>Therapeutic Justice Room: 2.3 Chair: Sharyn Roach Anleu</td>
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<td></td>
<td>Danielle Misell The legal and therapeutic constructions of the appellant in Habra v Police</td>
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<td>Fiona Tait Testaments of transformation: the victim impact statement process in NSW as experienced by victims of crime</td>
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<td>5.30–6.30pm</td>
<td>Methodology and Ethics Room: 2.2 Chair: Angela Melville</td>
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<td></td>
<td>Genevieve Grant Getting bang for your data buck: empirical research using administrative and other existing data</td>
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<td>Olivera Simić ‘Doing the research I do has left the scars’: challenges of researching in transitional justice field</td>
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<tr>
<td>6.30–7.00pm</td>
<td>Beverages</td>
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<td></td>
<td>Elliott Johnston Memorial Lecture: Why First Laws Must Be In Jacinta Ruru Pilgrim Uniting Church, 12 Flinders St (Opposite Flinders in Victoria Square)</td>
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<td></td>
<td>Canapes and Beverages</td>
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## Wednesday 2 December 2015

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<tr>
<th>Time</th>
<th>Event</th>
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<tbody>
<tr>
<td>8.30 – 9.30am</td>
<td>Registration</td>
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</table>
| 9.30–11.00am  | **Panel: How might we better engage Indigenous Knowledge in the academy and move towards putting the colonial imaginary of the savage to rest?**  
Irene Watson, Marcelle Burns, Jen Nielsen  
Room: 1.1                                                      |
| 11.00–11.30am | Morning Tea                                                            |
| 11.30am-1.00pm| **Concurrent Session 3**                                             |
|               | **Children, Parents and Medical Interventions**                       |
|               |  
**Room:** 1.2  
**Chair:** Jessie Hohmann                                      |
|               | **Travis Wisdom**  
Children with intersex variations: legal regulation and human rights in Australia |
|               | **Fiona Kelly**  
Transgender children and the Family Court                          |
|               | **Cornelia Koch**  
Stop ‘the chop’! The case for legal regulation of underage boys’ circumcision |
|               | **Rachel Peterson**  
The problematic assumption of the birth mother as legal parent in surrogacy agreements when using reproductive technologies in the UK |
|               | **Legal Education 1: Diversity**                                      |
|               |  
**Room:** 2.1  
**Chair:** Ann Genovese                                               |
|               | **Dee Smythe**  
Rhodes must fall! On teaching law (in context) in post-apartheid South Africa |
|               | **Anne Hewitt**  
Empowering engagement: developing skills for embracing, celebrating and accommodating diversity in law school classrooms and beyond |
|               | **Angela Melville & Susana Arrese**  
Teachers’ perceptions of international student diversity: barriers, enrichment or self-actualisation? |
|               | **Jennifer Nielsen & Marcelle Burns**  
Race and the law: a critical journey for law students                |
|               | **Towards Transnational Approaches to Socio-legal Questions**         |
|               |  
**Room:** 2.2  
**Chair:** Trish Luker                                               |
|               | **Mary Spiers Williams**  
Mass incarceration of Aboriginal people in Australia: can law be emancipatory? |
|               | **Deirdre Howard-Wagner**  
Indigenous practices inside and outside the court system in Newcastle, New South Wales |
|               | **Marium Jabyn**  
Emancipatory politics, legal cultures and the international human rights regime |
|               | **Saptarshi Mandal**  
Global governance, local feminisms: a case study of legislating domestic violence in India |
|               | **Family Violence**                                                   |
|               |  
**Room:** 2.1  
**Chair:** Heather Douglas                                          |
|               | **Robyn Holder, J. Putt & C. O’Leary**  
The spaces between: advocating with and for Aboriginal women facing violence |
|               | **Deirdre Howard-Wagner**  
Legal space and its influence on access to justice for Indonesian women victims of domestic violence |
|               | **Katherine Kerr**  
The dangerous impact of criminalising abortion: domestic violence and reproductive coercion |
| 1.00–2.00pm   | **Lunch and LSAANZ AGM**                                             |
|               |  
(Room: 1.1)                                                         |
## Concurrent Session 4

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<th>2.00–3.30pm</th>
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<tr>
<td><strong>Indigenous Legalities</strong>&lt;br&gt;Room: 2.1&lt;br&gt;Chair: Dierdre Howard-Wagner</td>
<td><strong>Constructing Legal Truths</strong>&lt;br&gt;Room: 2.3&lt;br&gt;Chair: Shaun McVeigh</td>
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<tr>
<td><strong>Stephen Young</strong>&lt;br&gt;Native Title in an FPIC World: questioning the continued reliance on the right to negotiate</td>
<td><strong>Trish Luker</strong>&lt;br&gt;Reading the archive: historians as expert witnesses</td>
</tr>
<tr>
<td><strong>Andie Palmer</strong>&lt;br&gt;An indivisible and honourable Crown: a potential treaty partner for First Nations and Maori following the Mutua (Mau Mau) decision</td>
<td><strong>Leah Findlay</strong>&lt;br&gt;The new (140) characters in court reporting: media coverage of NSW criminal proceedings from colonisation to Web 2.0</td>
</tr>
<tr>
<td><strong>Jessie Hohmann</strong>&lt;br&gt;Treaty as object, object as treaty: challenging the dichotomies of legal authority</td>
<td><strong>Rob McQueen</strong>&lt;br&gt;Transgressing boundaries on regulating rumours</td>
</tr>
<tr>
<td><strong>Sarah Ciftci</strong>&lt;br&gt;Inside and outside of the circle: implications of culturally inclusive models for the broader decolonisation of Indigenous child welfare</td>
<td><strong>S Che Ekaratne</strong>&lt;br&gt;More than moustaches: legal protections against unauthorised photo-manipulation in a technologically advanced society</td>
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<tr>
<th>3.30–4.00pm</th>
<th><strong>Afternoon Tea</strong></th>
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<tr>
<th>4.00–5.30pm</th>
<th><strong>Sub-Plenary Sessions</strong></th>
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<tr>
<td><strong>Major works in feminism and law: a 25 year anniversary celebration</strong>&lt;br&gt;Reg Graycar, Jenny Morgan, Ngaire Naffine, and Margaret Thornton&lt;br&gt;Chair: Ann Genovese&lt;br&gt;Room: 1.2</td>
<td><strong>Earth jurisprudence: geography, science and property</strong>&lt;br&gt;Nicole Graham, Lee Godden, John Page, Claire Williams&lt;br&gt;Chair: Margaret Davies&lt;br&gt;Room: 2.1</td>
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| 6.30–11.30pm | **Conference Dinner** |
### Thursday 3 December 2015

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<tr>
<td>8.30 – 9.30am</td>
<td>Registration</td>
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<tr>
<td>9.30–11.00am</td>
<td><strong>Sub-Plenary Sessions</strong></td>
</tr>
</tbody>
</table>
| A dialogical encounter of ethical futures (The existential threat: how do you bring wisdom to the table?) | Christine Black and Olivia Barr  
Room: 1.2 |
| Decriminalising abortion | Barbara Baird, Mark Rankin, Clare Parker, Sally Sheldon  
Chair: Mary Heath  
Room: 2.1 |
| 11.00–11.15am     | Morning Tea                                                            |
| 11.15–12.45pm     | **Concurrent Session 5**                                               |
| Commerce and Tax  | Room: 2.2  
Chair: Margaret Davies |
| Nikola Georgiev   | Principle of autonomy in Letter of Credit (LC): an overview from legal and shariah perspective |
| Megan Vine        | Wine Equalisation Tax Rebate: rethinking the legal framework in a social, environmental and economic context |
| Chilenye Nwapi    | The significance of mining codes in Africa for company–community relations and social licence to operate |
| Theorising Law's Insides and Outsides | Room: 2.3  
Chair: Jen Nielsen |
| Rhys Aston        | Anarchism, law and social change                                        |
| Timothy Peters    | Turning corporate law inside out: a political theology of the corporate body |
| Saika Sabir       | Using intersectionality in the 'post-period': law, gender and identity politics in contemporary India technologically advanced society |
| Women's Health Law | Room: 2.1  
Chair: Sally Sheldon |
| Suzanne Belton    | Transforming the Medical Services Act in the Northern Territory: the frontiers of feminist law advocacy |
| Suzanne Belton & Virginia Skinner | Transforming the Medical Services Act in the Northern Territory: making laws that work for women and health practitioners |
| Felicity Gerry    | Don't blame the parents: female genital mutilation and how campaigners have succeeded where law and policy feared to tread |
| Anna O'Rourke     | Legal strategies of anti-abortion activists in Australia |
| Courts, Activism and Access | Room: 1.2  
Chair: Robyn Holder |
| Tanya Josev       | Is ‘activism’ a dirty word now? The campaign against activism in the courts |
| Bridgette Toy-Cronin | A limited welcome: methods and motives for communicating outsider status to litigants in person |
| Lisa Webley       | When is a family lawyer, a lawyer?                                      |
| John Flood        | Form and substance in lawyer–client relationships                      |

12.45–1.30pm | Lunch |
<table>
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<tr>
<th>Time</th>
<th>Concurrent Session 6</th>
</tr>
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</table>
| 1.30–3.00pm  | **Legal Geographies 2**  
Brendan Grigg  
Legal time warps and obesogenic environments: slow law/fast food  
**Lauren Butterly**  
Dipping your toes into legal geography: governing sea country spaces in Australia  
**Julian Murphy**  
Architecting access to justice: the courts as doors to the law  
**Work-Life Balance in the Legal Profession and Judiciary**  
Room: 2.1  
Chair: John Flood  
*Richard Collier & Margaret Thornton*  
Balancing on a tightrope: law and life in the legal profession  
*Kathy Mack & Sharyn Roach Anleu*  
Managing work and family in the Australian judiciary: metaphors and strategies  
**The Legal Limits of State Power**  
Room: 2.2  
Chair: Chilenye Nwapi  
*Anna Kingsbury*  
Cybersecurity, moral panics and the law of confidential information  
*Andrew Kenyon*  
A state of affairs of freedom implications of media and free speech in German law  
*Sascha Mueller*  
Codifying extraordinary powers: furthering democracy or executive creep?  
**Miscarriages of Justice**  
Room: 1.2  
Chair: Tim Peters  
*Kevin Borick*  
A fair trial is a basic human right  
*Bibi Sangha & Robert Moles*  
Miscarriages of justice and the statutory right to a second or further appeal in South Australia. |
| 3.00–3.15pm  | **Afternoon Tea** |
| 3.15–4.00pm  | **Closing Plenary: Law’s Aliens**  
Margaret Davies  
Room: 1.1 |
| 4.00–4.30pm  | **Conference Wrap Up** |
KEYNOTE PRESENTATIONS

Professor Lynn Mather, Emerita

Keynote Presentation: Is Law Inside or Out? And Why Does it Matter?

Sponsored by the Law Foundation of South Australia.

The conference theme of Inside Out depicts law as fixed — a jurisdictional boundary, a set of normative categories, a designation of persons or organisations that fall within law’s bounds. Yet we know that this stability is immediately compromised and undercut by the social processes that constitute law in practice. Globalisation has further complicated legal boundaries by offering new opportunities for movement from inside to outside (and vice versa). But who determines where law resides? Who polices the boundaries? In her lecture, Lynn will explore the role of legal actors who enforce the inside/outside distinction and suggest how their communities of practice (of police, lawyers, judges – each with their own insiders and outsiders) construct law, sometimes reinforcing its stability and other times transforming it. Lynn will draw on examples from race and police, family law, tort lawsuits against tobacco, and changes in the legal profession, among others, to investigate why it matters whether law is ‘inside’ or ‘out’.

Lynn Mather, SUNY Distinguished Service Professor, is professor of law and political science and former director of the Baldy Center for Law and Social Policy at the University at Buffalo, State University of New York. A leading international scholar in the field of law and society, Mather served as president of the International Law and Society Association in 2001–02. She has published extensively on lawyers, legal professionalism, women in the legal profession, courts in popular culture, and trial courts and public policy. Her current research explores lawyers’ ethical conduct through empirical study of attorneys in different areas of practice.

Associate Professor Jacinta Ruru

Elliott Johnston Memorial Lecture: Why First Laws Must Be In

This talk will take the theme of this conference, Inside Out, to explore the role of first laws – the laws of Indigenous Peoples – within settler legal systems. If settler legal systems wish to realise aspirations for legal reconciliation with Indigenous Peoples, then an important component of this is to recognise Indigenous Peoples’ laws. This talk will consider how the common law and legislation ought to be embracing Indigenous laws. This talk provides a comparative perspective with Aotearoa New Zealand.

Jacinta Ruru teaches first year law and upper level optional courses in Maori Land Law and Law and Indigenous Peoples at the Faculty of Law, University of Otago, New Zealand. Her more than 90 publications explore Indigenous Peoples’ legal rights to own, manage and govern Maori land, national parks and coastlines. She has co-led several national and international research projects on the common law doctrine of discovery, Indigenous Peoples’ rights to freshwater and minerals, and multidisciplinary understandings of landscapes. She has won awards in teaching, research and for supervision. She is on the leadership team of Nga Pae o te Maramatanga, New Zealand’s Maori Centre of Research Excellence (joining Associate Professor Tracey McIntosh as co-director in 2016) and is an associate at the Indigenous Law Centre, University of New South Wales.
Professor Margaret Davies

Keynote Presentation: Law’s Aliens

In science fiction, aliens are often a metaphor for an archetypal other. This can take the form of either the literal outside beyond Earth or the interior psychological phantoms that shape human life. Aliens are beyond cognition, but also in many ways definitive of the earth and its inhabitants. In this paper, I will use the figure of the alien to illustrate some of the relationships between law and its disciplinary others. In particular I consider the changing relationship between socio-legal approaches, which were traditionally positioned as external to law, and the intrinsic critiques associated with continental philosophy. On the one hand, alien disciplines approach and shape the law from without, while on the other, the alien is present in knowledge, but as an absence, always there, but lurking in the cracks, ready to erupt when we least expect it. Recent developments in critical and socio-legal thought have made this distinction untenable. My paper will consider whether it any longer makes sense to think of law as having an inside and an outside.

Margaret Davies is Matthew Flinders Distinguished Professor at Flinders University. She was a foundation staff member of the Law School and has been a visiting scholar at Birkbeck College, Umea University, UBC, University of Kent, and Victoria University of Wellington. She has been a recipient of three Australian Research Council grants, and is a Fellow of the Academy of Social Sciences in Australia and the Australian Academy of Law.

PANEL

How Might We Better Engage Indigenous Knowledge in the Academy and Move Towards Putting the Colonial Imaginary of the Savage to Rest?

Wednesday 9.30am

This plenary session will discuss the long-term exclusion of Indigenous knowledges and engage with the work of scholars who are working in the field. Irene Watson will discuss her work with other panellists who have similarly worked to better include an Indigenous knowledges approach.

**Irene Watson**, Professor University South Australia Law School, belongs to the Tanganekald and Meintangk-Boandik First Nations Peoples of the Coorong and the South–east of Australia. Irene has worked as a legal practitioner since 1984, been a member of the Aboriginal Legal Rights Movement in South Australia from 1973, worked as an academic with the University of South Australia, David Unaipon College of Indigenous Education and Research from 2008–2014, and is currently Professor of Law at the University of South Australia. Irene has extensive experience working on questions of international law and Indigenous Peoples and has published extensively in this area. Her most recent publication is *Aboriginal Peoples, Colonialism and International Law: Raw Law* (Routledge, 2015).

**Jennifer Nielsen**, Senior Lecturer, Southern Cross University, has been a law teacher for more than 20 years, and has taught and developed curriculum on Indigenous legal issues and race and the law. Her teaching is informed by her research that seeks to critique mainstream law by engaging with Aboriginal Peoples’ conversations of colonialism, self-determination, whiteness and racism.

**Marcelle Burns**, Predoctoral Fellow, School of Law, University of New England, has extensive experience in developing curriculum on Indigenous Peoples and law at three universities. She led the inclusion of Indigenous knowledges in the LLB program at QUT (2008–2015). Marcelle is currently leading an Office for Teaching and Learning Grant to develop an Indigenous cultural competency program for legal academics, to support the inclusion of Indigenous knowledges in legal education.
Major works in Feminism and Law: A 25 Year Anniversary Celebration

Wednesday 4pm

2015 marks the 25 year anniversary of several major works in feminism and the law, notably *The Hidden Gender of Law* (Graycar and Morgan), *The Liberal Promise* (Thornton), and *Law and the Sexes* (Naffine). These works appeared at a time when feminist analysis of law was gaining in prominence, and they each had a significant, but quite different, influence on the topic both within and outside the universities. The authors of the books have been leaders in feminist legal theory for some decades, and this panel will celebrate their contributions at a crucial moment in feminist analysis of law and their subsequent work in the field.

**Reg Graycar** is a barrister practicing at the Sydney Bar where she specialises in public law. She is also Emeritus Professor of Law at the University of Sydney where she was Professor of Law from 1997 to 2012. Prior to joining the University of Sydney, Reg was Professor of Law at UNSW. She has been a member of the Australian Law Reform Commission, the NSW Law Reform Commission, and various other national tribunals and advisory bodies. Reg has also received a number of grants from the Australian Research Council and has published widely. Her publications include (with Jenny Morgan) *The Hidden Gender of Law* (Federation Press, 1990; second edition 2002).

**Jenny Morgan** is a professor at Melbourne Law School, the University of Melbourne, where she was Deputy Dean for four years. She is the co-author (with Reg Graycar) of *The Hidden Gender of Law*, the first edition of which was published in 1990 (and the second in 2002). She has published work on sexual harassment, homicide law, reproduction issues, understandings of equality, law reform, sexual assault and domestic violence. She also recently completed a study of print media and violence against women, funded by VicHealth. Jenny has been a part-time member of the Human Rights and Equal Opportunity Commission, the Social Security Appeals Tribunal and a commissioner with the Australian Law Reform Commission. She has done work with the AFL (Australia’s largest football code) on sexual assault, and works consistently with VicHealth on their program on violence against women. She was a member of the Victorian Government’s Sentencing Advisory Council from 2003 until the middle of 2013.

**Ngaire Naffine** is Bonython Professor of Law at the University of Adelaide and Fellow of the Australian Academy of Social Sciences. Her enduring research interest has been the moral and legal philosophy of the person – who and what can and should bear rights and duties. This topic first took shape in *Law and the Sexes: Explorations in Feminist Jurisprudence* (Allen and Unwin, 1990) where Ngaire examined the gender of the legal person. The topic received its fullest development in *Law’s Meaning of Life: Philosophy, Religion, Darwin and the Legal Person* (Hart, 2009). Ngaire has been Genest Visiting Professor at Osgoode Hall Law School (2012) and Baker-Hostetler Professor of Law at Cleveland-Marshall College of Law, Cleveland State University (2004). From 2007–2009 she was a member of the Australian Research Council, College of Experts. She is currently writing about the central character of criminal law, the responsible subject, as seen through the eyes of the leading male scholars and jurists of the nineteenth and twentieth century.

**Margaret Thornton** has been a professor for 25 years – at La Trobe University (1990–2006) prior to joining the Australian National University, Canberra (2006–2015). Her research interests are in the areas of discrimination law and policy, legal education, the legal profession and feminist legal theory. Her books include *The Liberal Promise: Anti-Discrimination Legislation in Australia* (Oxford University Press, 1990). She is a Fellow of the Academy of Social Sciences in Australia and a Foundation Fellow of the Australian Academy of Law.

**Chair: Ann Genovese**
Earth Jurisprudence: Geography, Science and Property

Wednesday 4pm

While legal geography contends that human laws and the natural environment are mutually constructed, earth jurisprudence advocates a different paradigm according to which human laws are nested within broader non-human 'earth laws'. However, both approaches critique the anthropocentrism of the status quo and both set out to subvert conventional distinctions between culture and nature and civilized and uncivilized. They also challenge the close identification of law with an entirely human sphere and invite us to imagine altered forms of governance of the planet, in particular with respect to property and the sustainable use of finite resources. Speakers in this session will address the very idea of earth jurisprudence in the light of their existing work in legal geography, climate science, property theory, and global environmental governance. They will discuss both the radical potentialities of thinking about law in alliance with the earth, and some already emergent realities that offer practical glimpses of future developments.

Lee Godden is a member of the Centre for Resources, Energy and Environmental Law at Melbourne Law School. Her research interests cover environmental law, Indigenous Peoples' land rights, property and legal theory. She has undertaken a range of interdisciplinary and comparative projects around these topics, and in 2013–15 was an Australian Law Reform Commissioner.

Nicole Graham, University of Technology Sydney, researches the relationship between property and the environment in law, culture and land use practices. She is particularly interested in the role of property rights in natural resource management and environmental planning policies. Current projects on which Nicole is working include the role of law in environmental histories and landscape change, and the relationship between law and science in regard to the development of land use policy (including especially vegetation and mining).

John Page, Southern Cross University, has research interests focused on property diversity and comparative, historic and interdisciplinary perspectives on property. He has published internationally and within Australia on topics ranging from the nature of property rights in public resources, the intersection of property and the environment, public property theory, modern common property, and property's relationship to landscape and community. His monograph, Property Diversity and its Implications, is scheduled for publication by Routledge in late 2016.

Claire Williams, University of Adelaide, studied a Bachelor of Laws and Legal Practice and a Bachelor of Science at Flinders University. She then completed her Honours year in climate science looking at ocean atmosphere interactions. She is now undertaking a PhD in the Adelaide Law School titled, ‘On the disconnection between current scientific understanding of human impact and the laws and policies governing our behaviour’. Claire also works part-time at Campbell Law in litigation and on native title issues. Claire is a founding member of the Australian Earth Laws Alliance and an active member of the South Australian Environmental Defenders Office. In addition to her academic pursuits, Claire is a dancer and artist.

Chair: Margaret Davies
A Dialogical Encounter of Ethical Futures
(The Existential Threat: How do you bring Wisdom to the Table (Part 1.))

Thursday 9:30am

In a context of climate change and increasingly complex technological developments, how might Indigenous intellectual traditions help us understand and navigate our collective futures? And what might be the role of law in these new worlds? In this panel, Christine Black and Olivia Barr contemplate the challenge of how we might prepare for a future that may have already arrived. In a context of global political, social and environmental instability, coupled with ever-accelerating technological advancements, especially the reality of artificial intelligence, the worlds we live in are constantly changing. But are western legal and philosophical traditions sufficient to understanding and navigating these worlds, both now and into the future? Can Indigenous legal and philosophical traditions assist?

Both Christine Black and Olivia Barr think so. Noticing telling patterns in science and technology, Christine Black asks the question: ‘Are we returning to the world of the mythical?’ and suggests it is time for Indigenous intellectual traditions to step forward and help create global legal and ethical understandings of where we are today, and where we will be tomorrow. In agreement, yet not abandoning western legal traditions, Olivia Barr asks how, if at all, might the conduct of legal meetings, especially those between Australian common law and Indigenous laws, help us prepare for these futures? Together, through the form of a dialogical encounter, this panel raises the challenge of how, as law and society scholars, might we live with such uncertainty, and in doing so, how might we prepare for our collective ethical futures?

This dialogue with Dr Barr will the first in a series of presentations led by Dr Black that dialogues, The Existential Threat: How do you bring Wisdom to the Table? (Part 1.)

Olivia Barr is a Lecturer in the Faculty of Law at the University of Technology, Sydney and is moving to Melbourne Law School as a Senior Lecturer in 2016. She has previously worked in law reform, as a government solicitor, and for the United Nations Permanent Forum on Indigenous Issues. Olivia writes in jurisprudence specifically, and law and the humanities scholarship more broadly, and is currently curious about questions of movement, lawful place and the relationship between law and walking. Her forthcoming book, A Jurisprudence of Movement: Common Law, Walking, Unsettling Place, will be published by Routledge in the Space, Materiality and the Normative series in January 2016. Olivia draws on the ideas from this book in this dialogue.

C.F. Black is Senior Research Fellow, Northern Institute, Charles Darwin University. She is the author of the Land is the Source of the Law: A Dialogic Encounter with an Indigenous Jurisprudence (Routledge) and has just finished her next book manuscript entitled A Mosaic of Ethical Thought: Legendary Tales and other Writings. It is this last manuscript which gives direction to Christine’s new trajectory which looks at the existential threat of new technologies through the lens of Indigenous law and wisdom.
Decriminalising Abortion

Thursday 9:30am

This exciting panel will consider the decriminalisation of abortion from a diversity of perspectives, using a variety of sources and disciplinary standpoints. Mark will consider and critique the current state of the law of abortion around Australia. Clare will address the political history of parliamentary reforms to abortion law. She argues that parliamentary compromise in the context of irreconcilable positions often produces outcomes that satisfy no one, driving continued calls for change. Sally will investigate the mid-Victorian values that ground UK laws on abortion, arguing that these laws require fundamental reform if they are to align with current medical science and moral values and meet their own claimed goals. Barbara will draw on a wide range of insider and media sources to explore the provision of abortion services in Australia since 1990. She considers the impact of decriminalisation in those Australian jurisdictions where it has been achieved in the context of the other forces of neoliberal governmentality shaping provision of abortion services.

Barbara Baird works in the discipline of Women’s Studies at Flinders University. Her research focuses on the histories and cultural politics of sexuality and reproduction in Australian contexts, with an emphasis on their constitution through discourses of race and national identity. She has been researching abortion in Australia, historically and in the contemporary context, since 1990. She recognises the sovereignty of the Kaurna people on whose land she lives and works.

Clare Parker is a visiting research fellow in history at the University of Adelaide, where she tutors in Australian history and politics. Her PhD examined the pioneering decriminalisation of abortion and homosexual activity in South Australia in the 1960s and 1970s, and her current work explores a range of progressive ‘moral’ reforms in the middle decades of the twentieth century.

Mark Rankin is a senior lecturer at Flinders Law School. He teaches in the topics Professional Skills and Ethics, Evidence, Contract, and Civil Litigation. His research interests include abortion law, civil litigation and procedure, legal ethics, and moral and political philosophy.

Sally Sheldon is a professor at Kent Law School. She has published widely in the area of medical ethics and law and the regulation of gender, with a particular focus on abortion law. Her work on abortion includes a book, Beyond Control: Medical Power and Abortion Law (1997), and a series of papers. Sally currently holds an Arts and Humanities Research Council Fellowship, which supports a project entitled ‘How Can a State Control Swallowing?’ Medical Abortion and the Law. She is also a trustee of the British Pregnancy Advisory Service and has recently co-founded Lawyers for Choice.

Chair: Mary Heath
Legal Activism and Transformations: Anarchism, Law and Social Change

Rhys Aston

Invoking the law, whether through engaging with its formal institutions or by appealing to concepts such as rights, remains a central strategy of those who wish to challenge existing social structures. This continues to be the case despite the abundance of research that highlights the numerous ways in which law is often complicit in the perpetuation of the very social structures under challenge. Law appears to have two faces. At times it can provide resources that can be harnessed to challenge dominant power structures. At other times, however, it operates as an institutional expression of those dominant power structures and, therefore, is something which itself should be resisted.

Exploring this contradiction has been a key focus of much contemporary critical legal scholarship. It is my aim to contribute to this broader theoretical discussion, but from a very different starting point, that of anarchism. Anarchism is a political theory that, at its core, provides a radical critique of centralised forms of political (and legal) power and promotes a vision of a non-hierarchical society. While classical formulations of anarchism rejected the state and state institutions (including state law) outright, contemporary anarchist scholarship (often referred to as post-anarchism) has adopted a more nuanced perspective, examining the political potential of more localised forms of resistance which attempt to exploit the interstitial spaces of state power in order to experiment with and create new forms of social organisation.

I will argue that anarchism can provide a unique perspective on this issue. Its deep scepticism of centralised authority and strong commitment to merging theory and praxis provides a framework that is emancipatory in aim and prefigurative in action and allows us to explore the potential for social change that is neither wholly inside nor outside the law.

Rhys Aston is a PhD candidate at Flinders Law School. His research interests include legal theory, social theory and socio-legal studies.

Transforming the Medical Services Act in the Northern Territory: The Frontiers of Feminist Law Advocacy

Suzanne Belton

Abortion law in the Northern Territory (NT) is contained in the Medical Services Act 1982 and it requires reforms. For two years, advocates have lobbied the NT Government and several Ministers of Health, requesting a raft of changes: all of them modestly asking for the law to be similar to other progressive jurisdictions such as the Australian Capital Territory, Victoria, Tasmania or Western Australia, where abortion has been removed from the criminal codes to varying degrees. The NT law has been criticised by medical and civil liberties groups on the grounds that its maintenance in two different legislative instruments makes the law overly complex and confusing, and its retention as a criminal code has a chilling effect on medical professionals, who may fear prosecution. However, no doctor has ever been prosecuted and around 1000 terminations of pregnancy occur every year. The problem of assessing early medication abortion using misoprostol and mifepristone is further compounded by the wording used in the Medical Services Act. The Act states that medical treatment ‘includes surgery’ which contemplates non-surgical forms of treatment. This has been conservatively interpreted to mean that less costly and non-invasive early medical abortion cannot be provided in a primary health care setting such as a general practice or outpatient setting. The speaker will outline the chronology and outcomes of two years of successful campaigning to bring the law in line with contemporary medical care.

Suzanne Belton is Chairperson of Family Planning NT and an executive member of the Public Health Association NT. She is the former Australian representative for International Planned Parenthood Federation and a vocal advocate for reproductive health rights. Dr Belton teaches public health at the Menzies School of Health Research in Darwin and is a medical anthropologist specialising in sexual and reproductive health research in SE Asia and remote and rural areas of Australia. Her PhD from the University of Melbourne investigated...
the connections between human rights and reproductive health outcomes.

Transforming the Medical Services Act in the Northern Territory: Making Laws that Work for Women and Health Practitioners

Suzanne Belton & Virginia Skinner

Lawyers who provide expert opinion and interpret law need to be aware of advances in medical knowledge. The technical aspect of termination of pregnancy has undergone tremendous changes and the Act governing the procedure in the Northern Territory is outdated. It was written at a time when only surgical methods were possible. With the advent of oral tablets to produce an elective miscarriage, the inertia in law failed women and health professionals, confining them to use effective but old methods. Human rights conventions speak of the right to the highest obtainable standard of health but this has not been possible in part to archaic laws. Despite Australia’s international commitment to the Convention of Elimination of Discrimination Against Women, termination of pregnancy remains criminalised and fossilised in parts of Australia. Advocates of reproductive health rights are working towards reforming the Medical Services Act and have gained considerable traction. This speaker argues that laws infringe women’s rights to access pregnancy choices and chose the number and timing of their children. Australian abortion laws need to be repealed. Further, that it is time to rescind all laws in Australia that delineate, limit, or restrict termination of pregnancy. Abortion decisions are best made between a woman and her medical practitioner, as is the case in Canada. Law is not needed to provide safe, effective, and evidence-based termination of pregnancy.

Suzanne Belton is Chairperson of Family Planning NT and an executive member of the Public Health Association NT. She is the former Australian representative for International Planned Parenthood Federation and a vocal advocate for reproductive health rights. Dr Belton teaches public health at the Menzies School of Health Research in Darwin and is a medical anthropologist specialising in sexual and reproductive health research in SE Asia and remote and rural areas of Australia. Her PhD from the University of Melbourne investigated the connections between human rights and reproductive health outcomes.

Virginia Skinner, PhD, BHSc Nursing, MNH, RN, RM, works at Charles Darwin University, Darwin, Northern Territory.

Urban Wildscapes in Helsinki: Exploring Legal Geographies in a DIY Sauna

Susan Bird

In this paper I will question the objectivity of the law through a spatial analysis of the city. Legal geographers, such as Nicholas Blomley, argue that law’s closure can be challenged by interdisciplinary studies. By exploring the legal boundaries that divide the way that urban activities are regulated, the objectivity of both laws and maps can be called into question. I will explore these ideas through the concept of the urban wildscape. Wildscapes are city spaces that provide gaps in the regulatory net, which can be exploited by those seeking to live outside of the laws of the state. As an example, I will describe my recent experiences in a Helsinki wildscape, where local youths have constructed a temporary DIY sauna in empty land under a bridge between a railway line and the ocean.

Susan Bird received honours in both arts and law, and has recently completed a PhD in law. Susan is an active participant in the research community. She enjoys sharing her ideas through publications and regular appearances at conferences both in Australia and internationally. Susan currently works with the grants and awards team at Deakin University. Susan’s research interests lie in legal philosophy, Indigenous peoples and the law, multiculturalism and the regulation of urban public spaces – particularly in Melbourne, her home town.

A Fair Trial is a Basic Human Right

Kevin Borick QC

The right to a fair trial is a basic human right that must be protected and enforced. If an individual is wrongly convicted as a result of an unfair trial, an effective remedy must be found. Compensation should be part of that remedy. Reference will be made to the International Covenant on Civil and Political Rights.
Specific reference will be made to two recent South Australian cases, Drummond and Keogh, both of which involve wrongful convictions based on flawed expert evidence.

Kevin Borick is a former Senior Assistant Crown Prosecutor for the State of South Australia. He was co-founder (with Philip Scales AM) of and was a former president of the Criminal Lawyers Association of Australia and New Zealand. He was defence counsel for Van Beelen at the trials, the appeals and at the Privy Council. From 2000–2011 he acted for Henry Keogh. In 2011, together with Dr Harry Harding and Philip Scales AM, he presented a submission to the South Australian Parliament that the Criminal Law Consolidation Act be amended to allow a second appeal as a means of addressing identified issues relating to the petition procedure.

Dipping Your Toes into Legal Geography: Governing Sea Country Spaces in Australia

Lauren Butterly

In Australia, native title can be recognised in the sea. This recognition is tempered by the fact that it has been held by the High Court that native title to the sea can only ever be non-exclusive. However, Indigenous communities are using a variety of tools to govern their sea country. In the process, it could be argued that Indigenous communities are pushing the boundaries of law in marine spaces. This paper will represent a researcher dipping her toes into the growing sub-discipline of legal geography.

The focus of this paper will be the relationship between regulatory theory, as a lens in which to view ‘law’, and the notion of place in legal geography. Seeing law through a regulatory lens allows us to move away from a state-centric approach to legal rights that is, more often than not, separated from place. In particular, notions of ‘regulatory space’ can provide us with a way to disrupt definitions of law and map participation of actors in the governance of marine spaces.

This research draws on aspects of both human and physical geography and is part of a broader empirical research (PhD) project. At the time of the conference, the researcher will be part way through conducting interviews. This paper will be of interest not only to ‘legal geographers’ but also those interested in ideas of space and empirical legal research, as well as anyone contemplating venturing into a new sub-discipline.

Lauren Butterly is an associate lecturer in law at the Australian National University where she researches in the areas of Indigenous rights and environmental governance (with a focus on marine spaces). Following graduation from university, Lauren served as the principal associate to Chief Justice Wayne Martin of the Supreme Court of Western Australia and then worked as an environmental law solicitor at a national law firm in Sydney. Lauren is also a centre associate at the University of New South Wales Indigenous Law Centre and has recently been appointed as one of ANU’s Inaugural University House Early Career Academic Fellows.

Joint initiatives: Using a Pro Bono Teaching Clinic to Prepare Law Students for Legal Practice and Promote Community Service

Francina Cantatore

Law students face a number of challenges when entering the legal profession. There is often a disconnect between the theory they are taught in law courses and the realities of legal practice they are faced with when stepping into the ‘real world’. At some universities, this discrepancy is partly addressed by legal skills programs, but there is still a significant leap to make from ‘student’ to ‘early career lawyer’. The legal profession can greatly enhance student employability by supporting pro bono clinic initiatives in universities. Such pro bono activities can effectively engage legal practitioners and universities in a joint effort to assist the local community and provide students with service learning opportunities. This paper contends that not only is clinical experience an invaluable asset to students to enhance learning and to prepare them for practice, but also that a pro bono teaching clinic has the added benefit of developing a sense of social responsibility in students. It focuses on the benefits of service learning in a pro bono teaching clinic with reference to a case study of a successful commercial law teaching clinic established within a university law faculty. It also examines the challenges and considerations inherent in establishing such a clinic within a law school, and suggests solutions for implementing an effective pro bono teaching clinic, thereby enhancing student employability and community engagement.
Francina Cantatore is an assistant professor at Bond University and the director of the Bond Law Clinic. She has been practicing law for 20 years and believes in a practice-based approach in teaching law students. She teaches and researches in the areas of property, commercial, copyright, and media and communications law.


Sarah Ciftci

In response to the colonial tradition of excluding Aboriginal people from decision-making processes, we have seen a growing trend towards the use of innovative models that seek to embed Indigenous values and incorporate social justice into its practice. While the use of such models has gained popularity in the criminal jurisdiction and is well documented (for example, Circle Sentencing), there are fewer programs operating in the child welfare context. This paper offers insights into the Aboriginal Care Circle program, an initiative of the NSW government that provides a ‘culturally-appropriate’ alternative to placement hearings held in the Children’s Court through the inclusion of Aboriginal Elders and community representatives in the decision-making process. Taking a look inside the circle, it is unsurprising that Care Circles hold a very real potential to transform the way justice and fairness is perceived or experienced in the process given its restorative and community justice influences. The research, however, indicates that there remains a disconnect between the prioritising of Aboriginal participation inside and outside of the Circle. It is argued that holistic strategies are required in order to ensure that Care Circles are able to make a positive impact and contribute to the broader project of self-determination and decolonisation within the child welfare system.

Sarah Ciftci holds a Bachelor of Socio-Legal Studies (Hons, First Class) from the University of Sydney and is currently undertaking a PhD in the Department of Sociology and Social Policy also at the University of Sydney. Her thesis reflects her broader research interests in Indigenous social and legal justice and explores the use of inclusive decision-making models in the child welfare context.

Balancing on a Tightrope: Law and Life in the Legal Profession

Richard Collier & Margaret Thornton

‘Work/life balance’ emerged as the catchcry of many workers in the late 20th century. It has been supplemented (supplanted?) by the new discourse of ‘wellness’ in the 21st century. This joint presentation will critically compare and contrast contemporary discourses around work/life and wellbeing in the context of UK and Australian legal practice, with a particular focus on global law firms. The presentation will problematise the tension between these voguish discourses and the prevailing hypercompetitiveness arising from neoliberalism, which has been given a boost by globalisation. The paper will consider the implications of rethinking work/life and wellbeing in the law for understanding the specific contexts in which professional legal ethics operate and for ideas of legal professionalism itself.

The presentation will draw on interviews with lawyers and legal professionals conducted by the authors in the UK and Australia.

Margaret Thornton is a professor at the College of Law, ANU and Richard Collier is a professor at Newcastle Law School, UK. Margaret and Richard have conducted extensive research on the legal profession, Margaret focusing on feminist critiques, and Richard on masculinities. Margaret’s present ARC grant, on which Richard is the International Partner, is entitled ‘Balancing Law and Life’.

End of Life Decision-making: Barriers to Access to Justice at a Health Provider Level

Katherine Curnow

Equal access to justice is central to upholding the rule of law, promoting democracy and ensuring people have the ability to effectively enforce their rights. However, many people take no action in response to a civil legal event, or elect not to pursue an unresolved dispute to a resolution through the civil justice system. The reasons for and consequences of inaction are generally not well understood. This presentation reports on some findings of a project seeking to contribute to filling gaps in knowledge about inaction in relation to civil legal events by examining the case example of decisions about the withdrawal or withholding of life sustaining
treatment from incapacitated adults (end of life decisions). Utilising access to justice, conflict and dispute resolution theory, it examines three key aspects of the context and process of end of life decisions: clinical decision-making, family decision-making and the role of conflict. The analysis identifies factors that may hinder or prevent access to justice and demonstrates that conflict may have value in assisting family members to overcome power imbalances arising from their own decision-making and formal law. Further, the analysis suggests barriers to access to justice could arise at any stage in the emergence or transformation of legal events into disputes, indicating legal events need to be examined holistically, not simply as conflicts or disputes, in order to obtain a comprehensive understanding of how barriers to access to justice emerge and hinder or prevent access to justice.

Katherine Curnow is an associate lecturer at the TC Beirne School of Law at the University of Queensland. She researches in the fields of dispute resolution, access to justice and health law. She is currently completing a PhD through Monash University investigating barriers to access to justice in relation to end of life decisions for incapacitated adults and how the design of dispute resolution mechanisms for end of life disputes in Queensland may be altered to enhance access to justice.

Medical Killings Inside and Outside the Law of Homicide

Colleen Davis

Some deaths in a medical context are within the law, but others fall outside what is lawful, despite the fact that in some cases the ‘ethical status of the two courses of action is for all relevant purposes indistinguishable’1. The distinction often depends on whether the death is caused by an omission, such as withholding treatment (lawful), or by a positive act, such as a lethal injection (unlawful). This paper draws on cases involving conjoined twins and patients suffering from locked-in syndrome to argue that the act–omission distinction is not an appropriate criterion for drawing the line in the sand between lawful and unlawful medical killings, particularly where doctors assist competent patients who want to die but who are unable to actively kill themselves. Instead of perpetuating the artificiality of the act–omission dichotomy, the law should give effect to the rhetoric of respect for patient autonomy and dignity, and regard the consent of a patient of full capacity, in conjunction with the defence of necessity, as a complete defence for doctors who help these patients to die a dignified and painless death.

Colleen Davis, Griffith Law School, has a Masters degree in clinical psychology, Honours (first class) in law, a Master of Education and a PhD, in which she researched the criminal law implications for doctors who perform sacrificial separation of conjoined twins. Her research interests are in criminal law and health law.

Frankenstein’s Monster and the Nineteenth Century Rise of the Legal Construct

Chris Dent

A legal construct is a tool – an artificial person – used by the courts when reaching their decisions. It can be seen as a judicial creation that is separate or distinct from the parties that appear in court. The reasonable man is the best known, but not the only, legal construct to be born into the nineteenth century common law. This paper introduces some of the construct’s siblings – including those from the areas of criminal law, contract law and two from intellectual property law. Both legal (eg procedural reforms and the practices of law reporting) and non-legal factors (eg utilitarianism and the rise of the capitalists) from the time will be highlighted in terms of their impact on the introduction of the constructs as modes of deciding cases. The conclusion is that, unsurprisingly, they were creatures – created monsters – of their time. Importantly for us, they were used to establish standards of behaviour well before the law operated through the use of norms – with those standards being characteristic of the ‘virtuous self’ (with specific features such as ‘reasonableness’, ‘prudence’ and the possession of ‘skill’). These attributes were applied to the parties appearing in the court (usually defendants, but, in contract, plaintiffs). Those who merely suffered from misconduct were, instead, seen by the law as ‘ordinary’.

Chris Dent is now an associate professor at Murdoch University after spending the previous 12 years in a research-only position at Melbourne Law School. His approaches to

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1 Airedale NHS Trust v Bland [1993] 1 All ER 821, 885 (Lord Goff).
Evidence and Victim Experience in Sexual and Domestic Violence Cases: The Approach of the Feminist Judge
Heather Douglas

One of the enduring problems with the legal process identified by feminist legal scholars is the way women's evidence of sexual violence is excluded, marginalised and disbelieved. Myths and stereotypes have developed around ‘real rape’. Legal rules were developed, initially by judges, that reflected and sustained these myths and stereotypes. In this context, Christine Boyle speculated in a 1985 article on what difference a feminist judge might be able to make in a sexual assault case. Interviews conducted as part of the Australian Feminist Judgments project provide an opportunity to further explore the question of what difference a feminist judge might be able to make in a sexual assault (or domestic violence) case. 41 judges agreed to be interviewed on the basis of their identification as feminists. Many discussed the challenges they face in cases involving sexual and domestic violence and how they have responded to these challenges. The paper considers how they approach their role in relation to the victim’s evidence in sexual and domestic violence cases, and the range of possibilities that exist at different levels of the court hierarchy. Such possibilities include different approaches to their role in hearing and assessing victims’ evidence, in managing the courtroom and controlling the admissibility of evidence and cross-examination. They report different approaches to language and try to craft particular messages in sentencing.

Heather Douglas researches in the areas of criminal justice and domestic violence. In 2014 she was awarded an Australian Research Council Future Fellowship to research the ways in which women who have experienced domestic violence use the legal system to help them leave violence. Between 2011–2014 Heather was a co-chief investigator on the ARC funded Australian Feminist Judgements Project which resulted in the edited collection: Australian Feminist Judgments: Righting and Re-writing Law (published by Hart, 2014). From 2001–2007 she was a part-time commissioner with the Queensland Law Reform Commission.

Connecting Law’s Internal and External Spaces
Kim Economides

This paper critically examines the emergence of legal geography over the past 30 years and offers a personal assessment of the contribution and impact of spatial perspectives on the theory and practice of law. It also considers how far conceptions of law and justice have informed geographical thought. Two main criticisms are made of interdisciplinary ‘geo-legal studies’ that link law with geography: first, the dominant focus on critical social theory has resulted in a failure to fully engage with traditional positivist foci in each discipline, i.e. rules and maps. I argue that socio-legal scholars might make greater use of cartography while human geographers could look more closely at how legal rules shape the built environment. Second, legal scholars interested in geographical perspectives on legal behaviour might rely less on spatial metaphor and instead begin to develop new justiciable ‘geo-legal’ concepts, such as ‘free space’, that might potentially change rather than just explain legal and social relationships. This implies a stronger commitment to normative theory and constitutional values, raising an interesting question as to whether there is an ethical responsibility on contemporary legal geographers to try to improve rather than simply map spatial variation in the behaviour of law and legal services. If legal geography can expose and measure gaps between legal ideals and reality, to what extent should this sub-discipline attempt to close such gaps?

Kim Economides has investigated access to justice across different legal cultures, first as a researcher on the Florence Access to Justice Project, then as co-director of the Access to Justice in Rural Britain Project examining with human geographers the accessibility of rural legal services. Currently he is comparing legal service provision in the Australian outback with that in the Amazonian rainforest. Aside from an interest in mapping the impact of law and legal services he has also had a long-standing interest in legal education and legal ethics and what motivates lawyers to deliver justice and uphold fundamental legal values.
More Than Moustaches: Legal Protections Against Unauthorised Photo-manipulation in a Technologically Advanced Society

S Che Ekaratne

In the past, options for changing or manipulating a person’s photograph may have been limited to physical alterations such as drawing a moustache on the photographed face. With emerging technological developments, however, the potential for photo-manipulation is now both more sophisticated (in terms of the degree of alteration possible) and more simple (in terms of the ease of using photo-altering software). Furthermore, the distribution of altered images can now be more widespread due to the internet and social media.

Those who are displeased about the dissemination of their altered photographs have often turned to copyright law as a protective legal mechanism. However, relying on copyright in such contexts can pose challenges. This paper examines some of those challenges, drawing on illustrative examples including recent American cases that involved unauthorised photo-manipulation. The paper also engages in comparative analysis of how such cases could be determined in jurisdictions that do not use the American ‘fair use’ approach to copyright, such as the United Kingdom and New Zealand.

One challenge when using copyright law in such situations is that the owner of copyright in the original photograph is often the photographer, not the individual who is photographed. Accordingly, this paper suggests exploring other legal options for regulative responses to the use of emerging technologies in such contexts.

These options include ‘rights of personality’ or ‘image rights’, which could allow the photographed individuals a more direct legal protection against unconsented use of digitally-altered images.

S. Che Ekaratne is a lecturer at the University of Canterbury School of Law. Her research interests include comparative aspects of entertainment law and intellectual property law. She is currently engaged in doctoral research involving comparative analysis of personality rights, particularly with respect to images. Before entering academia, Che was an attorney in the Washington DC office of an international law firm, where her work included submissions to the US Supreme Court. She holds a BA from Yale University, a JD from Harvard Law School and an LLM from the University of Bristol.

State Engagement with the Universal Periodic Review (UPR): An Added Value to Human Rights Monitoring Mechanisms?

Damian Etone

Human rights, as enshrined in international treaties, are legal claims that beg for accountability mechanisms to ensure their enforcement. Over the years, the human rights system has believed in the use of semi-adjudication processes to compel state compliance. These processes, including the ‘naming-and-shaming’ technique, fit within the compliance-centred theory which holds onto the notion that coercive mechanisms are the principal mechanisms to induce state compliance. While there are recent calls for stronger human rights enforcement mechanisms through the establishment of a world court of human rights, little attention is being given to the potential of more pacific and cooperative mechanisms to secure human rights compliance. Viewing international monitoring institutions within the compliance-centred optic has led many scholars to regard the monitoring institutions as basically weak and ineffective, underscoring their inability to meaningfully advance human rights.

This paper will argue that the compliance-centred theory is limited and does not capture the subtle but significant ways in which the UPR as a cooperative and non-confrontational mechanism is able to exert real influence within states. It will demonstrate that the UPR has added value and that the use of coercive mechanisms is only part of the strategy to achieve the ultimate goal of human rights treaties, which is to induce behavioural change within states. Engaging with the logic of effectiveness, it will examine the engagement of Nigeria with the UPR to determine their commitment to the preparation of UPR reports, readiness to accept recommendations and the extent to which they fully implemented the recommendations coming out of the UPR process.

Damian Etone is a PhD Researcher at the University of Adelaide Law School. His PhD research focuses on the Universal Periodic Review Mechanism of the Human Rights Council. Prior to his PhD candidature, he was a Chevening Scholar and graduated from Bangor University, Wales, with an LLM in International Criminal and Human Rights Law. He also presently works as an International Criminal Law reporter for Oxford University Press.
Promoting Law Student Wellbeing Through the Law Curriculum: An Ethical Imperative for Legal Academics
Rachael Field

The Australian tertiary sector is becoming increasingly concerned about the psychological wellbeing of its students. Building on this developing general concern in the tertiary sector, and also on the scholarship of legal academics in the US, Australian law teachers are increasingly recognising that psychological distress is an issue for students in our discipline. There is now a strong body of Australian empirical research, building on work by the Brain and Mind Research Institute of the University of Sydney in 2009, that continues to affirm that Australian law students are suffering high levels of psychological distress, beginning in their first year of legal education.

This paper argues that this body of knowledge creates for legal academics an ethical obligation to better prepare students for the stresses of legal study and of legal practice, and to promote law student wellbeing through the law curriculum. The paper argues that it is our duty as legal educators to do no harm to our students. This duty can also be considered through the lens of an obligation to our profession. That is, the wellbeing of law students should be promoted and protected because it has flow-on consequences for the psychological wellbeing of the legal profession.

Rachael Field is an associate professor in the QUT Law School, an Australian learning and teaching fellow, and a senior fellow of the Higher Education Academy. Her key teaching interests are in the first year experience and dispute resolution. She has had national and international impact with her research and service work in family mediation and student wellbeing, and is published widely in her areas of research interest, which include dispute resolution, legal education and family law. She founded the Australian Wellness Network for Law and is a co-founding member of the ADR Research Network. Rachael has been a member of the Women’s Legal Service Management Committee since 1994. Her PhD was on mediator ethics. In 2013 Rachael was named Queensland Woman Lawyer of the Year.

The New (140) Characters in Court Reporting: Media Coverage of NSW Criminal Proceedings from Colonisation to Web 2.0
Leah Findlay

From the 1800s onwards representations of crime and criminal justice have consistently held a dominant position in both the news and entertainment media in Australia. The role of the media as a key facilitator of open justice has been paralleled by the emergence of a culture industry around crime that has seen factual and fictional media become a platform for the performance of cultural rituals. These processes define social and moral boundaries and act to unite the community in collective consensus. The aim of this study is to examine how the seismic shift in the media landscape since the early 1990s has impacted upon the representation of criminal trials in both physical and online print media. In addition, the changing dynamic of the relationship between the criminal justice system and the media will be explored in light of advancements in communication technology and the rise of new media actors. In this presentation, the historical evolution of the interaction between crime, society and the media will be mapped against key transformative events in the social and technological spheres within the theoretical frameworks of risk and narrative. While this study is a work in progress, this presentation will highlight the new media and cultural conditions under which criminal trials now operate and identify some of the challenges that these pose for the practical operation of open justice in 2015.

Leah Findlay completed her BA(Crim)/LLB in 2014 and is now undertaking a PhD in the Faculty of Law at the University of New South Wales. Under the supervision of Prof Jill Hunter and Dr Alyce McGovern, Leah’s thesis will explore the impact of new media technologies on the relationship between crime, society and the media by examining how recent criminal trials in NSW have been reported. The aim of her study is to highlight the new conditions under which criminal justice processes operate and identify any implications for fundamental principles of common law criminal trials, such as open justice.
Form and Substance in Lawyer–Client Relationships

John Flood

Lawyer-client relationships are typically presented as dyads. In this paper, John Flood argues that this is simplistic and wrong. Using examples from lawyers and banking transactions he shows that lawyer–client relationships are essentially triadic or more pluralistic. This creates problems for both parties and throws into question the allegiances of lawyers when immersed in transactions.

John Flood is Professor of Law and director of the Law Futures Research Centre at Griffith University. His key research areas are the legal profession and the globalisation of law. He has held a number of research fellowships, the most recent being a Leverhulme Research Fellowship studying the globalisation of UK legal services style regulation. Before coming to Australia, John was the McCann FitzGerald Chair of International Law and Business at UCD, Ireland.

Who Gets to Decide that your Injury was Caused by Anything?

Warren Forster & Tom Barraclough

In 1992, the New Zealand accident compensation scheme introduced a ‘causation’ requirement, that replaced its previous tests for cover, drafted in terms of ‘consequences’. Since then, disputes about ‘causation’ have vastly outgrown previous personal injury litigation, which the scheme was designed to circumvent. With financial pressures on the ACC scheme and its administrators, a neoliberal revision of a social scheme, and developments in science and technology, there are now real questions about what we mean when we say your injury was ‘caused by’ anything. The adversarialism of personal injury litigation has been replicated by ACC’s role in seeking to exclude causation, generating power imbalances between the state and people with disabilities. There is a coming social discussion about whether ‘causation’ is medical, scientific, philosophical, social or legal, and the implications of each conception.

Causation will be important as technology develops and the population ages. The presenters aim to provoke discussion with a view to further research as well as giving an overview of their research and advocacy so far. The presenters’ research into the ACC dispute resolution system in 2015 received national attention and a Ministerial response, and they were responsible for a successful shadow report against the New Zealand Government’s compliance with the Convention on the Rights of Persons (both generously supported by the New Zealand Law Foundation). The presentation will interest medical personnel, philosophers, lawyers and advocates for the rights of people with disabilities. It will also be of interest for a critical view of the ACC scheme’s development.

Warren Forster graduated LLB(Hons) from the University of Otago in 2011 after working for many years as an advocate for ACC claimants in the statutory dispute resolution process. He led a successful shadow report to the United Nations Committee on the Rights of Persons with Disabilities about the NZ Government’s ACC law and policy in 2014. With a team of researchers, he recently completed research taking a systemic view of the ACC system that identified serious systemic barriers to access to justice. Both reports received national attention and are the basis for ongoing legislative and policy reform.

The Principle of Autonomy in Letter of Credit: An Overview From Legal and Shariah Perspectives

Nikola Georgiev

The issuance of a letter of credit (LC) as a method of payment in international trade carries the distinctive feature that it is independent from the underlying sales contract entered into between seller and buyer. Evidently, payment for goods will be made upon compliance of documents instead of compliance of the goods traded. Disputes between trading parties concerning the goods in the underlying contracts are to be addressed using a different cause of action, which should not compromise the LC operations, and undertaking of the bank to honour payment. Based on this unique characteristic, this paper aims to explain the meaning of the principle of autonomy, its nature and background. It highlights the significance of the principle of autonomy in LC transactions. Furthermore, it discusses the legal framework of the principle of autonomy where to a certain extent, comparisons between relevant articles in the Uniform Customs and Practice for Documentary Credits (UCP) UCP500 and 600 are highlighted. Next, discussion focuses on relevant case law where the principle of autonomy has prevailed in LC transactions. Last but not least, this paper addresses the issue of
shariah compliance in the application of this principle in LC.

Nikola Georgiev is a legal consultant with experience and deep knowledge of international and Arab commercial laws, alternative dispute resolution, arbitration, and international trade law. Experienced within a diverse business environment, Nikola has graduated with distinction in LLM in international and comparative commercial law from the School of Oriental and African Studies, University of London. Nikola has taken up various positions ranging from Legal research assistant to Legal and Economy Analyst and Advisor, and director of publications with Institution Quraysh, Norton Rose Group, Dubai Chamber of Commerce, British Business Bank and as a lecturer at the American University of Sharjah. Nikola has also provided pro bono work for the Dubai International Financial Centre Courts in Dubai. Nikola’s biggest project was the implementation of best in class (collection of the best world models) Dispute Resolution System in Saudi Arabia’s Economic Cities approved by the Saudi Arabian General Investment Authority.

**Don’t Blame the Parents: Female Genital Mutilation and how Campaigners have Succeeded Where Law and Policy Feared to Tread**

**Felicity Gerry QC**

Female genital mutilation (FGM) is a global cultural practice where female children are cut, to varying degrees of severity, as part of ceremony into adulthood. It has appalling health consequences and is the subject of criminal sanction but the practice continues.

This paper will examine the current phenomenon of global campaigning to combat FGM, which has the capacity to hold governments to account in the context of empowering women through law and policy.

The author has a grant to examine women’s health and law in the NT, to include whether FGM has been eradicated in both the migrant and Indigenous populace. She has written extensively on crime prevention in this context. She has worked to eradicate FGM since her groundbreaking article in 2012 ‘FGM: Time for a prosecution’. She was part of the Bar Human Rights Committee working party in the UK which recommended further protection for non-resident children, mandatory reporting, FGM protection orders and other measures which have since been the subject of legislative change.

This paper will trace international legal responses to FGM and examine why mutilation continues, why there have been so few prosecutions and how a holistic approach could be more effective.

It will be argued that if political statements on the empowerment of women and girls are to have any weight at all, then addressing women’s health is a vital factor. There is a global need to collect accurate FGM data, for effective law enforcement and educative and social reform is necessary and long overdue.

**Felicity Gerry QC** is Queen’s Counsel in London and Darwin and chair of research and research training committee, School of Law, Charles Darwin University, NT, Australia. Felicity is an expert in the field of FGM law. She wrote the groundbreaking article in The Guardian, ‘Female Genital Mutilation: Time for a prosecution’ following a successful presentation to lawyers and other professionals on how the law in relation to FGM could be enforced. This helped kick start the current UK campaign. In 2013 Felicity appeared on a panel after the launch of the Integrate Bristol FGM play ‘My Normal Life’ and the BAFTA nominated FGM documentary ‘The Cruel Cut’ on UK channel 4. In 2014 Felicity published a joint article in The Guardian, ‘10 ways why FGM law has failed and 10 ways to improve FGM law’ and a refereed journal article in the Griffith Journal of Law and Human Dignity special edition on women and violence; ‘Let’s talk about Vaginas: Female Genital Mutilation, the failure of international obligations and how to end an abusive tradition’. Most notably, she was a member of the working party for the UK Bar Human Rights Committee, which prepared and submitted the influential report on FGM to the UK Government Home Affairs Committee – several of the recommendations have been accepted and now proposed by the British Government.

**Getting Bang for your Data Buck: Empirical Research Using Administrative and Other Existing Data**

**Genevieve Grant**

Collecting data is expensive and time consuming, but empirical research is compelling. So what are we to do? One solution
is to make use of existing data to answer questions of interest. This presentation will introduce examples of existing data sources that might be used for socio-legal research, and outlines the benefits, risks and challenges of using such data. It may be useful and interesting because it could save you time and money.

Genevieve Grant is a lecturer in the Law Faculty at Monash University. She has a PhD in law and public health, and is a member of the Monash University Human Research Ethics Committee. Genevieve’s research focuses on injury compensation systems and dispute resolution, and her recent research partners include the Motor Accidents Authority of NSW, the Institute for Safety, Compensation and Recovery Research, the Transport Accident Commission and WorkSafe Victoria.

Diagnosing Justice? Claimant Encounters with Officials in the Swedish Social Insurance System

Genevieve Grant & Emilie Friberg

In compensation and social insurance schemes internationally, there is increasing interest in the way claimants’ encounters with scheme officials impact upon their experiences and health outcomes. In Sweden, financial support for workers who are incapacitated by illness or disability (‘sickness absentees’) is administered by the Swedish Social Insurance Agency (SSIA) or Försäkringskassan. The encounters between absentees and SSIA officials are the primary setting for the delivery of administrative and procedural justice in this legal system, but relatively little is known about claimant experiences of these encounters.

We present findings from a large cross-sectional study of the encounters between SSIA officials and long-term sickness absentees. The study explores the prevalence and predictors of negative and positive encounters and dimensions of procedural justice using a survey sent to a random sample of sickness absentees, of whom 9558 responded (response rate 52%). Survey responses were linked to register-based health and demographic data. Descriptive statistics and odds ratios using logistic regression with 95% confidence intervals were computed, with multivariable analyses adjusted for age, sex, birth country and education.

The study findings show that a majority of long-term sickness absentees experienced mostly positive encounters with the SSIA. Encounters varied by diagnosis, however,: compared to those absent due to cancer, sickness absentees with a range of other diagnoses had a higher risk of having experienced mostly negative encounters. These findings raise important questions about the role and impact of stigma and procedural justice in the encounters between social insurance beneficiaries and scheme officials and administrators.

Genevieve Grant is a lecturer in the Law Faculty at Monash University. She has a PhD in law and public health, and her research interests include injury compensation and dispute resolution.

Emilie Friberg is an Assistant Professor in the Division of Insurance Medicine at the Karolinska Institute. Emilie has a background in epidemiology and work disability prevention, and she is currently a visiting scholar at the Institute for Safety, Compensation and Recovery Research at Monash University.

Systematic Muting or Systematic Enhancing of Human Rights Discourse?

Laura Grenfell

This paper examines whether and how human rights discourse figures in public policy debates, particularly in parliaments across Australia.

There is much diversity among Australia’s nine parliaments, with four having no formal or systematic system of scrutinising Bills on a rights basis. Through opting to continue an exclusive system of political rights review, seven of Australia’s nine parliaments have impliedly claimed that they are the sole institutions best equipped to scrutinise and protect the human rights of all, including those of vulnerable and politically unpopular minorities in Australian society.

This paper analyses whether human rights considerations are more likely to be raised in parliaments with mechanisms for systematic scrutiny of Bills for human rights implications, such as parliamentary committees, or in parliaments where such mechanisms are absent. This paper will also investigate whether scrutiny reports written by parliamentary committees lead to more fulsome parliamentary debates regarding human rights implications or whether they tend to mute parliamentary debates regarding human rights implications.
Laura Grenfell is an associate professor at the Adelaide Law School. She teaches and researches in public law and has a particular interest in constitutional law, comparative constitutional law, human rights law and post-conflict justice. In 2013 she published *Promoting the Rule of Law in Post-Conflict States* (Cambridge University Press). Dr Grenfell has a LLM from the University of Toronto (2000–2001) and a PhD from the Australian National University (2005–2009). Before joining academia in 2002, Laura practiced constitutional law with the Crown Solicitor’s Office of South Australia and was an associate in the Supreme Court of South Australia.

**Legal Time Warps and Obesogenic Environments: Slow Law/ Fast Food**

Brendan Grigg

Applications to Australian local councils for planning approval for fast food restaurants are often the subject of controversy. Much of the opposition to these applications is founded on concerns about public health, in particular, the assertion of a link between the ready availability of fast food and obesity.

Where the controversies over applications for planning approval for fast food restaurants have led to legal appeals, these appeal decisions, despite the levels of community concern, are often silent about issues of health. Where the decisions refer to health concerns, the court or tribunal does so only to say that those concerns are irrelevant.

My presentation explores appeal decisions about fast food restaurants in Adelaide and Melbourne and examines why, in these decisions, the South Australian Environment Resources and Development Court and the Victorian Civil and Administrative Appeal considerations of health are marginalised or absent. My presentation analyses the planning policies that were applicable to the appeal decisions. It speculates whether these decisions reflect historical and largely outdated understandings of public health and whether, as a result, they demonstrate an inability for land use planning law to deal with 21st century conceptions of pressing public health problems.

My presentation also draws on attempts at legislative reform in this area to illustrate how land use planning law might be used in the 21st century to create healthy environments rather than as a facilitator of an obesogenic environment.

Brendan Grigg is a senior lecturer at the Flinders Law School. Before joining Flinders in 2010, Brendan was a legal practitioner working in native title law and environmental law at the South Australian Crown Solicitor’s Office. This included a role as in-house solicitor to the South Australian Environment Protection Authority. He has also practiced at a specialist planning and development law firm in Adelaide. At Flinders Law School he teaches a first year legal research and writing skills topic and in property law topics. He also teaches in environmental law electives, including a land use planning law topic.

**Empowering Engagement: Developing Skills for Embracing, Celebrating and Accommodating Diversity in Law School Classrooms and Beyond**

Anne Hewitt

Universities and law schools have legal obligations to avoid engaging in prohibited discrimination against students. However, complying with those legislative obligations concerning diversity is insufficient for the success and wellbeing of law students or that of the general community they will serve as graduates. Law schools in particular have a greater obligation to embrace, celebrate and accommodate diversity.

Successful teaching and learning which both caters for students’ diverse needs and celebrates the variety of student experiences and perspectives must be planned; it cannot be left to chance. As a part of this process it is imperative that every law teacher be equipped to recognise, respond to, and embrace diversity within the student cohort. However, law schools are not immune from the growing casualisation of the higher education sector, and many law teachers are employed on a sessional basis. Sessional law teachers (many of whom are members of the legal profession) often lack access to professional development opportunities that would assist them to integrate diversity into their teaching, assessment, support and feedback roles as they develop students’ capacity to work in a changing environment.

This paper will discuss a national project (supported by the Office for Learning and
Teaching) which, among other things, supports sessional law staff to:

a. create learning environments which identify, accommodate and celebrate diversity in students
b. embed a range of diverse experiences and perspectives within the teaching of law
c. facilitate students developing an understanding of the diverse needs of future clients.

Anne Hewitt is an associate professor at the Adelaide Law School. She is passionate about legal education, and has been published extensively in that field. She also researches and publishes in the field of anti-discrimination and equality law. In 2014 Anne was a member of a team of legal academics who received Office for Learning and Teaching funding to construct a series of self-directed development activities for use by sessional law teachers on a just-in-time basis. Among other things those resources focus on themes of Indigenisation, digital literacy, diversity, gender and internationalisation.

Work Integrated Learning: Educational Panacea or Poisoned Chalice?

Anne Hewitt

Work integrated learning (WIL) describes a range of strategies and activities that seek to promote students’ learning by engaging with aspects of work. It is a chameleon term, which can encompass a practicum, period of fieldwork, internship or clinical placement. There is considerable positive rhetoric about WIL, which suggests that engaging in a WIL experience will assist students to master skills essential to workplace practice. In the context of law, WIL has often been considered an effective strategy for taking student development beyond the classroom and assisting students to develop skills associated with what the Australian Law Reform Commission has described as ‘what lawyers need to do’.

However, there are practical, ethical and pedagogical implications of requiring students to engage in unpaid work prior to securing paid employment.

This paper will re-examine the role of WIL in transitioning students from education to employment. It will consider the growth and scope of WIL and evidence of its pedagogical efficacy. Different models of engaging students with WIL in the tertiary education sector will be discussed, and the administrative arrangements which can be used to manage the workplace/educational divide considered.

Anne Hewitt is a chief investigator on the Australian Research Council Discovery Grant ‘Work Experience: Labour Law at the Boundary of Work and Education’ along with Professors Rosemary Owens and Andrew Stewart and Dr Joanna Howe. That four-year project considers the regulation of internships and work experience in Australia and overseas. The project builds on Anne’s expertise in legal education and anti-discrimination and equality laws, areas in which she has researched and published for a number of years.

‘Don’t Mention the War’: Legal Excising of Footballer Gang Rape

Rachel V Hirsch

In 2012, the rape trial of Fraser James Pope, a former Victorian Football League (VFL) player, generated a lot of public interest due to the involvement of elite Australian Football League (AFL) footballers, specifically from the Collingwood Football Club. The charges of rape against Pope are inextricably linked to the allegations of gang rape made by the same victim against Collingwood footballers. The focus of this presentation is on a Victorian rape shield law – section 342 – that leads to the violent excising of footballer gang rape from the trial narrative. The victim’s experience of footballer gang rape is not only silenced by the law but becomes further distorted by the double-voiced narratives of consent, a feature both inside and outside of the text, and by the very authorising of footballer gang rape as an unutterable taboo. Football’s feel for the game saturates the very conduct of the trial, in which football metaphors of contest and battle underscore the role of footballers at the very same time they are muted from the trial proceedings. By continuing to ‘mention the war’, the primary metaphor for the gang rape, the law itself becomes complicit in the violence of footballer gang rape. This trial should be an example for feminists and legal reformists alike to celebrate: it protects the rape shield and prevents the victim’s ‘second rape’ by the defence. Yet the cruel irony is that the restriction and inadmissibility of sexual history as evidence works instead to severely distort the victim’s narrative, and thus tests the very ability of the law to adequately prosecute rape.
More broadly, it allows us to interrogate how ‘inside’ but left the material artefacts ‘outside’. International as object offers an opportunity to consider how recovering the object as treaty and the treaty as object through a consideration of treaty-making practices between Indigenous nations and colonial powers in North America. It is part of a broader project on ‘the Objects of International Law’, which examines international law’s objects, icons and images and their relationship to the objects as purposes of international law.

Recovering the object as treaty and the treaty as object offers an opportunity to consider how international law has kept the written terms ‘inside’ but left the material artefacts ‘outside’. More broadly, it allows us to interrogate how international law claims and disclaims objects as well as subjects (such as Indigenous peoples), and what processes – of collection, memory and erasure – are attendant on the claiming or disclaiming.

Jessie Hohmann is lecturer in law at Queen Mary, University of London. She researches and teaches in international law and human rights, focusing particularly on the right to housing, economic and social rights, and Indigenous rights. Among other publications she is author of The Right to Housing: Law, Concepts, Possibilities (Hart, 2013) and co-editor of the forthcoming OUP Commentary on the UNDRIP. Her current research on international law’s objects interrogates the relationship between material artefacts, objects and images and objects as purposes. A forthcoming edited collection on this topic will be followed by a monograph on international law’s material culture.

### Money: Exploring the Meaning of Financial Assistance for Survivors of Sexual Victimisation

Robyn Holder & Kathleen Daly

This presentation explores the meaning of money for survivors of sexual victimisation through interviews with female recipients of a state-based financial assistance scheme. We situate the analysis within wider debate about the nature of justice and recovery from crime. Women’s comments are related to differing rationales given by scholars and the state for the provision of state-based compensation, and to research on victim preferences for compensation from offenders and from the state.

The research will be of interest to researchers examining justice in domestic and international justice settings, particularly reparations for sexualised violence. It will also be of interest to public policy makers. Empirical research in this area is extremely limited.

Robyn Holder is a research fellow at Griffith University, Australia. Her research interests include participatory justice, justice theory, victims’ rights nationally and internationally, justice responses to violence against women in domestic and high-conflict settings, and law and society. She completed her PhD at the Regulatory Institutions Network at ANU in 2013 after nearly 30 years’ experience in research.
public policy and law reform in Australia and the UK.

The Spaces Between: Advocating with and for Aboriginal Women Facing Violence
Robyn Holder, J Putt & C O'Leary

Nearly 25 years ago an intense debate erupted following criticisms from Aboriginal scholars and activists of universalising claims made by non-Aboriginal feminists. The tipping point was violence against women, its causes and responses. Underpinning these elements were deeper arguments about history, knowledge, representation, colonisation and white privilege. The critiques not only opened (further) space(s) between Aboriginal and non-Aboriginal women, but coloured its contours and defined boundaries on an issue of noise and silence. This paper traces these debates and weighs their enduring influence on those who work in the service and advocacy sector on violence against women. It asks what has been learned in the intervening years and what has been happening in the spaces between.

Robyn Holder is a research fellow at Griffith University, Australia. Her research interests include participatory justice, justice theory, victims’ rights nationally and internationally, justice responses to violence against women in domestic and high-conflict settings, and law and society. She completed her PhD at the Regulatory Institutions Network at ANU in 2013 after nearly 30 years’ experience in research, public policy and law reform in Australia and the UK.

Indigenous Practices Inside and Outside the Court System in Newcastle, New South Wales
Deirdre Howard-Wagner

While there is a growing body of law and society scholarship concerning the Indigenous justice practices inside the courts in Australia (eg Cuneen 1995 & 2007, Daly 2004, Marchetti 2004, 2007 & 2009, Marchetti and Daly 2004), there has been limited consideration of the incorporation of Indigenous programs, ways of doing business and cultural practices at the different stages of the criminal justice system more broadly (Bartels 2010).

The paper is an account of where and how Aboriginal programs, Aboriginal ways of doing business, and Aboriginal cultural practices figure at different stages of a local justice system: (a) from policing to courts and tribunals to corrective services (community and correctional services) to juvenile justice; and, (b) from those who manage Aboriginal offenders in the community through to programs for Aboriginal offenders. It draws on in-depth interviews conducted as part of an Australian Research Council Discovery Early Career Researcher project examining Aboriginal success in addressing Aboriginal disadvantage and improving Aboriginal wellbeing in the Australian city of Newcastle. The study spans across the seven Closing the Gap Building Blocks, including Safe Communities. However, in recognising the limits of Safe Communities as an approach for addressing the Indigenous justice needs of Aboriginal peoples, the research goes beyond its framework to: (a) look at the justice needs of Aboriginal people in the greater Newcastle region; (b) the role of local Aboriginal people working in the justice system; and, (c) where and how Aboriginal programs, Aboriginal ways of doing business and Aboriginal cultural practices figure in different stages of a local justice system.

Deirdre Howard-Wagner is a sociologist and socio-legal scholar, who currently is an ARC DECRA Fellow in the Department of Sociology and Social Policy at the University of Sydney. She is president of the Law and Society Association Australia and New Zealand (LSAANZ). Her academic research and publications to date examine how the Australian state exercises control over Aboriginal peoples and their rights through law and policy. This focus has led her to give detailed consideration to the intent and effects of the Northern Territory National Emergency Response laws and policy in her research and writing. Building on this work, Deirdre is currently involved in an in-depth place-based study of urban Aboriginal success in addressing disadvantage and improving wellbeing as a way of engaging methodically with the national Overcoming Indigenous Disadvantage framework and its associated policies, programs and practices.
Emancipatory Politics, Legal Cultures and the International Human Rights Regime

Marium Jabyn

Human rights have undoubtedly taken central stage in the modern day international order. It provides the lingua franca of progressive politics and an ideal emancipatory script for those fighting against various forms of injustices within and beyond their national borders. However, the existing problems at all levels of the human rights framework – from the understanding of its language to its implementation – makes most of the human rights endeavours of various rights organisations, such as the United Nations, ‘futile’. These issues also become further pronounced with rights that have been written down in international human rights instruments, but are largely disagreed with or contested via reservations or non-compliance by states parties.

This paper explores these as truths that force us to re-think the ambitious aspirations of the international human rights regime, and what it means for groups such as women from different legal cultures, particularly in terms of ‘contested’ rights such as a woman’s right to public life. The questions raised in this paper explore the interconnection of rights in international human rights frameworks and the local standard of rights in Islamic cultures. The main enquiry being, can there be an emancipatory framework of a ‘universal’ right to a public life to women, as espoused in international human rights frameworks such as CEDAW? Does a transnational perspective, exploring the issues from ‘below’ and the spaces of local struggles, provide useful insights as to the emancipatory potential of international human rights instruments and the gaps in the realisation of human rights?

Marium Jabyn is the youngest person to have been appointed to serve as a Permanent Secretary in the Maldives. During her service at the Attorney General’s Office, she formulated and implemented policies at the national level and served on multiple legal and policy related government boards. Prior to this role, she worked as a law lecturer and the head of Law Department at the Maldives National University. Amongst her most notable work, she created a general cadre of legal professionals for the national civil services, a cadre of legal professionals for the AGO, drafted the first Common Core document for the Maldives and the first National Human Rights Action Plan. In 2009 she also co-founded ‘Avant-Garde Lawyers’, which is currently a leading law firm in the Maldives.

Rights in ‘Principle’ vs. Rights in ‘Practice’: The Impact of CEDAW’s Right to a Public Life in the Maldives

Marium Jabyn

In order to explore whether ratification to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) leads to equality for women in public life, this research analysed the decision-making experience of 48 women in the executive, judiciary, legislature, political parties and civil society in the Maldives. The narratives demonstrated a highly gendered world, where links between political power and male leadership are seen as ‘natural’ and ‘fitting’ and women are seen as a better fit in junior administrative roles. The factors that limited the achievement of a right to public life included socio-cultural, religious beliefs, political culture, limited capability of women to pursue a public life, ineffective treaty reporting mechanisms and the inability of the CEDAW Committee to adequately measure ‘a right to public life’.

The main findings led to a conclusion that CEDAW has had limited success in changing women’s rights in public life in the Maldives. Similar to other studies, this study also confirms that local politics and domestic approaches to international norm enforcement must consider how local barriers affect the implementation rights. The description and analysis from this study could be transferred and appropriately applied in the identification of issues around the limited implementation of a right to public life. Moreover, the factors that are discovered in this study have importance not only for women, but also for other marginalised groups.

Marium Jabyn is the youngest person to have been appointed to serve as a Permanent Secretary in the Maldives. During her service at the Attorney General’s Office, she formulated and implemented policies at the national level and served on multiple legal and policy related government boards. Prior to this role, she worked as a law lecturer and the head of Law Department at the Maldives National University. Amongst her most notable work, she created a general cadre of legal professionals for the national civil services, a cadre of legal professionals for the AGO, drafted the first Common Core document for the Maldives and
the first National Human Rights Action Plan. In 2009 she also co-founded ‘Avant-Garde Lawyers’, which is currently a leading law firm in the Maldives.

**Older Persons and Decision-making Capacity: Adaptations of Law in the Medical Setting**

**Sue Jarrad**

In an exploration of decision-making processes, in-depth case studies of six older persons in hospital revealed both overt and hidden processes shaping the expression of autonomy. Capacity assessments conducted on the older persons demonstrated significant gaps between the law in books and the law in action. Hidden medical paradigms of authority and paternalism shaped these overt assessments, with the older person’s ‘problem’ and ‘solution’ defined within the medical construct. This led to instances where the older person became subject to the imposition of others’ views of preferred social outcomes. These practices reduced the voice of the older person and shaped their choices, diminishing the older persons’ legal and moral personhood.

This paper presents the findings of these case studies in relation to gaps in law and practice, and the cultural and normative aspects that either distanced or adapted law to fit the dominant medical approach. As older people represent a significant proportion of the hospital population, greater attention to decision-making practices in these settings is warranted.

**Sue Jarrad** has qualifications in social work, policy, and administration, with a particular interest in older persons and aged care services. She has held key leadership positions in Alzheimer’s Association SA and has contributed to dementia care policy at the state and federal level. Sue’s skillset includes policy analysis and organisational development, and an interest in legal and ethical issues, and in person-centred care.

Sue is a member of the SA Health Ethics Advisory Council, and assisted in the implementation of the SA Advance Care Directives legislation. She has recently submitted a doctoral thesis on decision-making capacity and personhood.

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**Is ‘Activism’ a Dirty Word Now? The Campaign Against Activism in the Courts**

**Tanya Josev**

The term ‘activism’, and its variant in the legal sphere, ‘judicial activism’, were relatively neutral (albeit indeterminate) behavioural descriptors used by court commentators in the 1950s. The second half of the twentieth century, however, saw a rise in organised social movements and groups in Australia and other common law jurisdictions utilising the courts to ventilate important and often highly politically charged issues, usually surrounding what are known now in the popular media as ‘minority rights’. The courts, in return, expanded on the methods used to decide on these issues, including displaying an increased willingness to accept amici curiae briefs and consider extralegal materials in their decision-making on these issues. These developments have coincided with the descent of the term ‘judicial activism’ into purely pejorative use, used to condemn members of the judiciary who have decided in favour of these litigants, regardless of the methods used to come to a decision.

This paper examines the rise of the campaign against judicial activism in Australia and the common law world; the impetus for the campaign; and its effects not only on the judiciary, but also on the future of social activism in the courtroom. It then considers whether recent moves to restore of the meanings of ‘social’ and ‘judicial activism’ to their descriptive use would prove beneficial to litigants and court commentators alike.

**Tanya Josev** is a lecturer in the Melbourne Law School with research interests in modern Australian and US legal and political history. In particular, Tanya is interested in institutional/superior court history and the relationship between courts, media commentators, and academia. Tanya’s current research focuses on the history of the public debate over ‘judicial activism’ in various common law jurisdictions, and her doctoral research examined the transportation of the debate from the United States to Australia within the academic and political spheres.
Transgender Children and the Family Court
Fiona Kelly

A growing number of Australian children are seeking medical treatment for gender dysphoria. A fivefold increase in referrals to the Gender Dysphoria Service at the Royal Children’s Hospital in Melbourne has occurred in just the past two years. However, unlike comparable jurisdictions, transgender children and youth in Australia cannot receive all of the appropriate medical treatment without Family Court approval. Medical treatment for transgender children is regulated by international consensus guidelines. Treatment occurs in two stages. Stage one comprises administration of puberty-suppressant hormones or ‘blockers’. Stage two treatment usually commences when the adolescent reaches approximately 16 years of age and involves the administration of either testosterone or oestrogen, depending on the adolescent’s chosen sex. To access stage two treatment, Family Court approval must be obtained. It is the view of medical experts in the field that the Family Court approval process is ‘one of the significant contributors to increased morbidity and mortality’ amongst transgender adolescents in Australia. In this presentation, I will draw on qualitative interviews with key stakeholders, including doctors, lawyers, and parents of transgender children, to identify the challenges of the existing process as well as paths to reform.

Tanya 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 in the context of non-normative families. She is the author of Transforming Law’s Family: The Legal Recognition of Planned Lesbian Families and co-author of Autonomous Motherhood? A Socio-Legal Study of Choice and Constraint. In 2015, she was awarded a Victorian Law Foundation grant to explore the legal challenges faced by transgender youth seeking medical treatment.

A State of Affairs of Freedom: Implications of Media and Free Speech in German Law
Andrew T Kenyon

Free speech is often seen as a negative legal right in law and political theory – a freedom from government action. But the rationales that are said to underlie free speech go further and suggest what could be called ‘positive’ aspects of free speech: communicative processes involve freedom to communicate as well as freedom from legal rules imposing liability. The concept of a ‘state of affairs’ is used in relation to free speech and other constitutional rights in Robert Alexy’s writing on the German constitutional system. It is adopted here in asking what implications arise for thinking about free speech – and especially media and free speech – from the case law of the German Federal Constitutional Court for this approach that takes freedom beyond a liberty. For more than 50 years, the court has created a structural approach to broadcasting regulation based directly on free speech, which offers a striking, if flawed, illustration of what could be required by commonplace rationales for free speech. The court’s reasoning poses a challenge to all legal systems that do not similarly support a state of affairs of free public communication.

Andrew Kenyon is professor of law at the University of Melbourne. He researches in comparative media law, including defamation, privacy, free speech, copyright and media policy. As well as legal doctrine, the work draws on a wide range of social, cultural and political research. He has formerly served as deputy dean of the Melbourne Law School and as president of the Law and Society Association of Australia and New Zealand. In 2015 he has been a Visiting Shimizu Professor in Law at the London School of Economics.

The Dangerous Impact of Criminalising Abortion: Domestic Violence and Reproductive Coercion
Katherine Kerr

Unplanned, unintended or unwanted pregnancy is more common among women who identify as experiencing domestic violence, often due to the presence of reproductive coercion. Reproductive coercion is a tactic of control used by perpetrators of domestic violence, where a
woman’s own body and fertility are used as tools of power and control over her. Through behaviour including birth control sabotage, emotional manipulation, rape and pregnancy promotion, perpetrators coerce, use and exploit their victim’s reproductive autonomy and pregnancies to control a woman to remain in an abusive relationship: further eroding her capacity to leave and intending an ongoing connection to the woman for the perpetrator through their future roles as co-parents. Pregnancy itself increases risk of intimate partner violence and controlling behaviours, and women in these circumstances seeking an abortion often do so to avoid bringing a child into a relationship characterised by violence, or to avoid co-parenting with a perpetrator. Barriers to accessing termination services caused by criminalisation of abortion are further compounded for these women, risking women’s health, safety and lives.

In 2014 Children by Choice collaborated with the UQ TC Beirne School of Law Pro Bono Centre to undertake research into the impact of domestic violence on women’s reproductive health and access to options and services. This paper will present key findings and recommendations of this research partnership and the necessity of abortion law reform to prevent barriers to provision from placing pregnant women in violent relationships at greater risk, and impeding their access to a safe future.

Acknowledgments: Children by Choice and the TC Beirne School of Law Pro Bono Centre

Katherine Kerr is a feminist researcher with particular interest in gendered experiences of criminal law, abortion law reform, and domestic violence. She has bachelor degrees in social work, law and arts, and extensive experience working with women across the domestic violence, reproductive health and community legal service sectors, and has published a feminist critique of abortion laws in Queensland. Recently, Katherine collaborated with Children by Choice and the TC Beirne School of Law Pro Bono Centre in research into experiences of coerced pregnancy.

Stop ‘the Chop’! The Case for Legal Regulation of Underage Boys’ Circumcision

Cornelia Koch

Australia has a long cultural history of circumcising boys at an age when they cannot yet object or consent to this procedure. In the 1950s around 85% of newborns were routinely circumcised, in the 1970s the rate dropped to about 50% and today the circumcision rate in underage boys is between 10 and 20%. It is estimated that around 50% of all males living in Australia today are without foreskin. While fewer parents choose to have their baby boys circumcised, it is still a culturally accepted practice in Australia.

This paper questions the laissez faire approach that Australian law takes to undergraduate circumcision and regards the procedure as a

Cybersecurity, Moral Panics and the Law of Confidential Information

Anna Kingsbury

This paper is about the trend to criminalisation of the protection of confidential information, and its justifications. In New Zealand as elsewhere, fears of foreign hackers and of breaches of national cybersecurity have been used to create a form of moral panic, justifying the extension of electronic surveillance by national security services. These same fears have also been used to justify the extension of the criminal law to the protection of confidential information and trade secrets. We have seen the creation of criminal offences involving the taking of trade secrets, along with criminal offences relating to computer misuse. However, at least in New Zealand, these provisions have not led to prosecutions of foreign hackers, and such prosecutions would raise practical difficulties in any event. Employees and ex-employees appear to be much more likely defendants. This paper discusses selected recent cases of theft of information by employees in knowledge-based industries in the United States and in New Zealand, focusing particularly on cases involving scientists, engineers and university staff. It argues that the availability of the criminal law in these cases creates excessive risks for individual employees and more broadly for employee mobility.

Anna Kingsbury is an associate professor at Te Piringa Faculty of Law, University of Waikato, New Zealand. She teaches part of a general course on the law of torts, and she also teaches specialist courses in intellectual property and competition law. Her research interests and publications are primarily in the law of intellectual property and in competition law and regulation, and she has published in these areas in New Zealand and internationally.
breach of children’s right to physical integrity and personal autonomy. Most medical bodies in developed countries, including in Australia, take the view that the potential benefits of the procedure are outweighed by the associated risks. This means that under Australian law parents are allowed to make their children undergo medical procedures for no major medical benefit and carrying significant risks. This paper makes the case for legal regulation of male circumcision. It argues that, unless there is a pressing medical need for circumcision, the procedure cannot be carried out until the boy is old enough to determine his own circumcision status.

Underage male circumcision has not yet been given much attention by legal scholars and it is timely to consider this significant and unnecessary breach of young children’s rights.

Cornelia Koch is a Senior Lecturer at the Adelaide Law School, The University of Adelaide. Her research focuses mostly on public law and human rights issues, usually in the domestic context and often in comparative perspective. With her colleague Anne Hewitt she is currently completing a comparative project on male and female circumcision in Australia and Germany, to be published as an article later in 2015.

Civil Oversight: One Size Fits All? Insights from Prison Visitors in Japan and the ACT

Carol Lawson

In theory, civil oversight mechanisms ensure international human rights norms are observed in participatory democracies – including when state power is exercised in detention contexts. Local citizens check the conduct of public officials in order to prevent human rights abuses. But how can we tell if an oversight system is working? And must all oversight systems look the same? Or is internal logic enough?

Japan and the ACT have both introduced civil prison oversight systems in recent years. Both leverage the common sense of ordinary citizens, and both are concerned with international norms, including the 1955 United Nations Standard Minimum Rules for the Treatment of Prisoners expected to be expanded as the Mandela Rules in December 2015. Japan’s Visiting Committee system is part of the first prison reforms in 97 years, and its design is unusual among developed countries. At first glance it lacks independence and effectiveness. In contrast, the ACT’s official visitor system follows a model that is both more traditional, and more flexible.

This presentation takes an astonishing journey into the hidden world of Japanese corrections, before drawing on recent accounts by Japanese Visiting Committee members (Kawai, 2014; Sawanobori, 2015), an ethnographic study of Japanese visiting committees, and interviews with ACT official visitors to highlight differences – and unexpected commonalities – between these two civil oversight regimes. This comparative study is part of a larger project aiming to shed light on the possibility of legitimate diversity in civil oversight mechanisms, and the shape of the rule of law itself in Asia.

Carol Lawson is a PhD Candidate at the ANU College of Law. She brings a passion for legal sociology and comparative law, and long-standing engagement with Japanese law and language to her topic: The Rule of Law, Civil Oversight and Japanese Prison Reform. From 2012–2014 she held the position of adjunct associate professor at the Leading Graduate Schools Program in Cross-Border Legal Institution Design at Nagoya University Graduate School of Law.

Gender Equality Agencies in an East Asian Context

Yun-Hsien Diana Lin

With rising importance and calling for gender mainstreaming as the model of governance, Taiwan, South Korea and Japan have all established their gender equality agencies under the executive branch, which marks the onset of the institutional transformation to pursue the goal of gender equality. By taking a closer look of both domestic and international feminist advocacy, this article intends to reveal a holistic view of the East Asian gender law reform, policy and institution.

The establishment of gender equality agencies in the central government has been regarded as progressive by many feminists. However, the drawbacks of such practice have also emerged through the time. This article will analyse the dedicated gender equality agencies and discuss how gender related bureaucratic mechanisms have evolved in the East Asian context. Special focus would be on the formation, features and limitations of gender equality agencies in the
three countries respectively, which would centre on the unique situations and challenges of the tension between the bureaucratic system and the women's movement. Through reflecting upon the legal reform that has taken place both inside and outside of the government, this article advocates for a more cautious attitude toward gender equality agencies and their possible conflicts with the feminist reform agenda.

Yun-Hsien Diana Lin is an associate professor of law in National Tsing Hua University, Taiwan. She received her JSD and LLM from the University of California, Berkeley, and LLB from National Taiwan University. Her research interest centres on the fields of gender and law, family law, bioethics and law. Professor Lin's recent refereed articles appeared in University of Pennsylvania East Asia Law Review, Asian-Pacific Law and Policy Journal (published by the University of Hawaii), and Asian Bioethics Review (published by National University of Singapore). Besides of various consulting positions appointed by ROC Ministry of Health and Welfare, Ministry of Education and Ministry of Justice, Professor Lin also serves as a member of Discrimination Review Board in the Ministry of Interiors.

Reading the Archive: Historians as Expert Witnesses

Trish Luker

In a substantial study into the relationship between law and history in Australian jurisprudence, Curthoys, Genovese and Reilly found that when historians appear as expert witnesses in Australian courts, they have often not been well received (2008). While it is acknowledged that historians have particular skills in identifying relevant sources in archives, Australian courts have generally been resistant to the idea that they bring special interpretative skills, because lawyers and judges believe that the hermeneutic processes involved in the interpretation of historical documents is a skill in which they are already well versed.

A number of developments have occurred in relation to the role of historians as experts in the decade since this study. The Federal Court of Australia has introduced procedural rules for expert conferences and for the production of concurrent evidence of expert witnesses. In this paper, I will discuss the legal reception of expert opinion evidence from historians through an investigation of has happened in the period since the mid-2000s. This research suggests that the collision that occurred between historians and the law during the 1990s subsequently resulted in an impasse between the disciplines of law and history. Legal counsel are disinclined to call historians as expert witnesses; historians themselves have resiled from the role as witnesses, and have been critical of courts' failure to recognise the particular value of their skills in reading an archive. This paper will report on research conducted into the role of historians as expert witnesses and will include reference to transnational research conducted in New Zealand and Canada.

Trish Luker is Chancellor’s Postdoctoral Research Fellow in the Law Faculty at the University of Technology Sydney. She works in the areas of socio-legal research and critical legal theory, maintaining a research focus on interdisciplinary approaches to law, history and culture. Her postdoctoral research project is called ‘Reading the Archive: Use of Historical Documents as Evidence in Law’. Trish is also a chief investigator on two Australian Research Council Discovery projects: the Australian Feminist Judgments Project (2012–14) and The Court as Archive Project (2013–16).

Managing Work and Family in the Australian Judiciary: Metaphors and Strategies

Kathy Mack & Sharyn Roach Anleu

Like many Australians, women and men in the judiciary experience work-based and domestic demands, requiring everyday practical strategies to transition in and out of their judicial role. Data from face-to-face interviews and nationwide mail surveys of Australian judges and magistrates reveals the ways judicial officers experience, describe, and manage the interface between these spheres. Three main themes emerge. First, for all judicial officers, work is dominant. It is perceived as inflexible and this inflexibility is normalised. Second, judicial officers use a wide variety of metaphors to describe their experience of managing work and non-work time, including blurring, balance, seepage, juggling, tension, collision and conflict. Third, the strategies used by women and men to demarcate work/family boundaries are different. Despite women’s apparently greater commitment to maintaining a strong boundary between their work and family life, a higher proportion of women judicial officers than men report that their job often or always interferes
with family life. In contrast, men in the judiciary seemed less concerned about the transition from one sphere to another than their female colleagues.

**Kathy Mack**, BA magna cum laude Rice University, JD Law School Stanford University, LLM Law School University of Adelaide is Emerita Professor of Law, Flinders Law School. She is the author of a monograph, book chapters and articles on ADR, and articles on legal education and evidence. With Professor Sharyn Roach Anleu, she conducted empirical research involving plea negotiations in Australia. Since 2000, they have been engaged in a major socio-legal study of the Australian judiciary. http://www.flinders.edu.au/law/judicialresearch/

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**Global Governance, Local Feminisms: A Case Study of Legislating Domestic Violence in India**

**Saptarshi Mandal**

This paper seeks to offer an account of the making of the Indian law addressing domestic violence against women. Adopting the methodology of ‘transnational legal pluralism’ (Zumbansen, 2011) this paper focuses on the roles played by global actors, norms and institutions in the enactment of legal ideas at the national level. The Indian law – Protection of Women from Domestic Violence Act, 2005 – was the product of both local feminist activism since the 1980s around issues of dowry violence and ‘wife battery’ and the mobilisations that took place at the international level over the 1990s to locate a broad range of acts classified as ‘violence against women’ within the international human rights discourse. I argue in this paper, that the making of the Indian domestic violence law can be understood within the framework of a certain mode of global governance, initiated by bodies such as the United Nations and the Word Bank, with feminists as active participants. Janet Halley and others have used the term ‘governance feminism’ (2006) to track this predicament travelling across international and domestic spaces, whereby feminists have been increasingly relying on the powers of criminal law to advocate for gender equality. While drawing on the analytical powers of governance feminism, I argue in this paper, that feminist legal reform projects in the governance mode, do not always rely on criminal law, but pursue diverse models of law reform at the local level.

The Indian domestic violence law is a case in point, which is a predominantly civil law, using the enforcement mechanism of criminal law.

**Saptarshi Mandal** is assistant professor at the Jindal Global Law School, Sonipat, India. He teaches, researches and writes in the areas of family law, disability and mental health law, and law and society. Saptarshi has been a TLSI Fellow at the inaugural Transnational Law Summer Institute, King’s College, London (2015), and has held visiting fellowships at the International Institute for the Sociology of Law, Onati, Spain (2015) and the Centre for the Study of Law and Governance, Jawaharlal Nehru University, New Delhi (2012). His work has been published in Australian Feminist Studies, Indian Journal of Gender Studies and Economic and Political Weekly, among others.

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**Transgressing Boundaries on Regulating Rumours**

**Rob McQueen**

Rumours in financial and corporate markets have long been a focus of regulators due to their potential for causing significant financial harm to stock markets within very short spaces of time. Stock exchanges and corporate legislation in many (if not most) countries contain specific provisions regarding the illicit dissemination of price sensitive information. Nonetheless, the reporting of rumours by the financial press has generally been permitted, as long as the journalists concerned identify the information as unverified rumours in their reportage.

In 2009 the Australian corporate regulator ASIC proposed new legislative provisions which would effectively outlaw ‘rumourtrage’ and penalise those engaged in the practice. Somewhat unfortunately the definition chosen to identify rumourtrage in proposed legislative provisions would have not only penalised malicious rumourmongers (in respect of whom there were probably ample provisions to deal with under existing legislation), but also would have penalised financial journalists reporting on rumours respecting unfolding events respecting vulnerable Australian enterprises as the GFC unfolded. After significant criticism in the press and other public arenas of this ASIC initiative respecting ‘rumourtrage’ was finally abandoned in 2010.

This paper seeks to draw on a considerable body of social science literature regarding the nature and role of rumour in social discourse in order to better understand the reasons for the
failure of the above and other similar initiatives. The paper then concludes with an examination of the ambivalent role that rumours might play in the social arena, not only as a negative disrupter of ‘truth’, but also as a proactive means of challenging the ‘official’, and what that latter role might mean in better understanding the endurance of rumours despite attempts to regulate them. As Di Fonzo and Bordia (2006) have noted regarding the enduring nature of rumours: ‘Rumours are unverified information that circulate among people confronted with uncertainty’. One might therefore argue that rumours will thus continue to circulate as long as ambiguity persists.

Rob McQueen has published extensively on historical and social aspects of corporate law and corporate regulation, as well as on other areas pertaining to the interaction of law and society. He was one of the founding members of the Australian and NZ Law and Society Association. He retired at the end of 2012 from his then full-time position in the Monash Law School, previously having been head of Victoria Law School, Melbourne and subsequently dean of Griffith Law School. He was appointed a senior associate in the Melbourne Law School in 2015. Amongst many other scholarly publications he is the author of A Social History of Corporations Law (Ashgate, 2009).


Shaun McVeigh

The Indigenous Australia: Enduring Civilization exhibition in London and Canberra allows for reflection on the jurisprudence of receiving and acknowledging an emblem of Indigenous jurisprudence and law. In one register, the oddness of the title of this exhibition invites political, cultural and social analysis. In another register, this exhibition requires a response from within jurisprudence adequate to the task of welcoming a law and its jurisprudence. This paper addresses the latter question. It does so locally as part of a law of welcome, movement and place expressed through the Transport for London Bus route #68 that runs between Norwood and Euston Station in London. Starting at the sources of the River Effra and South London cemetery in the South and ending at Euston Station and St Pancras old cemetery and the river Fleet in central London, this bus route maps its path via Imperial War Museum, the Southbank, and the British Museum. It ends at what is probably the burial site of Matthew Flinders. This should be enough to begin to trace a pattern of lawful relations presented in the exhibition and to think about what might be involved in welcoming an Indigenous jurisprudence.

Shaun McVeigh researches in the Institute of International Law and Humanities, Melbourne Law School, University of Melbourne. His research addresses the authorisation and conduct of lawful relations. Along with Shaunnagh Dorsett he is the author of Jurisdiction (2012).

Teachers’ Perceptions of International Student Diversity: Barriers, Enrichment or Self-actualisation?

Angela Melville & Susana Arrese

One of the main activities of the International Institute of Sociology of Law (IISL) is its International Master’s program in sociology of law. This program is highly innovative, in that rather than having any in-house teachers, the program is delivered by leading scholars from around the world. In 2014, the IISL celebrated its 25th anniversary, which provided an ideal opportunity to reflect upon the Master’s program. Teachers were invited to provide their views on teaching at the IISL, and the strongest theme that emerged was student diversity. This paper considers why student diversity struck teachers so strongly, and how the IISL has achieved such a highly diverse student body.

It then explores teachers’ perceptions of diversity, revealing responses ranging from seeing diversity as a barrier to embracing diversity as enriching for students and teachers alike. Teaching was largely conceived as a form of ‘engaged pedagogy’ (bell hooks 1994), which involved drawing on a genuine dialogue with students, embracing multiple perspectives, challenging hegemonic understandings of sociology of law, and interaction beyond the classroom walls. We argue that this model of teaching can potentially produce a global community of reflective, self-aware, critical, culturally sensitive and caring sociology of law scholars.
Angela Melville is a senior lecturer in the Flinders Law School, Flinders University, and is a former scientific director at the International Institute for the Sociology of Law.

The Legal and Therapeutic Constructions of the Appellant in Habra v Police

Danielle Misell

Habra v Police [2004] SASC 430 provides an example of the complex ways a criminal defendant is represented in legal and therapeutic discourses. Habra participated in a drug court program, was sentenced in the Magistrates Court, reoffended and appealed that further sentence to the Supreme Court. Assessments of compliance with drug court requirements, deterrence and risk to the community enabled constructions of the appellant as a legal subject worthy of punishment and as a therapeutic subject for whom punishment should no longer apply. This case illustrates how courts of higher jurisdiction construct an appellant using the information available including information from the drug court, which is recontextualised to form the basis of the appeal decision. Habra (and cases like it) reveal how the possible narratives about the appellant, including their time on the drug court program, are constrained and compressed to meet the legal requirements of the sentencing process. Habra provides insight into the value of linguistic and discourse analysis to theorise and explore the space between treatment for drug dependence in the drug court, sentencing and appeal.

Danielle Misell is a Master of Laws student at the Flinders University of South Australia. As a legal practitioner, Danielle represented clients participating in the South Australian drug court for many years.

Codifying Extraordinary Powers: Furthering Democracy or Executive Creep?

Sascha Mueller

On 22 February 2011 an earthquake shook the Canterbury region of New Zealand, taking the lives of almost two hundred people and destroying large parts of the region’s infrastructure. In April 2011, the New Zealand Parliament passed the Canterbury Earthquake Recovery Act 2011 (CER Act), whose purpose it is to expedite the recovery of the region and the rebuilding of affected communities. The Act confers extensive executive powers for a period of five years – powers that in some respects equal emergency powers. It thereby creates long-term emergency powers in all but name.

The codification of emergency powers has gained popularity in developed democracies over the last century. The reasons are apparent: customary, non-codified, and extralegal emergency powers (eg martial law) are beyond regulation and challenge. This may lead to abuse of emergency situations and the resulting extraordinary powers. Codifying and regulating the use of emergency powers adds a democratic element and strengthens the rule of law in emergency situations.

However, codification does not come without its own dangers. Emergency powers limit or suspend usual democratic processes and the rights of citizens. Parliament-sanctioned emergency statutes give these extraordinary powers an air of democratic legitimacy which may normalise them in the eye of the citizenry. As such, these powers could creep into ordinary non-emergency legislation. The CER Act could be one such example, as well as recent legislation regarding organised crime and terrorism.

The purpose of this paper is to investigate the effects of codified emergency powers on ordinary legislation.

Sascha Mueller is a senior lecturer and director for the LLM (by papers) at the University of Canterbury. His research fields mainly comprise constitutional and comparative constitutional law. His current research focus is on the changing nature of the concept of emergencies and its effect on democratic legitimacy.

Architecting Access to Justice: the Courts as Doors to the Law

Julian Murphy

The physical space of the law court is the point at which the abstract giant of our legal system is physically manifest and opened up to citizens. As such, it is of paramount importance that these places are welcoming and accessible, both physically and psychologically. This paper will employ an amalgam of architectural theory and legal scholarship to determine how successfully our law courts are fulfilling their brief of providing the open door to the law.
Discussion will cover both the aesthetics and functionality of these buildings, particularly their facades, entrances and waiting areas and, of course, the court rooms proper. With reference to architectural and spatial theorists, it will be posited that the physical organisation of these court buildings and rooms has consequences for the individuals entering, and hoping to gain entry, to them, particularly those from more vulnerable or disadvantaged classes. The paper will refer to a number of examples including the Northern Territory Supreme Court, the South African Constitutional Court and the Palais de Justice in Paris.

Julian Murphy is a lawyer and writer. He currently practices as a criminal defence advocate at the North Australian Aboriginal Justice Agency and in 2016 will be associate to the Honourable Justice Geoffrey Nettle at the High Court of Australia. You can find his writing on art, literature and film in publications like The Berlin Review of Books, The Millions, Senses of Cinema, Art and Australia, Arena and New Mathilda.


Jennifer Nielsen & Marcella Burns

In 2014, we co-facilitated the specialist elective ‘Race and the Law’ as a summer school intensive to a group of 33 LLB students. The unit was delivered through a four day-intensive program; its pedagogical design was informed by Indigenous philosophy and knowledge (eg, Watson, 2014; Morgan, 2012; Moreton-Robinson, 2007) and by critical race and whiteness theory (eg Delgado and Stefanie, 2012; Goldberg, 2001; Moreton-Robinson, 2009).

Our aim was to prompt students to think critically about the ongoing significance of race to law (and law to race), how systems of race structure social relations, the capacity of mainstream law to operate as a racialised system of power, and whiteness as a position of privilege. We also sought to empower students by engaging them in a reflexive praxis through which they could develop self-awareness of the significance of race and respond to its influence in their personal and professional lives.

In this paper, we share our reflections on the success of this unit, its pedagogy and the significance of theory to its design; the value of team teaching in this complex and dynamic teaching space; and the significance to legal institutions and the profession of engaging law students in critical learning on race and whiteness.

Marcella Burns is a Kamilaroi woman and descendant of the Stolen Generations. A strong advocate for recognition of First Nations peoples’ law and culture, Marcella’s practical legal experience includes working as a solicitor with the Aboriginal Legal Service NSW/ACT Limited, the Legal Aid Commission of NSW, and in private practice. She is a predoctoral fellow in the School of Law at UNE; previously at QUT, she led the inclusion of Indigenous knowledges and cultural competency in the LLB program, and in 2010, completed a Teaching and Learning Grant that developed an Indigenous cultural competency program for legal academics.

Jennifer Nielsen is a senior lecturer in the School of Law and Justice at Southern Cross University. She is an active researcher in the field of race and the law, applying critical race and whiteness theory to mainstream Australian law in order to expose its normative standards and tendency to privilege ‘white’ interests. Since 2013, she has been part of a four-person team that delivers staff training on race and racism – Courageous Conversations About Race – to the SCU community.

The Significance of Mining Codes in Africa for Company–Community Relations and Social Licence to Operate

Chilenye Nwapi

How are mining codes in Africa shaping or reshaping relations between mining companies and their host communities? The imperative for social licence to operate (SLO) has compelled mining companies around the world to reconsider the way they do business, specifically, their relations with their host communities and other stakeholders. Flowing from the idea that mining companies need more than the approval of their host governments to operate, SLO is regarded as the acceptance of mining companies and their activities by the communities affected by them. The license is not given in some formal or official way, unlike mining permits issued by the government. Rather, companies obtain the licence through developing good relationships with communities. There is no uniform way of developing such relationships. The World Bank has recommended that governments, mining
companies and communities enter into trilateral agreements from the very start of mining projects. A major problem with the concept, however, is its extralegal nature, compared to the mining licence issued by the government. Due to its existence outside the formal legal system, its normative claims often come into conflict with the rule of law or may be used to undermine the rule of law. The burning question is: What measures can be taken to integrate SLO into the formal legal system and bridge the gap between them? This paper attempts to answer this question through an examination of mining codes in Africa to see their influence on relations between mining companies and their host communities.

Chilenye Nwapi is a Banting Postdoctoral Fellow at the Canadian Institute of Resources Law, University of Calgary, Canada. He is also a Senior Fellow at the Institute for Oil, Gas, Energy, Environment and Sustainable Development, Afe Babalola University, Nigeria. He holds a PhD from the University of British Columbia, Canada, an LLM from the University of Calgary, Canada, and an LLB from Imo State University, Nigeria.

Legal Strategies of Anti-abortion Activists in Australia

Anne O’Rourke

Historically in Australia the issue of abortion has not attracted the violent protests that are frequently part of the American political landscape. Nor had it featured prominently in parliamentary debates. This began to change in 2004 when it was put back on the political agenda by a small but vocal group of conservative members of the Federal Parliament. It also emerged as an issue at the state level in 2008 and 2013 with the decriminalisation of abortion in two Australian states. The reforms generated much public debate due to the inclusion of a conscience clause that contained an ‘obligation to refer’ on objecting medical practitioners. These changes have initiated a campaign by opponents that consist of three main strategies: an acceleration of claims to conscientious objection and lobbying to repeal the conscience provisions; a disingenuous focus on sex-selection as a means to limit public funding of abortions; and attempts to introduce Bills into state parliaments recognising foetal personhood. This paper examines all three strategies. It argues that the first strategy is misleading and dishonest, relying on false interpretations of international human rights treaties and guidelines. It shows that the second strategy is based on falsehoods as there is no evidence to show that sex-selection abortion occurs in Australia. It then turns to the problematic nature of foetal personhood laws arguing by reference to American experience against the implementation of such laws in Australia. The final part evaluates the likely success of these strategies in Australia.

Anne O’Rourke is a lecturer in business law and taxation at Monash University. She teaches employment/labour law and Australian company law, and also guest lectures in international human rights law. Anne’s research includes labour law (workplace privacy, workplace bullying and labour rights) and abortion law reform. She has been a policy committee member of Liberty Victoria for 20 years and a vice-president for 10 years. In the latter capacity Anne was very active in the abortion law reform process in Victoria and remains committed to ensuring that the law recognises women’s reproductive rights.

‘All I Want is to Die Peacefully’: Regulating for Risk in Assisted Dying Laws

Pam Oliver

The legalisation of assisted dying (AD) has been increasing apace in the past two decades, with either specific statues or court decisions making AD now legal in 13 jurisdictions and Bills are being debated currently in three others. Where specific statutes have been enacted, they contain a range of ‘safeguards’, ostensibly for the protection of ‘vulnerable’ people, that are known to result, intentionally or otherwise, in barriers to access. Pam’s research canvassed the experience of implementing AD laws in six jurisdictions, asking three main questions:

1) What are the access barriers and other implementation issues that have arisen in jurisdictions where AD has been legalised?
2) How have those problems been addressed, or not, by regulatory or other means?
3) How might such problems be avoided or mitigated by improvements to legislation?

In this presentation, Pam will profile a United States case where the recipient of a lethal dose did not die until 26 hours after ingesting the medication. Through this case she will discuss the implications and issues for all parties
involved – the person seeking AD, their family, and participating medical professionals – of the absence of sufficient regulation for the various risks to those parties. She will identify ways in which such problems can be mitigated or avoided altogether through the legislative framework and/or other means, in particular through the constructive collaboration of medical and legal bodies, and discuss how and why this has been achieved in some jurisdictions but not in others.

**Pam Oliver**, PhD Psychology, LLB, registered psychologist. Following earlier careers in social and mental health services and then academia, Pam has worked since 1997 as an independent researcher/evaluator. She has undertaken more than 120 major projects, primarily in health, social services and justice, with a recent focus on aged care and mental health services. Her current doctoral research focuses on identifying the barriers to accessing assisted dying where it is legal, and identifying ways in which those barriers may be addressed by legislative, regulatory and/or other means, to inform the development of assisted dying law in New Zealand.

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**Madness Inside and Out the National Disability Insurance Scheme: Structural Impacts of the NDIS on Social Constructions of Psychosocial Disability**

**Mariana Oppermann**

The National Disability Insurance Scheme (NDIS) represents the biggest development in the disability sector in Australian history, yet in many ways disability arising from mental illness has been an afterthought.

As a result, both the mental health sector and affected individuals are increasingly, in part out of practical necessity, seeking to redefine themselves (and psychosocial disability) so as to fit the NDIS model, rather than critically engaging with the inherent shortcomings and dangers of the scheme. Unfortunately this creates a range of serious problems.

I argue that whilst the NDIS seeks to enable people with a disability to come more inside ‘mainstream’ society, the scheme’s structure risks pushing most of those with psychosocial disabilities further out, both in terms of its direct practical effects and its impact on the ways in which mental illness is constructed.

At the core of NDIS eligibility and coverage are a range of dangerous in/out distinctions, including between

- the permanently impaired for life (in), and the temporarily disabled (out)
- reasonable and necessary disability needs (in), and other needs/desires (out)
- matters pertaining to the ‘disability sector’ (in), and to ‘health sector’ (out)
- symptoms (out), and functional impairment (in)
- treatment (out?), and support (in).

These crucial distinctions are highly detrimental to our understanding of psychosocial disability. I conclude that ultimately they endanger much of the work that has been done to address mental illness in a holistic and de-medicalising manner, and undermine many of the original goals of the NDIS itself.

**Mariana Oppermann** is a Canberra-based lawyer with a special interest in mental health law and policy. Mariana holds an arts degree majoring in anthropology and a first class honours degree in law from the Australian National University. She currently works in the community mental health sector while on leave as a postgraduate student in the Culture, Health and Medicine Program at the ANU.

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**An Indivisible and Honourable Crown: A Potential Treaty Partner for First Nations and Maori Following the Mutua (Mau Mau) Decision**

**Andie Palmer**

The Waitangi Tribunal’s Stage One Report on Te Tiriti O Waitangi finds ‘it is clear that at no stage . . . did rangatira who signed te Tiriti in February 1840 surrender ultimate authority to the British’. The Prime Minister of Aotearoa New Zealand has since made it equally clear that he is ‘respectfully rejecting’ the finding. A case involving the Alberta Indian Association has, since 1982, similarly strained relationships first set out between the Cree and the Crown in a treaty signed with the ceremony of the Sacred Pipe. In both countries, the Crown represented at treaty has, at law, shifted into a divisible Crown, such that the ‘constitutional duty to protect Indian interests’ and ‘positive duty to act in good faith, fairly, reasonably and honourably towards the other’ have been effectively avoided. An alternative to these impasses for the descendants of Maori and First Nations
signatories would appear to come from a British High Court decision in *Mutua v Foreign and Commonwealth Office*, the 2011 Mau Mau torture reparations case, which could open the door for a reconsideration of a direct relationship with the Crown in Right of the United Kingdom. As relationships shaped in accordance with tikanga and First Nations’ protocols effectively engaged this Crown in the past, restored avenues of communication become possible, and earlier interpersonal relationships between rangatira and the British sovereign, steadfastly maintained through generations and recounted in recent tribunal hearings, may be more fully recognised and given due weight.

Andie Palmer (associate professor, Department of Anthropology, University of Alberta) is a linguistic and legal anthropologist. Her areas of specialisation include Northwest Coast arts, oratory and aesthetics, and cross-cultural (mis)communication in courtroom discourse. Her research on Indigenous legal systems, sponsored by SSHRC and the Law Commission of Canada, examined the accommodation of First Nations’ oral history testimony as evidence in the Canadian courts. Drawing from her experiences as an international observer at Waitangi Tribunal hearings in her current project, Making Treaties Matter, she considers relationships between Indigenous Peoples of Aotearoa New Zealand and British Columbia, and the Crown.

Turning Corporate Law Inside Out: A Political Theology of the Corporate Body
Timothy D Peters

Concerns over both the actions and regulation of corporations are rarely far from news headlines. However, what is the basis for regulating the activities of corporations? Traditionally corporations are seen either as a construct of the law granted certain privileges that can then be regulated or taken away, or as arising from the agreement or contract of its members. However, following the work of scholars such as Joshua Barkan, the corporation can be more clearly understood not as an entity or legal person that can be regulated by the law, but rather a body which is constituted by its exclusion from the law. In this sense, we potentially need to turn the idea of regulating the corporate body inside out, understanding the corporation not as a legal person whose activities are to be regulated but as a source of law itself. To progress this rethinking of the corporate body, this paper turns to recent work in political theology and traditional concepts of the church as a ‘corporate body’. Whilst the medieval theological origins of the corporate form are noted in the history of corporate law, they are seldom drawn upon in terms of examining the modern corporation. This is despite references to ‘corporate metaphysics’ in judicial considerations of corporate personality and its effects. By understanding the relevance of these theological concepts of corporate personhood to the modern form of the corporation, the ‘regulation’ of the activities of corporation can be potentially rethought, turned inside out and rendered anew.

Timothy D Peters holds an LLB, a Bachelor of Commerce and a PhD from Griffith University and is a Lecturer at the Griffith Law School. His research explores the intersections of legal theory, theology and popular culture and he is currently completing a book manuscript entitled *The Law Made Strange: A Theological Jurisprudence of Popular Culture*. Tim teaches corporations law, cultural legal studies and securities regulation. He is a managing editor of the *Griffith Law Review* and secretary of the Law, Literature and Humanities Association of Australasia and the Law and Society Association of Australia and New Zealand.

The Problematic Assumption of the Birth Mother as Legal Parent in Surrogacy Agreements When Using Reproductive Technologies in the UK
Rachel Peterson

In England and Wales, the *Human Fertilisation and Embryology Act* was reformed in 2008 in order to respond to new family formations, especially those families built through the use of reproductive technologies. However, the presumption of the gestational mother as a legal parent of the child born from surrogacy agreements was kept untouched. It opens the possibility for future disagreements among adults involved. It occurs, especially, when the surrogate changes her mind and decides to keep her legal status as parent of the child born, frustrating plans and projects of intended parents (same sex couples, heterosexual couples or even single persons). In addition to this, although commercial surrogacy is forbidden in the UK, it is common to find couples going
abroad to a country where it is possible and having children from these agreements. Nonetheless, these couples may face problems being recognised as legal parents of children born under the British legislation. It might also be possible for a stateless child be born as a result of the divergence in the legislation between the country where such agreements were made and England and Wales.

Rachel Peterson is a Masters of Law student. She studies LLM in advanced legal studies at the postgraduate program of the University of Reading, England. She holds a Brazilian Bachelor of Laws from the Federal University of Rio de Janeiro State, Rio de Janeiro City, Brazil. After graduation, she started her postgraduate degree in England in order to improve her knowledge and obtain different points of view in her areas of interest, especially family law and LGBT rights.

Disabilities, Ageing and the Law: Reconceptualising the Threshold Test for Coercive Mental Health Treatment in Light of Art 12 of the CRPD

Susan Peukert

My presentation will focus on the obligations required under Article 12 (Equal Recognition Before the Law) of the Convention on the Rights of Persons with Disabilities in the context of the threshold test for coercive mental health. The aim of my research is to increase the autonomy and mental integrity of those living with severe mental illness by creating a new threshold test for those times when coercive mental health treatment is unavoidable. I will discuss legal capacity, the exercise of which on an equal basis with others is promoted in the CRPD, and mental capacity which is what is tested in newer mental health legislation with capacity provisions. It will be seen that diminished mental capacity commonly leads to a determination of incapacity and hence coercive mental health treatment. This is in violation of the requirements of the CRPD. I will look at the elements of the legal test for capacity and discuss the conundrum of trying to develop a new test for coercive mental health treatment that does not violate the requirements of the CRPD.

Conference attendees will find my presentation informative because I will take a critical look at what Art 12 requires as opposed to how its requirements are implemented in mental health legislation within Australia. It is informative to learn that although newer mental health regimes have tried to incorporate a presumption of capacity and use capacity as the threshold test for coercive treatment, the legislation has failed to uphold the requirements of Art 12 by allowing a loss of legal capacity on the basis of diminished mental capacity.

Susan Peukert is a PhD candidate at the University of Adelaide. Her research interest is mental health law and particularly the reconceptualisation of the threshold test for coercive mental health treatment in light of Australia’s obligations under Article 12 of the CRPD which promotes legal capacity on an equal basis with others. Sue has lived experience with mental illness and her interest in the area of mental health law arose from her observations and experiences in the mental health system. Sue is passionate about disability rights and is a member of the Australian Lawyers for Human Rights’ Subcommittee for Disability Rights.

Regionalism in the Ordering of Universal Human Rights

Catherine Renshaw

We are still grappling with the fundamental dilemma of how to affirm a universal substantive vision of human dignity while respecting the diversity and freedom of human cultures. The struggle is between dual polarities. On the one hand, there is an abstract, de-contextualised, monolithic vision of the human person. On the other, there is a destructive relativism, where particularism and contingency mitigate against the very concept universality.

This paper advances the political space of ‘the region’ as a via media between the global and the particular in the ordering of international human rights. What drives my paper is this: judgments about human rights involve navigating difficult questions about the relationship between culture and rights, and the appropriate balance between rights and freedoms. Because decisions must be made with a deep understanding of the specific circumstances in which human rights violations take place in different complex societies, power in relation to rights should be exercised close to the people. In the language of subsidiarity, we would say that power should be devolved to the lowest competent unit. The level of the state, it
would seem, is well-suited to promoting and protecting human rights.

Yet we know from history that the state is also often the primary violator of rights, and that within closed political communities such as states, judgments about the balance between individual freedom and public morality, or between liberty and security, are sometimes poorly struck. For these reasons, we need what Adam Smith described as a ‘certain distance’ in order to obtain objectivity about questions of justice. My paper argues that regional organisations provide the ‘certain distance’ that imparts objectivity (as well as understanding) in judgments about rights.

Catherine Renshaw is a senior lecturer in the School of Law at the University of Western Sydney. Her research focuses on human rights and democracy in Southeast Asia. She is the author of numerous journal articles and book chapters on these and related subjects and with Professor Ben Saul, is editor of Human Rights in Asia and the Pacific (Routledge, 2014). In 2013 and 2014, Catherine was deputy director of the Australia-Myanmar Constitutional Democracy Project, based at the University of Sydney. Catherine has taught law at the Australian Catholic University, the Sydney Centre for International Law at the University of Sydney, the Faculty of Arts and Social Sciences at the University of Sydney and the University of Newcastle.

**Baseline Sentencing: Elite Interviews and Counter Narratives**

**James A Roffee**

Proffered by the then Liberal government to ensure the state justice system meets the expectations of Victorians, the introduction of the baseline sentencing in the Sentencing Amendment (Baseline Sentences) Act 2014 remains highly controversial. It has been one of a number of recent changes to the Victorian sentencing landscape that includes the abolition of suspended sentences and home detention. A significant number of criticisms to the baseline system came from individuals occupying positions of elite status in political, legal and judicial, and third sector organisations. Their public criticisms include the impact and reduction of judicial discretion, increased resources required to manage court caseload (following a perceived reduction in guilty pleas), and an associated increase in corrections resourcing from the increased length of custodial sentences. This paper draws on the preliminary findings from a number of elite interviews with those who have engaged in the debate on the introduction of the baseline sentencing system. The findings indicate the presence of a number of counter narratives that suggest the resistance to and the arguments against the baseline sentencing system, are anything but balanced.

James Roffee is a lecturer in Criminology at Monash University. He holds degrees in law from King’s College London and the University of Oxford. His research is interdisciplinary in nature and sits within a socio-legal structure seeking to both appraise and inform policy and academic practice. James’s research interests include the regulation of sexual offences, victims and sentencing.

**Artist, Criminal, Both? What Impact does Prisoners’ Artwork have on the Outside?**

**Jeremy Ryder**

How we think about ourselves is linked to how others think of us. Committing crime and/or serving time in prison stigmatises people. These experiences can become toxic and contaminating to individual identity because they can change, for worse, the way people think of themselves and how others think of them. In short, criminals are not held in high regard by the general community and this is because being criminal is linked to the immoral qualities of peoples’ characters.

But those in prison are rarely given the opportunity to challenge and disrupt the powerfully negative labels and stigma that attach to criminal behaviour. Art, however, is one way which prisoners are able to present themselves to the community in a positive light. In stark contrast to criminal achievements, artistic achievements have been traditionally associated with truth, beauty and moral goodness. When art from prison is made into an art exhibition, prisoners are transformed momentarily into artists, the central figures in a socially constructive cultural event. Art is also an expression of the inner (sub)consciousness, and so allows prisoners to reveal aspects of themselves, to tell stories of their lives and their experiences of incarceration. At a time when it is politically popular to get tough on those who commit crime, what happens when art from inside prison occupies the walls of culturally significant spaces outside prison?
Jeremy Ryder commenced his PhD in 2011 at Flinders University and since then has produced exhibitions of art from South Australian prisons annually for the last four years. His research will focus on prisoner experiences of doing art and being part of a public exhibition as well as community reactions and responses to artwork from prison.

Using Intersectionality in the ‘Post-Period’: Law, Gender and Identity Politics in Contemporary India

Saika Sabir

This paper engages with the interplay between law, gender and identity politics in postcolonial India through intersectional lenses. The paper aims to build upon a strategy of anti-subordination that combines subaltern perspectives with an intersectional approach. The intersectionality approach was formally inaugurated in 1989 by Kimberle Crenshaw to argue that black women are located at the intersection of racism and sexism. Their experiences were the product of both and equivalent to neither, therefore single axis anti-discrimination law would fail to provide any remedy. Thus, intersectionality was used as a mapping processes, locating points of crossing and charting their significance within a broader legal and theoretical topography. By framing it in this particular way, the problem of intersectionality is ‘brought in being’ as a problem of representation. The feminist movement in postcolonial India has witnessed similar intersectional moments. Dalit (caste based minority) feminists, for example, have made this critique of the putatively unmarked, universal claim of the subject of Indian feminist politics, a claim that renders invisible its own upper caste underpinnings in the guise of an absence of caste. Similarly, Muslim women’s involvement in the Islamist movement poses a challenge to the secular-liberal politics of which feminism has been an integral part, therefore positioning Muslim women as unable to voice their concerns either as a ‘Muslim’ or as a ‘woman’. This is where intersectionality becomes important as it primarily concerns itself with analysis of how law represents women’s experience.

Saika Sabir is presently studying MRes (Law and Society) at the University of Reading, United Kingdom. She has been awarded the very prestigious British Chevening Scholarship (FCO) and the Felix Scholarship. She has obtained her Bachelor of Arts and Bachelor of Law (BA LLB) from the University of Calcutta, and her Masters of Law from the West Bengal National University of Juridical Sciences. She is a faculty at the Centre for the Study of Social Exclusion and Inclusive Policy, National Law School of India University, Bangalore, India. Her primary research interests include law and impoverishment, ethnic and minority rights, multiculturalism and feminism.

Resolving Disputes under the Advance Care Directives Act (SA)

Susannah Sage-Jacobson & Sue Jarrad

Section 45 of the Advance Care Directives Act 2013 (SA) (‘OPA’) to informally resolve disputes that may occur in relation to the operation of an Advance Care Directive. Notably, South Australia (SA) is the first Australian state to enact legislation in response to the National Framework for Advance Care Directives and this provision is unique nationally in providing an alternative to administrative tribunal adjudication in this jurisdiction. The location of this dispute resolution service within the Office of the Public Advocate rather than with a Tribunal is a model of significant interest to researchers and practitioners in this area. This initiative is indicative of the emerging development of mediation and dispute resolution services nationally and internationally.

This paper presents preliminary findings into research into the effectiveness of the OPA Dispute Resolution Service, as viewed by its users after one year of operation. This includes identification of the reasons for the dispute concerning an advanced care directive, the informal mediation process undertaken, and the outcomes of applications that have been resolved by the OPA Dispute Resolution Service. It will also give preliminary findings as to the value of information provided by the OPA Dispute Resolution Service in referrals to the South Australian Civil and Administrative Tribunal.

Susannah Sage-Jacobson is a lecturer in Australian administrative law and is a supervising solicitor in the clinical program at Flinders Law School. Susannah’s research interests encompass socio-legal methods and relate to access to civil justice in Australia. She has particular expertise in tribunal decision-making affecting migrants and older people.
Sue Jarrad has worked in the aged care field for several decades as a social worker, in dementia care policy at the state and national level, and in legal and ethical aspects affecting older people. She has recently submitted a doctoral thesis on decision-making capacity and personhood in later life.

**Miscarriages of Justice and the Statutory Right to a Second or Further Appeal in South Australia.**

Bibi Sangha & Robert Moles

In May 2013 South Australia introduced a new statutory right of appeal. It provides for a right to a second or further appeal where there is ‘fresh and compelling’ evidence, which should be considered ‘in the interests of justice’ and which indicates that a ‘substantial miscarriage of justice’ has occurred.

Australian appeal rights have been in ‘common form’ for over 100 years. In that time, this is the first substantial change to the appeal rights. The South Australia Government acted after receiving a submission to a parliamentary inquiry which stated that the appeal rights, throughout Australia, failed to comply with international human rights obligations to which Australia was committed.

Tasmania has also announced that it will introduce a similar alteration to the criminal appeal rights there.

To date, two appeals have been heard under this new right of appeal, and both have been successful: *R v Keogh* (No 2) (2014) 121 SASR 307; and *R v Drummond* (No 2) [2015] SASCFC 82.

The principles stated in those appeals are likely to have a profound effect on future cases, and on the duties of prosecutors and expert witnesses, particularly forensic experts.

These cases will lead to reconsideration of the principles governing appeals, the circumstances in which retrials should be ordered, the circumstances in which compensation should be payable and whether there should be established in Australia a Criminal Cases Review Commission.

Bibi Sangha is Senior Lecturer, Law School, Flinders University, South Australia.

Robert Moles is Chief Researcher, Networked Knowledge, Adelaide, South Australia.

Bibi Sangha and Robert Moles are the authors of a major practitioner’s text on miscarriages of justice, criminal appeals and the rule of law in Australia, published just a month ago. They have made a significant contribution to establishing the new statutory right of appeal in South Australia and soon to be introduced in Tasmania.

**Legal Space and its Influence on Access to Justice for Indonesian Women Victims of Domestic Violence**

Rika Saraswati

The paper considers the experience of Indonesian women who have experienced domestic violence in accessing resources and justice in legal spaces such as courts and police stations. The role of legal spaces will be examined to see whether they empowered or disempowered women to cope with violence. Legal space will be approached through consideration of the relationship between law, power and space as these elements are the main content of legal spaces. This relation has a significant influence on women victims of domestic violence in accessing resources and seeking justice: the problem of domestic violence always has an in-depth correlation to the issue of law, power and space. There is an assumption that women victims of domestic violence who have access to resources will have more power and control to obtain their goals. However, there is debate over whether women become more powerful or not when they access resources in different spaces (which have been divided into ‘private’ and ‘public’ space). This occurs because resources are various, and every resource, either in private or public space, has its own ‘law’ and ‘power’ which can be an empowering and/or oppressive factor either singly or simultaneously for victims of domestic violence to cope with domestic violence.

Rika Saraswati is a lecturer at the School of Law, Faculty of Law and Communication, Soegijapranata Catholic University in Semarang, Central Java, Indonesia. She has a bachelors and a Masters degree from the Faculty of Law, University Gadjah Mada, Yogyakarta, Indonesia. She finished a Doctor of Philosophy at the Faculty of Law, University of Wollongong, NSW, Australia, in 2014. Her research was focused on the experience of Indonesian women victims of domestic violence.
‘Doing the research I do has left the scars’: Challenges of Researching in Transitional Justice Field

Olivera Simić

Transitional justice research involves critical examination of difficult topics that raise a number of ethical and methodological issues for both the participants and the researchers. Although empirical research has been a facet of the studies produced in the field, the researcher’s accounts of undertaking research in often politically sensitive environments is largely missing from scholarly literature. This paper aims to open discussion among transitional justice researchers about how doing research on a sensitive topic affects them and what are some of the strategies they use to negotiate challenges they encounter. The paper is informed by insights of scholars and researchers who work in transitional justice field of studies. The paper concludes with some suggestions on the ways to improve the researchers’ wellbeing when working with difficult topics.

Olivera Simić is a senior lecturer with the Griffith Law School, Griffith University, Australia and a visiting professor with UN University for Peace in Costa Rica. Her research engages with transitional justice, international law, gender and crime from an interdisciplinary perspective. Olivera has published in journals such as International Journal of Transitional Justice, Law Text Culture, Women’ Studies International Forum, Journal of International Women Studies, 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 2013. Her latest monograph, Surviving Peace: A Political Memoir, has been published by Spinifex in 2014.

Rhodes Must Fall! On Teaching Law (in Context) in Post-apartheid South Africa

Dee Smythe

Recent events at the University of Cape Town have underscored the need for the university to radically alter its approach to issues of transformation, integration and institutional culture. In 2015, an organised student-led movement staged multiple protests around campus in a campaign entitled ‘Rhodes Must Fall’. The campaign began in early March when human waste was poured over the statue of Cecil John Rhodes which is/was centrally located on the steps leading to UCT’s upper campus. Explaining their actions and calling for the statue to be removed, the student protesters stated that ‘the statue symbolises white supremacy’ at UCT. Thereafter events escalated rapidly. Students proceeded to occupy the university’s administration building. In the Faculty of Law students mobilised to demand that the institution ‘de-colonise UCT law’ and introduce more ‘law in context’. In this paper I reflect on the challenging questions raised by students about the extent to which UCT has been successful in transforming the institution (who we teach, how we teach and what we teach) in the post-apartheid era. In doing so I draw on both recent events and a survey conducted by the Centre for Law and Society at UCT into law student experiences and expectations.

Dee Smythe is the director of the Centre for Law and Society and professor of public law at the University of Cape Town. She has degrees from UCT (in political science and law) and from Stanford University, where she completed her Masters and doctoral degrees. Dee has published widely in the area of women’s rights. At UCT she convenes the Programme in Law and Society in Africa, a research seminar on women and law and teaches criminal procedure in the LLB.

Mass Incarceration of Aboriginal people in Australia: Can Law be Emancipatory?

Mary Spiers Williams

Australian criminologists and criminal justice scholars have been struggling with the problem of the imprisonment of Indigenous people in Australia for a long time. Despite the volume of
research and recommendations arising therefrom, there has been little impact on numbers and proportions of Aboriginal peoples incarcerated by state agencies, at best not decreasing and otherwise increasing. For decades, we have been aware of the gross levels of mass incarceration and the underlying issues (RCIADIC 1991). Police practices have been detailed (Cunneen 2001, etc) and the results of the cases involving those disproportionately represented peoples replicate the patterns of overcriminalisation measured in the numbers of Aboriginal people we lock away daily (Walker and McDonald 1995, Australian Prisons Project 2008–2013). Criminal justice actors in the legal field, who persist in practices that suggest that they have no control over their part in the levels of incarceration, have not been subject to sustained and detailed analysis. Most criminal law scholarship remains captive to the presumptions embedded in statist law doctrinal analysis. This paper explores the possibilities of altering the methodological approach to researching overcriminalisation of Aboriginal people through sentencing. Alternative perspectives which examine the role of actors and their network can uncover an assemblage of ‘law’ that is at odds with the findings of a doctrinal analysis of law and legal practice. Such a reconstituted vision of the law – describing the complex overlapping assemblages of laws, the power dynamics and the processes experienced and seen from the ground up – may defatalise existing practices and concepts that contribute to this mass incarceration, and expose emancipatory potential in criminal and sentencing law.

Mary Spiers Williams lectures at ANU College of Law, Australian National University

Testaments of Transformation: The Victim Impact Statement Process in NSW as Experienced by Victims of Crime

Fiona Tait

This study, featuring one of the largest, broad-based samples of primary and family victims of crime (VOC) interviewed in depth regarding the Victim Impact Statement (VIS) process, aimed to address current gaps in VIS knowledge to include whether some sectors of the VOC community are better, or more poorly served by the process of VIS and why. Drawn from data collected from 66 VOC and 35 victim service professionals in NSW between 2010 and 2011, it further sought to uncover the exact therapeutic benefits of VIS, and present a comprehensive picture of the NSW VIS process as experienced by VOC.

This presentation intends to present some key findings to include the core therapeutic value of VIS which stands alone, even where levels of anger or psychological trauma remain unaffected, and despite VOC dissatisfaction with other elements of their criminal justice experience or sentence handed down. The presentation will also discuss how the nature of the crime, relationship with the offender, gender, literacy, culture, minority status and personal self worth can individually or collectively impact VOC access and engagement with VIS process and take up rate, and explore how legal processes can enhance or hinder the VIS experience for VOC.

Finally, the presentation will conclude with recommendations regarding VIS process and further research avenues.

Fiona Tait recently completed her a Criminology Research Masters, Law School, University of Sydney. Her area of interest was the therapeutic consequences of the Victim Impact Statement process for victims of crime. During this work, Fiona also worked as a researcher on various projects for the NSW Department of Health and Ageing including: Person Centred Environment and Care Study, Nursing in Aged Care Retention Study, and Parkinson’s Medication Protocol Study. Fiona’s initial degree was a Bachelor of Applied Psychology. Prior to her studies, she produced music videos, commercials and music documentary film projects.

A Limited Welcome: Methods and Motives for Communicating Outsider Status to Litigants in Person

Bridgette Toy-Cronin

Litigants are the central party in an adversarial system and yet litigants in person (LiPs) receive the message that they are outsiders in the court process. Drawing on doctoral research that involved interviews with LiPs, court staff, lawyers and judges, as well reviewing litigation documents and observing LiPs in court, this paper explores the range of subtle and not so subtle ways LiPs are told they are outsiders. It then looks at explanations of why judges, lawyers and court staff offer only a limited
welcome to LiPs. The paper concludes with a discussion of the implications of LiPs outsider status for the reform programs being developed in many jurisdictions to accommodate the rising number of LiPs.

Bridgette Toy-Cronin is a teaching fellow at the University of Waikato and has recently submitted her thesis on litigants in person in the New Zealand civil courts. Bridgette has a BA and LLB(Hons) from the University of Auckland, and an LLM from Harvard Law School. She has worked as a judges’ clerk, a human rights lawyer in Cambodia, and as a civil litigator in New Zealand and Australia.

Business as Usual? How Magistrates make Bail Decisions in Tasmania
Max Travers

There is a quiet revolution taking place in criminal courts, as many practitioners are no longer satisfied with business as usual, and instead look for ways to address the underlying social and psychological problems that cause offending. Drawing on observation of bail applications in the Hobart magistrates’ court, and interviews with practitioners, this presentation will describe how magistrates currently make decisions. There are also, however, proposals to introduce reforms that may require defendants to attend therapeutic programs as a condition for obtaining bail. Perhaps the most interesting question for criminologists in relation to these developments is why courts change. Factors identified by American political scientists that explain bail reform during the 1970s include national reform initiatives, budgetary crises and community resistance to harsh decisions (Nardulli 1979). By contrast, what seems to be happening in Australia today is cultural change that is disrupting traditional ideas and practices, and has the potential to transform both the bail and sentencing process.

Max Travers is a senior lecturer in the School of Social Sciences, University of Tasmania. After qualifying as solicitor in England, he was awarded a PhD in sociology from the University of Manchester in 1991. He taught at Buckinghamshire New University (High Wycombe, England) before moving to Tasmania in 2003. His teaching and research interests are in the sociology of law, criminology and qualitative research methods. His most recent study, The Sentencing of Children (New Academia Press, Washington DC 2012), is based on ethnographic research conducted in Australian children’s courts.

Wine Equalisation Tax Rebate: Rethinking the Legal Framework in a Social, Environmental and Economic Context
Meg Vine

The Wine Equalisation Tax (WET) producer rebate scheme currently provides support to all winemakers and results in many small winemakers paying no wine tax at all. Many claim the scheme is necessary for the continued viability of Australia’s small winemaking industry but extensive rorting of the scheme means its continued existence is up for debate. This presentation aims to highlight the competing social, environmental and economic priorities which should all be considered and provide recommendations on moving forward in the regulation and promotion of this industry. Some key areas of focus are on the tension between current government philosophies and policies committed to minimum government intervention in order to maximise the choice, freedom and rights of individual Australians and the provision of rebates and grants as a type of corporate welfare. Debate over continuation of the rebate will be considered in the context of a move from a wholesale value tax to volumetric tax of wine in order to bring it in line with other alcohol taxation. This will raise additional issues related to the use of taxes in delivering public health benefits and prevention of crime. In the largest wine producing state in Australia, the wine industry plays a key role in the South Australian identity. Against this backdrop, this presentation will provide informative insight into how the law and social, environmental and economic factors can affect the regulation of this industry.

Meg Vine currently teaches first year law in tort law and contract law at the School of Law, University of New England, NSW. Prior to entering academia, Meg worked as a legal interpretation officer at the Australian Taxation Office in Adelaide. She worked extensively in the indirect tax areas focusing on alcohol and fuel excise and the application of the Wine Equalisation Tax. These experiences inform her current research into the legal and social implications of taxation in the wine industry. Meg also has a keen interest in the interactions between tort and animal law.
When is a Family Lawyer, a Lawyer?
Lisa Webley

Family problems are amongst the most common disputes liable to give rise to the need for legal help; they often encapsulate multiple and interconnected problems, which may warp and shift as time elapses. At a difficult time in their lives when family support systems may be at breaking point, individuals are faced with a bewildering array of choices about the professionals and services they should use to help them to navigate complex procedural rules in a rapidly changing family law landscape. Further, the accessibility and affordability of legal advice and representation have been greatly reduced in many jurisdictions, not least in England and Wales, such that many argue that we are facing a crisis in family justice. This paper will examine an emerging trend in England and Wales of family legal services offered in less traditional environments by people who may not always be admitted lawyers subject to regulatory oversight, for example paid Mackenzie Friends. Although the context in England and Wales differs from that in Australia and New Zealand, the Mackenzie Friend phenomena is not unique to Britain and there are some developing parallels. While there are serious concerns about the market’s ability to protect consumers and ensure the maintenance of the rule of law, the developing legal services market may hold some potential to increase the public’s access to family legal help if appropriately regulated to reduce the risk of exploitation and harm.

Lisa Webley is professor of empirical legal studies and director of the Centre on the Legal Profession at Westminster Law School, University of Westminster; she also holds a senior research fellowship at the Institute of Advanced Legal Studies University of London. She conducts research on gender and diversity in the legal profession, which has included collaborative research projects on the barriers and challenges faced by women and minority individuals within the legal profession and the role of women in law firms. She also conducts research on family justice, legal ethics, legal education and access to justice.

Children with Intersex Variations: Legal Regulation and Human Rights in Australia
Travis Wisdom

‘Intersex’ describes any person whose internal or external anatomy is neither distinctly male nor distinctly female. Intersex variations may or may not be readily visible at birth and may reveal themselves later in life, such as during adolescence. The presence of genitals that do not wholly conform to dimorphic sex categories often raises social, medical and legal uncertainty and controversy surrounding the treatment of children with intersex variations. The most common response to such children is sex assignment, which may include a variety of hormonal and surgical procedures to alter the child’s genitalia to appear distinctly male or distinctly female. With this in mind, this paper investigates the legal position of children with intersex variations in Australia, and examines the Births, Deaths and Marriages Registration and sex assignment statutes as well as anti-discrimination legislation. Australian law does not protect the best interests of children with intersex variations. It facilitates the performance and recognition of sex assignment by the medical profession under the direction of parents but it does not restrict such procedures to therapeutic reasons. The lack of legal protection from non-therapeutic procedures has detrimental impact on the human rights considerations of children with intersex variations, particularly the right to physical integrity.

Travis Wisdom is a PhD candidate at the University of Adelaide. He obtained his BA in women’s studies from the University of Nevada, Las Vegas (USA), his MA in human rights, globalisation and justice at Keele University (UK), and his LLM in international law and human rights at the University of Birmingham (UK). His research interests relate to human rights, particularly the rights of the child, and the socio-legal regulation of human bodies. His thesis investigates Australian legal understanding of sex and gender, and regulation of sex assignment of children with intersex variations within a framework of children’s right to physical and mental integrity.
Native Title in an FPIC World:
Questioning the Continued Reliance on the Right to Negotiate

Stephen Young

Future acts under Australian Native Title grant individuals the ability to use land in a way that may affect native title rights and interests. An example is the granting of a mining tenement that may extinguish Aboriginal or Torres Strait Islanders native title. There are two pathways the Native Title Act provides for individuals seeking a future act and Indigenous peoples to reconcile potentially incommensurate uses of land. One is the Indigenous land use agreement and the other is the right to negotiate (RTN). This paper examines whether the Native Title Act is consistent with Indigenous peoples’ ability to claim free, prior and informed consent (FPIC) to any action that may affect their lands, territories or livelihoods. It argues that so long as the RTN enables future acts seeking individuals to be granted a Native Title Tribunal determination that conflicts with Indigenous consensus, Australia is not in compliance with FPIC. A case study is provided to elucidate what this means, as well as conceptual problems non-Indigenous individuals have in understanding what FPIC requires.

Stephen Young is from the United States, where he obtained a bachelor of arts, a Master of arts and his juris doctorate. He is currently living in Brisbane and studying for his PhD at the University of Queensland, where he is advised by individuals in the Law School and the Sustainable Minerals Institute. His research is primarily focused on understanding the complexity of Indigenous peoples’ free, prior and informed consent.