



CCCS NEWSLETTER #40

JUNE 2019

Welcome to the 40th edition of the Centre for Comparative Constitutional Studies newsletter, a guide to news and events at the Centre.

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- Laureate Program in Comparative Constitutional Law website: law.unimelb.edu.au/laureate-programs/lpccl
- Centre members also blog at Opinions on High: blogs.unimelb.edu.au/opinionsonhigh/
- The IACL Blog: iacl-aidc-blog.org



Centre for
Comparative
Constitutional
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Melbourne Law School

DIRECTORS' REPORT

We begin our 40th CCCS Newsletter with a note of sadness following the death of our valued colleague and friend, **Philip Cummins**, in February. Known widely within the Australian public law and law reform community, many of our members will have read some of the obituaries which celebrated Philip's life and contribution to the law (www.vicbar.com.au/news-events/obituary-honourable-philip-damien-cummins-am). At CCCS we knew Philip above all as one of our PhD candidates; an experience he relished and in which he flourished. As a tribute to Philip, we have arranged for five of our research assistants to attend our forthcoming 2019 Constitutional Law Conference and dinner in his memory. Vale Philip from your friends at CCCS.

Our **2019 Constitutional Law Conference** is just six weeks away and promises to be an outstanding event. This year, the conference will officially commence on the evening of **Thursday 25 July** with the 2019 Allen Hope Southey Memorial Lecture delivered by **The Hon. Justice Stephen Gageler AC**, High Court of Australia (please register for this free public lecture [here](#)). Justice Gageler's chosen topic – '**Engineers: The drama of its day in the climate of its era**' – will provide a fascinating frame for the conference to follow, which will commence on **Friday 26 July** with a special panel on '**Engineers: The Next 100 Years**', followed by panels on '**The Constitution and National Security: Internal and External**', '**Constitutional Dimensions of Property**', and '**Recent Developments in Freedom of Political Communication**'.

Confirmed **speakers** are Dr Stephen Donaghue QC (Commonwealth Solicitor General), Mr Bret Walker SC (Fifth Floor St James Hall Chambers), Mr Graeme Hill (Owen Dixon Chambers West), Mr Craig Lenehan (Fifth Floor St James Hall Chambers), Laureate Professor Emeritus Cheryl Saunders AO (Melbourne), Professor Michael Crommelin AO (Melbourne), Emeritus Professor Jeff Goldsworthy (Melbourne), Professor Adrienne Stone (Melbourne), Dr Cameron Moore (UNE/ANU/UOW) and Dr Lael Weis (Melbourne). **Recent cases to be discussed** in the speakers' presentations include *Spence v Queensland*, *Clubb v Edwards*, *Preston v Avery*, *Unions NSW v New South Wales* and *Northern Territory v Griffiths* (the *Timber Creek* case). We will also celebrate the publication of **Dylan Lino's** award winning *Constitutional Recognition: First Peoples and the Australian Settler State* (Federation Press, 2018), with remarks by **Professor Marcia Langton AM** at the book launch to be held at the close of the day's proceedings, and are delighted to have secured **The Hon. Kenneth M Hayne AC QC** as our after-dinner speaker at the conference dinner, addressing the subject of '**On Royal Commissions**'.

See full programme details and information on how to register [here](#). We remind our community that the **conference registration closes on Monday 22 July**.

In this edition of the CCCS Newsletter we continue the tradition of including special features on our alumni and members. For

our **alumni feature** CCCS Research Assistant **Sophie Clapin** interviewed **Anne Mullins**, former Deputy Director of the CCCS and currently Associate to the Patient Review Panel at the Victorian Department of Health and Human Services (see p 6). For the **member feature** we profile our colleague **Associate Professor Tarun Khaitan**, who spoke to CCCS Research Assistant **Emily Peck** about his scholarship on anti-discrimination law and the Indian Equality Law Project that he has recently launched with the support of the award of the prestigious 2018 Letten Prize (see p 8). We are also delighted to include a **special feature interview** with **Professor Adrienne Stone** on the recent High Court 'safe access zone' cases by CCCS Research Assistant **Alice Maxwell** (see p 9).

The local and global engagement of CCCS members continues apace. **Professor Adrienne Stone** addressed the Ibero-American Association of Constitutional Law Congress in Buenos Aires, Argentina, in May, and brought her expertise on freedom of expression to a Symposium to Honour Norman Dorsen at Cardozo Law School in New York City in April. Co-Director **Associate Professor Kristen Rundle** chaired a public conversation ('The Office of the Commonwealth Ombudsman: Four Decades On') with **Commonwealth Ombudsman, Michael Manthorpe** in April (see p 13). As at the publication of this newsletter many of our CCCS academic members are preparing to head off to various public law conferences and meetings across the northern hemisphere, including the '**Public Law in Four Jurisdictions**' (PL4J) biennial conference that we convene in partnership with colleagues in South Africa, New Zealand and Hong Kong, and which this July will be hosted by Witwatersrand University in South Africa.

Among recent accomplishments in our community, we are thrilled to report that our colleague **Dr Tom Daly** (former MLS Postdoctoral Fellow) has been appointed **Assistant Director** of the **Melbourne School of Government (MSoG)**, where he will be developing the School's research and teaching agendas as well as international strategy, and administering and helping to restructure MSoG's signature academic program, the Master in Public Administration. We could not be happier that we get to 'keep' Tom here in Australia, not to mention so close at hand. Congratulations Tom. Applause is also due to our colleague **Dr Anna Dzedzic** who has secured a prestigious two-year **Global Postdoctoral Fellowship** at **Hong Kong University** where she will continue her valuable research into foreign judges. Our very best wishes to Anna for a great two years. We were equally delighted to learn of the award of funding from the **Academy of the Social Sciences in Australia (ASSA)**, with the collaboration of Professor Adrienne Stone as an ASSA Fellow, to support our colleagues **Dr Anne Carter** (Deakin) and **Dr Joe Tomlinson** (King's College London) to convene an important workshop on 'Facts in Public Law Adjudication' this coming August.

Our **international and national visitors** over the course of the

DIRECTORS' REPORT

last six months have continued to enrich the life of the Centre. They included **Professor Claudia Geiringer** (Victoria University Wellington), who shared her expertise on human rights legislation to an **academic workshop** as well as the Melbourne-Monash **'Judges and the Academy'** series (alongside Justice Kevin Bell, Supreme Court of Victoria) during her week with us in February. **Associate Professor Yoon Jin Shin** of Seoul National University also visited with us in February, and presented her work on the influence of international law on the South Korean Constitutional Court's practice. We also supported an extended visit from Cambridge University doctoral candidate Nick Petrie, who gained much from his stay with us for the development of his research into Australia's 'common law Constitution'.

We also have news of two of our 2018 visitors having recently published research conducted during their stay at Melbourne Law School. Dr Vladimir Nizov's article 'Public Property in Australia and Russia: The Concept and the Role of the Constitution' has been published in *Russian Law Journal* and Dr Oscar Roos' article 'A Shift in the United Nations Human Rights Committee's Jurisprudence on Marriage Equality? An Analysis of Two Recent Communications from Australia' has been published in the *University of New South Wales Law Journal*.

Professor Adrienne Stone's **Laureate Program in Comparative Constitutional Law** also hosted two **Kathleen Fitzpatrick Visiting Fellows** (see page 12), both of whom made wonderful contributions as presenters and participants in our signature Tuesday **Brown Bag seminars**. The semester 1, 2019 Brown Bag series was again beautifully convened by Laureate Postdoctoral Fellow, **Dr Erika Arban**, and can be viewed on page 14.

Finally, we are delighted to welcome Ms Elizabeth Hicks, PhD candidate who will be supervised by Professor Adrienne Stone and Professor Cheryl Saunders. Her project will compare the relationship between values reasoning and legalism in Australian and German constitutional law.

We look forward to seeing you at the conference!



Professor Adrienne Stone



Associate Professor Kristen Rundle



Kristen Rundle introducing **Terry Moran AC** at the Jim Carlton Annual Integrity Lecture on "The Next Long Wave of Reform: Where will the Ideas Come From?" - 25 March 2019 at Melbourne Law School

Adrienne Stone, Director

Forthcoming Publications

'Constitutional Change in Australia: The Paradox of the Frozen Continent' Routledge Handbook of Comparative Constitutional Change (Xenophon Contiades & Alkmene Fotiadou, eds., forthcoming).

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3346179 (with Elisa Arcioni)

Lectures and Presentations

'Freedom of Speech: Taking Structure Seriously' at Symposium to Honour Norman Dorsen, Cardozo Law School, New York City, 1 April 2019.

'Freedom of expression, the Citizen and the State in the Digital Age' at Ibero American Congress of Constitutional Law, 22 May 2019.

Media

Interview, SBS News: Free Speech Explainer: <https://www.sbs.com.au/news/explained-freedom-of-speech-in-australia>

Podcast Series, ABC Radio National: Shut Up: A Free Speech Investigation with Sami Shah, <https://www.abc.net.au/radionational/programs/earshot/> (episodes 1 and 5)

Podcast, Free Speech (or Lack Thereof?) Around the World for "Think about it" with Ulrich C. Baer available at <https://www.ulrichbaer.com/info> or on Spotify at https://open.spotify.com/episode/3C0RVyA0JI09NenhIIAtk0?si=Wrh2JHj6SCmkBhMbFf_4YQ

Kristen Rundle, Co-Director

Forthcoming Publications

Kristen Rundle, 'Non-compellable powers: A relational analysis', (2019) 30 *Public Law Review*.

Kristen Rundle, 'Fuller's Relationships', (2019) *Archiv für Rechts- und Sozialphilosophie (The Journal for Legal and Social Philosophy)*, Special Edition on "The Rule of Law and Democracy".

Kristen Rundle, 'The Morality of the Rule of Law: Lon L. Fuller', Chapter 11 in Martin Loughlin and Jens Meierhenrich (eds), *The Cambridge Companion to the Rule of Law* (Cambridge University Press, 2019).

Events and Seminars

Chair, 'Artificial Intelligence and the Law', Melbourne Law School – Federal Court of Australia 'Judges in Conversation' event (Professor Karen Yeung and Justice Michael O'Bryan),

9 April 2019.

Chair and Participant, 'The Office of the Commonwealth Ombudsman: Four Decades On', Public Conversation with Ombudsman with Michael Manthorpe, Melbourne Law School, 30 April 2018.

Lectures and Presentations

'The structures of our times: Some reflections on form' at 'Defeat From Within? Managerialism, Neoliberalism, and the Arts', Laboratory Adelaide Colloquium, Flinders University, 1 March 2019. Recording: http://video.flinders.edu.au/events/LabAdelaideColloquiumSessions_2019.cfm?id=3

Cheryl Saunders AO, Foundation Director

Publications

Cheryl Saunders, 'Courts in Federal Countries', Constitution Brief, March 2019, International IDEA

Cheryl Saunders, 'Working Better with Other Jurisdictions', ANZSOG research paper for the Australian Public Service Review Panel, March 2019 (with Ben Rimmer, Michael Crommelin).

Cheryl Saunders, 'Processes of Constitutional Transitions in the Face of Territorial Cleavages', in George Anderson and Sujit Choudhry (eds) *Territory and Power in Constitutional Transitions* (Oxford University Press), 2019

Presentations

Presentation on 'Referendums and Representative Democracy, Law and Justice Forum on Democracy and Citizen Participation, YTL Centre for Politics, Philosophy and Law, London, 6 December 2018.

Presentation on 'Constitution Building Processes and Transitional Justice' to Fifth Edinburgh Dialogue on Constitution-Building, Edinburgh, 10-11 December 2018

Address on 'Common Law Constitutionalism under a Codified Constitution' to a Conference to mark the retirement of Chief Justice Sian Elias, Auckland, 31 January 2019.

Key-note address on 'Constitution Transformation' to a conference on Global Constitutionalism: Asia-Pacific Perspectives', Chinese University of Hong Kong, 28 March 2019

MLM Teaching

Post-Conflict State-Building (with Bruce Oswald), March 2019

Public Law and Private Law (with Jason Varuhas), May 2019

International constitutional assistance

Presentation on Constitutions in Multi-Ethnic Societies, Karen State, Myanmar, March 2019 (for International IDEA)

PhD completions

Anna Dziedzic, 'The Use of Foreign Judges on Courts of Constitutional Jurisdiction in Pacific Island States'

Other

You-tube presentation on 'Intergovernmental Relations and its implementation in the BARMM, as mandated by the Bangsamoro Organic Law, <https://www.youtube.com/watch?v=0YwiFdQfsz4>.

Centre Members

Farrah Ahmed

Appointments

Advisory Committee of the Australian Law Reform Commission's Review of religious exemptions in anti-discrimination law.

Publications

Book Chapters

'Pluralism and Personal Laws' in Susanna Mancini (ed) *Handbook on Constitutions and Religion* (Edward Elgar, forthcoming)

'Arbitrariness and Judicial Review in India' in Swati Jhaveri and Michael Ramsden (eds), *Judicial Review of Administrative Action: Origins and Adaptations Across the Common Law World* (Cambridge University Press, forthcoming 2019) (with Swati Jhaveri)

'Reclaiming Indian Administrative Law' in Devesh Kapur and Madhav Khosla (ed) *Regulation in India: Design, Capacity, Performance* (Hart, 2019) (with Swati Jhaveri)

Journal Articles

'Judging Constitutional Conventions' *International Journal of Constitutional Law* (forthcoming) (with Richard Albert and Adam Perry)

Media and Blog Posts

'Reclaiming Indian Administrative Law' *Admin Law Blog* (10 April 2019) (with Swati Jhaveri)

Erika Arban

Blog Posts

Erika Arban, 'EU Parliamentary Elections: A Snapshot from Down Under' Eureka! – A Blog on all things EU and the European Parliamentary elections (4 April 2019. <https://blogs.eurac.edu/eu-elections/eu-parliamentary-elections-a-snapshot-from-down-under/>)

Guest Lectures

'Federalism as a political and constitutional response to common problems' – Course *Law and State* – University of Hasselt, Faculty of Law (Hasselt, Belgium)

'Federalism as a tool to reconcile diversity and social cohesion in divided societies' - Course *Law and Development* – University of Milan, Faculty of Law (Milan, Italy)

Tom Daly

Appointments

Assistant Director, Melbourne School of Government, May 2019.

Global Advisory Council, We The People (NGO), March 2019.

Publications

'Democratic Decay: Conceptualising an Emerging Research Field' (2019) 11(1) *Hague Journal on the Rule of Law* 9.

'Unfinished Revolutions: Constitutional Pasts and Futures in Ireland and Mexico' (2018) 4(2) *Revista Estudos Internacionais* 905.

Presentations

'Invited speaker, 'How do We Measure Success? Assessing International Human Rights Courts facing Democratic Decay in the Global South'. iCourts Annual Conference, 20-21 May 2019.

International expert, 'Lebanon Youth Constitution-Building Dialogues', presenting on public finances, social and economic rights, and decentralisation. Event organised by International Institute for Democracy and Electoral Assistance (IDEA), Beirut, Lebanon, 11-12 May 2019.

'Writing Resistance Against Tyranny into the Constitution: Lessons from Germany and Venezuela', University of Chicago Law School, 8 April 2019. Talk organised by Professor Tom Ginsburg.

'The Democratic Decay Resource (DEM-DEC): Pooling Knowledge, Herding Cats, and Opening Eyes about Global Threats to Democracy', Talk introducing DEM-DEC at the International Legal Studies group, Harvard University.

Invited speaker, 'Institutionalising the People as a Democratic Defence', 'The Other "Transitology": Pathways

into and out of Authoritarianism in the Twenty-First Century – Empirical and Normative Perspectives’, Princeton University, 29 March 2019.

Invited panellist, One-day brainstorming workshop on EU responses to democratic backsliding, RECONNECT: Reconciling Europe with its Citizens through Democracy and Rule of Law (international research project), Princeton University, 28 March 2019.

Invited panellist, ‘Freedom in Decline: Global Overview’. Public event organised by the NGO We the People, 14 March 2019. Speaking via Skype.

Invited speaker, ‘Hugh Kennedy: Ireland’s Judicial Visionary’. ‘Towering Judges’ conference, Chinese University of Hong Kong (CUHK) Law Faculty, 25-26 January 2019.

Invited speaker, ‘Juristocracy is Dead, Long Live Juristocracy! The Mutation of Judicial Power in the Context of Global Democratic Decay’. Programme for the Foundations of Law and Constitutional Government, University of Oxford, 15 January 2019.

Invited speaker, ‘Populism, Public Law, and Democratic Decay in Brazil: Understanding the Rise of Jair Bolsonaro’. ‘Democratic Backsliding and Human Rights’ conference, College of Law and Business, Tel Aviv, Israel, 2-3 January 2019.

Alison Duxbury

Publications

Can ASEAN Take Human Rights Seriously?, (with Tan Hsien-Li) (Cambridge University Press, 2019)

Presentations

Presented at Asian Law Institute Conference in Singapore on a panel on ‘ASEAN and Human Rights: Moving the Debate Forward’ (11 June 2019)

Presented at the launch of her book, co-authored with Dr Hsien-Li Tan from the National University of Singapore, *Can ASEAN Take Human Rights Seriously* (CUP, 2019). The book was launched by Ms Yuyun Wahyuningrum, the Indonesian Representative on the ASEAN Intergovernmental Commission for Human Rights, at the Centre for International Law on 12 June 2019.

Anna Dziedzic

Presentations

‘Foreign Judges in Pacific Island States: Agents of Global Constitutionalism?’ at *Global Constitutionalism: Asia-Pacific Perspectives*, Chinese University Hong Kong, 28-29 March 2019

[‘The use of foreign judges on courts of constitutional](#)

[jurisdiction in Pacific island states’](#) Department of Pacific Affairs, Australian National University, 9 May 2019.

Tarun Khaitan

Publications

Tarunabh Khaitan, ‘Executive Aggrandizement in Established Democracies: A Crisis of Liberal Democratic Constitutionalism’ 17(1) *International Journal of Constitutional Law* (2019) 342. <https://academic.oup.com/icon/article/17/1/342/5485955?guestAccessKey=0efb0f47-b301-4038-92a3-537d9b0a0423>

William Partlett

Publications

The Foundations of Democratic Dualism: Why Constitutional and Ordinary Politics Are Different, 26 *CONSTELLATIONS: AN INTERNATIONAL JOURNAL OF CRITICAL AND DEMOCRATIC THEORY* 1-17 (2019) (with Zim Nwokora).

Criminal Law and Cooperative Federalism, 56 *AMERICAN JOURNAL OF CRIMINAL LAW* 1663-1691 (2019).

Blog Posts

Constitutional Design and Post-Soviet Presidential Succession: The Kazakh Model? *INTERNATIONAL JOURNAL OF CONSTITUTIONAL LAW BLOG* (May 1, 2019), <http://www.iconnectblog.com/2019/05/constitutional-design-and-post-soviet-presidential-succession-the-kazakh-model/>.

David Cameron’s Critical Mistake: Brexit as Constitutional Politics, *INTERNATIONAL ASSOCIATION OF CONSTITUTIONAL LAW BLOG* (April 1, 2019), <https://blog-iacl-aicd.org/2019-posts/2019/4/1/david-camerons-critical-mistake-brexit-as-constitutional-politics>.

Russia’s Contested Constitutional Review, *INTERNATIONAL ASSOCIATION OF CONSTITUTIONAL LAW BLOG* (February 13, 2019), <http://www.iconnectblog.com/2019/02/russias-contested-constitutional-review/>.

Jeff Redding

Publications

‘A Decade of Transgender Rights Developments in Pakistan (2009-2019)’ *Droit et Cultures* (invited submission) (forthcoming 2019).

‘The Pakistan Transgender Persons (Protection of Rights) Act of 2018 and Its Impact on the Law of Gender in Pakistan’ *Australian Journal of Asian Law* (peer-reviewed) (forthcoming 2019)

Book Review

‘Disorder and Drag: Julia Stephens’ Bold Diagnostics of Secular Governance in Colonial South Asia’ (review of JULIA STEPHENS, *GOVERNING ISLAM: LAW, EMPIRE, AND SECULARISM IN SOUTH ASIA* (2018)) for ‘Law and Other Things - A Blog About India’s Laws and Legal System, its Courts, and its Constitution’ (invited submission) (forthcoming 2019)

Presentation

Visiting Senior Research Fellow at National University of Singapore (NUS) Faculty of Law for two weeks in December 2018, invited to deliver a seminar to and otherwise liaise with colleagues in the Law & Religion Cluster in the Faculty of Law’s Center for Asian Legal Studies.

Dinesha Samararatne

Publications

‘Direct Public Participation in Constitution-Making’ policy brief for Constitution Transformation Network of Melbourne Law School (Policy Brief No 001/2018)

‘Proposals for a Bill of Rights for Post-war Sri Lanka’ in *Key Issues in Sri Lanka’s Constitutional Reform Process: The Executive Presidency, Devolution and Bill of Rights* (Institute for Constitutional Studies, Colombo, 2018)

Judicial Borrowing and Creeping Influences: Indian Jurisprudence in Sri Lankan Public law, *Indian Law Review* 2(3) (2018) 205.

Media and Blog Posts

Understanding the ‘prohibition to wear any garment concealing the full face’ *Daily Financial Times* (Sri Lanka) 6 May 2019. <http://www.ft.lk/columns/Understanding-the-prohibition-to-wear-any-garment-concealing-the-full-face-/4-677592>

Honours

Honoured as a ‘Woman of Inspiration’ by the Harvard Women’s Law Association and the Harvard Law and International Development Society at the Harvard Law School’s 6th Annual International Women’s Day Celebration (March 2019)

Dale Smith

Publications

Lisa Burton Crawford, Patrick Emerton and Dale Smith (eds), *Law under a Democratic Constitution: Essays in Honour of Jeffrey Goldsworthy* (Oxford: Hart, 2019)

Dale Smith ‘What Is Statutory Purpose?’ in Lisa Burton

Crawford, Patrick Emerton and Dale Smith (eds), *Law under a Democratic Constitution: Essays in Honour of Jeffrey Goldsworthy* (Oxford: Hart, 2019)

Scott Stephenson

Publications

‘Against Interpretation as an Alternative to Invalidation’, *Federal Law Review* (forthcoming)

‘The Rise and Recognition of Constitutional Statutes’ in Richard Albert and Joel Colon-Rios (eds), *Quasi-Constitutionality and Constitutional Statutes: Forms, Functions, Applications* (Routledge, 2019) 27–44

Joo-Cheong Tham

Publications

Joo-Cheong Tham and Judy Fudge, ‘Unsavoury Employer Practices: Understanding Temporary Migrant Work in the Australian Food Services Sector’ (2019) Issue 1 *International Journal of Comparative Labour Law and Industrial Relations* pp. 31–56

Zim Nwokora, Malcolm Anderson, Joo-Cheong Tham, Anika Gauja, Stephen Mills and Narelle Miragliotta, ‘Political Finance Regulation and Reform in New South Wales: Towards a Fairer System?’ (2019) 65(1) *Australian Journal of Politics and History*

Iain Campbell, Maria Azzurra Tranfaglia, Joo-Cheong Tham & Martina Boese (2019) Precarious work and the reluctance to complain: Italian temporary migrant workers in Australia, *Labour & Industry: a journal of the social and economic relations of work*, 29:1, 98-117, [DOI: 10.1080/10301763.2018.1558895](https://doi.org/10.1080/10301763.2018.1558895)

Presentations

Joo-Cheong Tham, ‘The First Nations Voice and Political Equality’, *First Nations Voice: From Referendum to Design*, 2 May 2019, Indigenous Law Centre based at UNSW Law, and the Gilbert + Tobin Centre of Public Law, Sydney

Joo-Cheong Tham, ‘Political donations and lobbying’, *National Integrity Forum – Our Choices*, 15 April 2019, Commonwealth Parliament House, Canberra

Joo-Cheong Tham, ‘The risks of regulating political funding’, Senate Occasional Lecture, 12 April 2019, Commonwealth Parliament House, Canberra

Joo-Cheong Tham, ‘Reforming Political Integrity: Undue Influence, Political Donations & Revolving Doors’, *National Integrity Forum – Our Choices*, 3 April 2019, Melbourne

Opinion Pieces

Joo-Cheong Tham, ‘Government advertising may be legal, but it’s corrupting our electoral process’, *The Conversation*, 10 April 2019

Joo-Cheong Tham, 'We've let wage be the default experience for migrant workers', *The Conversation*, 22 March 2019 (republished in *Il Globo*, 6 June 2019).

Media references

Ben Schneiders, 'Farmers using black market labour because backpackers aren't up to the job', *Sydney Morning Herald*, 3 December 2018

Nick Bonyhady and Jennifer Duke, 'Telstra's undeclared \$100,000 in political donations spark reform call', *Sydney Morning Herald*, 25 March 2019

Michael McGowan and Josephine Tovey, 'One Nation's NSW election campaign funded by Queensland loans', *The Guardian Australia*, 14 March 2019

Christopher Knaus, 'ICAC chief urges overhaul of lobbying rules after NSW's nine year failure to act', *The Guardian Australia*, 13 April 2019

David Crowe, 'Elections shouldn't be bought': Push for donation limits to prevent corruption', *Sydney Morning Herald*, 15 April 2019

Eryk Bagshaw, 'Coalition solicited foreign donations after introducing new laws banning them', *Sydney Morning Herald*, 6 May 2019

Patrick Begley, 'Helloworld chief made \$200 000 donation to Liberal Party during government tender', *Sydney Morning Herald*, 23 April 2019

Francesca Valdinoci, 'Should migrants on visas have the right to vote in Australia?', *SBS*, 13 May 2019

Stephanie Dowrick, 'Election Lies We Cannot Afford', *Pearls and Irritations*, 16 May 2019

CCCS SPECIAL FEATURE - INTERVIEW WITH ANNE MULLINS

An interview with Anne Mullins



Anne Mullins is Associate to the Patient Review Panel at the Victorian Department of Health and Human Services. In this role she deals with complex applications for assisted reproductive treatment, under the Assisted Reproductive Treatment Act 2008, provides legal advice to the Panel and manages a small team. She has also worked for many years as

a senior policy officer for the Department. She completed a combined Law and Arts degree at Melbourne University in 1985 and has also worked as a Research Officer for the Victorian Parliament's Legal and Constitutional Committee. She spent 10 years with the CCCS (1990-2000); first as a Research Fellow, then as an Associate Director and Manager of the Centre. She kindly agreed to be interviewed by CCCS Research Assistant Sophie Clapin.

What motivated you to become involved with the CCCS?

With hindsight, we caught the first wave of interest in comparative law. I had just finished working on an inquiry for the Legal and Constitutional Committee and wanted to continue doing research in a similar area. Cheryl Saunders had an Australian Research Council grant looking at how governments used their contracting powers to achieve policy objectives. That sounded really interesting to me, so I joined the Centre to work on that project. I then worked on other research papers, and gradually became involved in all aspects of the Centre's work, including conferences, grant writing, and the extensive visitors' program. I found the comparative aspect of the Centre's work and its people-focus and openness to collaboration and new ideas and perspectives really compelling. It was also a really fun place to work, and I loved working with Cheryl.

What is your fondest memory from your days at CCCS?

There are lots! – the Christmas lunches up in the top front room at 157 Barry Street, with the staff and students and whoever was visiting from overseas at the time; all the wonderful colleagues over the years; our own Centre cat, who had kittens in the backyard; the IACFS (International Association of Centres for Federal Studies) conferences and the sense of collaboration and camaraderie with the people from all those centres around the world; working with the Constitutional Centenary Foundation in the lead-up to the centenary of Federation including with wonderful community members; and acting as Secretary to the Constitutional Centenary Conference in Sydney in 1991, led by Cheryl and James Crawford, and chaired by Sir Ninian Stephen – that was a really wonderful event, which brought together so many people across disciplines and politics – that was, and is, really Cheryl's genius: her ability to bring people together to work towards a common goal.

In what ways did your time at the CCCS influence the career you have had since?

I still remember a couple of pivotal articles on regulation and the role of government that I read while doing my first research project with Cheryl. One was by Terence Daintith and one was by Michael Trebilcock. It's a long time ago, but these two articles are still in a folder which I have carried to every job I've had. Reading them all these years later still excites me, because the issues they dealt with so incisively remain so relevant, and while the work at the Centre had a much broader focus than government regulation, that first research did focus my mind on key issues about how you regulate and why, and how you get good government decision-making. Across many different content areas, that has really been the focus of my work in government since leaving the Centre. And of course, Cheryl was a wonderful role model as a real 'public servant' in the sense of never being a careerist and always being open to and looking for new ways to think and do things for the better, and always caring for her staff and colleagues.

What are the titles of those articles? I am sure many students would be interested in reading them

Their citations are:

Michael Trebilcock, "Smaller or Smarter Government?" (Trebilcock, Howse and Prichard) (1990) 40 Univ. Toronto L.J. 498

Terence Daintith, "Regulation by Contract: The New Prerogative" (1979) 32 Current Legal Problems, 41-64.



CCCS staff, 1995 – (left to right) Marcia Lehmann, Tony Thomas, Anne Mullins, Graham Hassall, Cheryl Saunders, Maxine Simpkins and Stephen Donaghue – Source: CCCS archive

What aspect of your career has been the most rewarding or significant?

Overall, working alongside and learning from super smart people, who really care about the impact of the law and what it can do, and who are rigorous, critical, ethical and creative in their thinking. That was a given at the CCCS - colleagues, visitors from interstate and overseas, and the student research assistants— so many of them have gone on to absolutely brilliant careers.

In my 20 years since leaving the Law School, I have worked in different roles in quite varied regulatory areas – water and energy, drugs, health services, privacy, human tissue, food safety, assisted reproductive treatment – but my choice of what I’ve worked on has usually been dictated by who I want to work with or for. As Meryl Streep once said, the thing that counts the most with me is the friendships, the friendships you make through working together. In those 10 years at the CCCS, we had such fun, did such good work, and formed such a bond – that experience has really been a bedrock for me, supporting all the work I’ve done since.

What are the most challenging aspects of your current work?

The Patient Review Panel is made up of non-lawyers as well as lawyers, and in advising them, it’s important to ensure that you communicate effectively about the relevant law and the scope of the Panel’s role. It’s also a jurisdiction that involves intensely personal matters, so sensitivity in dealing with applicants is critical.

Do you have any advice for students hoping to get involved in public law?

I would really encourage students to consider working in government, and not just as lawyers. I think legal training in public law is a great underpinning for public policy work and legislative development and implementation. There are great opportunities to apply those skills and training, in fascinating areas, and while working in a government department has its challenges, it’s really the only show in town to do that work.



CCCS colleagues celebrating Arturo Sandoval’s Thesis Submission and Farewell - 11 March 2019



CCCS colleagues celebrating Osayd Awawda’s Thesis Submission and Farewell - 29 March 2019



CCCS members panel at the first Brown Bag Seminar of Semester 1 2019 on 5 March . The panel at this Brown Bag Seminar, ‘Looking Ahead - Key Constitutional Developments Worldwide in 2019’ included from L to R: Scott Stephenson, Anna Dziedzic, Arturo Villagran, Tom Daly, William Partlett, Hayley Pitcher, Tarun Khaitan, Adrienne Stone and Cheryl Saunders.

MEMBER FEATURE

An interview with Dr Tarunabh Khaitan, CCCS Member



Dr Tarunabh Khaitan is Associate Professor and Future Fellow at Melbourne Law School. He is working on a project on the resilience of democratic constitutions, with a focus on South Asia. He is also an Associate Professor and the Hackney Fellow in Law at Wadham College, currently on special leave for four years

starting 1 September 2017. Tarun Khaitan is the founding General Editor of the Indian Law Review, an Academic Fellow of the Honourable Society of the Inner Temple, an Affiliate of the Bonavero Institute of Human Rights and an Associate of the Oxford Human Rights Hub.

Dr Khaitan kindly agreed to be interviewed by CCCS research assistant Emily Sarah Peck about his time with the Centre, and his current research.

When did you first become connected with the CCCS? What has been your experience of the Centre?

When I visited Melbourne Law School (MLS) on my sabbatical in 2016, I really liked the genuinely global and cosmopolitan outlook of the Centre. Comparative Constitutional Law, as a discipline, is still dominated by canonical jurisdictions (the US and Germany, primarily). At the CCCS, the range and diversity of topics being researched and talked about, including from jurisdictions that rarely get a mention in many ‘comparative’ works, is really astonishing. I think in terms of geographical spread, the CCCS might be at the top globally and in terms of quality, certainly among the top institutions.

What ignited your interest in Discrimination Law and Comparative Constitutional Law?

For reasons that are in part biographical, my main scholarly interest is in the theme of living with difference—how do we live together under institutions that strive to secure justice as well as peace despite deep divisions and disagreements. Both discrimination law and comparative constitutional law examine different aspects of this fundamental question.

In your recent interview with the University of Oxford (<https://www.law.ox.ac.uk/research-and-subject-groups/jurisprudence-oxford/tarunabh-khaitan>), you mentioned that, “Scholars have an important truth-telling function”. Would you be able to expand on how you view this function?

John Rawls famously said that “Justice is the first virtue of social institutions, as truth is of systems of thought.” Whatever we think about his claim regarding justice, he was clearly right about truth being the first aspiration of scholarship. The academy is designed to discover and to speak the truth—provision of time for research and reflection, guarantee of academic freedom,

rigours of a system of peer review, and an abiding openness to criticism and refutability—these are all meant to facilitate truth-telling. Different disciplines have developed sophisticated methodologies to investigate, interrogate, corroborate or refute different types of truth claims, whether empirical or moral. Scholars are not somehow more truthful people—just that their institutional contexts, when well-designed, make truth-telling the key imperative.

Truth and power have always had a difficult relationship. Just as law is an institutional check on power, truth is a discursive check on power. So, our vocation often pits us against the powerful. The phenomenon maddeningly being described as ‘post-truth’ is basically a shameless legitimization of lying. It cleverly deploys the abiding scepticism that must accompany academic truth-telling to discredit all scholarly claims as mere opinions. What’s worse, political power often attributes a mendacious motive to the academy too, by characterising scholars as part of the ‘elite establishment’ interested only in self-preservation. It is not a surprise that the two key truth-seeking institutions in any society—the media and the academy—are the first targets of latter day autocrats, who are seeking to discredit, contain, co-opt or capture them. The academy is far from perfect anywhere, but recent efforts in many countries are aimed at dismantling it, or hollowing it out, rather than helping it better perform its truth-telling function.

What projects are you currently pursuing?

I am currently finalising an empirical project on the Indian Supreme Court, examining the balance between its appellate and constitutional defence functions. I am also reading for a new paper on the place of political parties in constitutionalism.

You were recently awarded the 2018 Letten Prize. Could you tell us about this award and how you plan to use it?

The Letten Prize gives 2 million Norwegian Kroner to a scholar under the age of 45 whose research has had a significant impact towards the achievement of the United Nations Sustainable Development Goals. I received the prize primarily for my work on equality.

With the prize money, I have launched the Indian Equality Law Programme. It will run over three years to fund one PhD student and some visiting scholars who will visit Melbourne Law School to work on a project on an aspect of Indian Equality Law.

PhD student, Radhika Agarwal, started earlier this year and is working on the conflict between religious freedom and anti-discrimination norms. The first batch of visiting scholars has been finalised for a visit in November 2019.

In conversation with Professor Adrienne Stone on the High Court's recent judgment on the implied freedom of political communication in *Clubb v Edwards*; *Preston v Avery* [2019] HCA 11



On 10 April 2019, the High Court handed down its judgment in the joint 'abortion exclusion zone' cases, *Clubb v Edwards*; *Preston v Avery* [2019] HCA 11. The cases concerned whether Victorian and Tasmanian laws that imposed narrow geographical proscriptions on abortion-related 'communications' (Vic) and 'protests' (Tas) impermissibly infringed the implied freedom of

political communication.

The Public Health and Wellbeing Act 2008 (Vic) prohibits 'communicating by any means in relation to abortions' that is 'reasonably likely to cause distress or anxiety within an exclusion zone' (ss 185D, 185B(1)). The Reproductive Health (Access to Terminations) Act 2018 (Tas) prohibits 'a protest in relation to terminations' within an 'access zone' (Section 9(2)). Under both Acts, the protective zoning applies to the area falling within a 150-metre radius of an abortion clinic.

The two appellants – pro-life advocates Kathleen Clubb and Graham Preston – were convicted of offences under the Victorian and Tasmanian laws respectively. Mrs Clubb was convicted after handing over a leaflet to a couple as they approached an abortion clinic, while Mr Preston was convicted for holding up signs, leaflets and placards, which carried statements referring to the right to life of unborn children under international law.

The Court unanimously rejected both challenges. CCCS Research Assistant **Alice Maxwell** sat down with Professor Adrienne Stone to discuss the cases.

Were you surprised that the High Court unanimously upheld both laws?

Let me just preface this by saying no one can ever be entirely sure what the High Court will do. But I certainly thought there was a really strong case that both laws would be upheld, especially the Victorian law. In that case, it was very noticeable that a wealth of information about the law was provided to the Court. I think this process was greatly assisted by the fact that – because of the Charter of Human Rights and Responsibilities (Vic) – the Victorian Government had had to make an extensive statement of compatibility to the Victorian Parliament, addressing in detail questions around the precise object of the law and the way in which it affected freedom of expression. The basic point made was that the law is designed to protect the right of women to access a legal medical service without inference and to protect their dignity in doing so. That seemed to me like a strong argument that militated in favour of the validity of these laws.

A law will not engage the implied freedom unless it effectively burdens political communication. What did you make of the majority's analysis that not all communication about abortion is strictly 'political'?

The threshold test – which asks whether a law effectively burdens political communication – is a unique aspect of Australian jurisprudence because unlike most countries, which guarantee freedom of 'speech' or 'expression', our protection is for 'political communication.' It is hence necessary to develop a working concept of 'political communication', a question which is in turn informed by the 'constitutionally protected system of representative and responsible government'. The Preston case was in this respect very straightforward, as the law was directed specifically at 'protest' and Mr Preston was engaged in activities like holding placards, and calling for changes to the law. Such conduct can very easily be connected to the system of representative and responsible government provided for by Constitution.

The Clubb appeal was complicated by the fact that there was no evidence about what was actually said during her exchange with the couple. Putting that evidential problem aside, the Court appeared to proceed on the basis that what transpired between Mrs Clubb and the couple she approached was that Mrs Clubb simply sought to speak to them directly about their decision to have an abortion and perhaps to suggest alternatives. The question this immediately raises is whether such a communication attracts protection under the Constitution as properly 'political communication'?

The Court here draws a very interesting distinction between types of communication on abortion. The Court appears to accept the proposition that not all communication about abortion is 'political.' So for instance, the private conversation a woman might have with her doctor about whether to have a termination is not a 'political communication'. This idea is very interesting and has a great deal of intuitive appeal. But the reason such a communication is not political is not made fully plain in the reasons and I think we will have to think about it in the future.

The way in which the Court has typically understood the idea of 'political communication' is that it is communication on a matter that might affect the way a voter casts their vote at a Commonwealth election (I've discussed these ideas further [here](#) and [here](#)). Now I think it is quite possible that conversations that you have with a doctor about a termination may actually, in quite a fundamental way, affect political views that you have about abortion and about its availability. During the course of a medical consultation, you might receive information about the nature of the procedure that might prove a very strong determinant of your views on abortion. It might be an even more persuasive experience than public discourse, precisely because it is a highly personal experience.

I can understand, however, why the Court might want to steer away from extending the category of 'political communication'

to such exchanges. But I do not think it is explicable on the approach so far articulated for determining the nature of political communication. I think there is something else that explains the distinction; perhaps something about the context of a private conversation, the privacy of the relationship, or maybe the fact that in the course of such a communication, one is not acting strictly as a 'citizen' but as a private individual, that is just distinct from communications made in public discourse and hence is not something which the Constitution is designed to protect. These are just speculations but I make them to stress that I think there is a way to make the distinction between the 'political' and 'non political'. I do not think the Court has yet provided the full rationale and I suspect it may be developed in later cases.

Do you accept, as the majority appears to, that Mrs Clubb's actions more closely resembled a private communication with a doctor, than an onsite protest of the kind engaged in by Mr Preston?

This question is complicated by the lack of evidence in the case. But I certainly find it difficult to accept that Mrs Clubb's actions have no more political content than a private conversation about abortion. (Imagine, for instance, a mother escorting her daughter into a clinic and simultaneously counselling her against the procedure. I can understand that communication as not 'political' in the relevant sense).

I think that in this context – judged against the backdrop of the well-known history of anti-abortion protests outside clinics – the better analysis of Mrs Clubb's conduct is that, in flagging down a couple on approach to a clinic, she is engaging in political communication. A stranger like Mrs Clubb does not approach a woman to advise her not to proceed because, or simply because, she thinks the woman entering the clinic should not make that personal moral choice, but rather, because she also has a political objection to the procedure itself. I think this would likely be evident to those Mrs Clubb approached and may be evident to those observing the exchange.

So I am not troubled about the idea that there is a private sphere in which we talk about our personal moral choices in a manner that is not 'political'. But I am troubled by the idea that these circumstances are an instance of it.

What are the implications of *Clubb* for the status of structured proportionality within the context of the implied freedom?

Chief Justice Kiefel and Justices Bell and Keane have been quite consistent in their endorsement of structured proportionality and this is evident again in their joint judgment. I think it is now also clear that Justice Edelman and Justice Nettle are also comfortable with proportionality. Justice Nettle's judgment is notable for a very careful restatement of proportionality to indicate that it has an important degree of inbuilt flexibility and requires a certain amount of deference towards legislative choices. So that is five judges of the High Court who are now clearly accepting proportionality (and in particular a form of proportionality that leaves them with a fair degree of flexibility in its application). And so it is tempting to think that this debate is now resolved. Time will tell.

It is also notable that an attempt by Victoria to carve out a class of cases in which proportionality would not apply was rejected. The argument was that in circumstances where the challenged law imposed a very insubstantial burden on the freedom of political communication, the only question should be whether the law passes the first step of the proportionality analysis: whether the law was rationally connected and suitable to the fulfilment of a particular end. That submission I think responded to some statements made in earlier cases about proportionality that suggested it was a 'tool' that need not be used in every case. Nonetheless, it was rejected.

So there seems to be a majority of the High Court behind the proposition that proportionality is a form of analysis that is appropriate in freedom of political communication cases, including in cases where the burden imposed upon the challenged law is relatively small.

What do you make of the criticism that structured proportionality is too rigid and too structured?

Let me start by saying that I think there are many criticisms of proportionality that have considerable weight. For instance, it is quite open ended and may give insufficient guidance as to how to resolve later cases. That feature in turn poses difficulties for lower courts, legislators and litigants. I find the criticism that proportionality is too rigid, harder to understand. It is a hallmark of proportionality that it is highly flexible and context-dependent. It is quintessentially a 'standard', and not a 'rule'. (I have discussed this idea further [here](#) and [here](#))

So, the question then becomes 'what are the advantages and disadvantages of having such a flexible and open-ended form of analysis?' One possible objection to such flexibility is that it detaches reasoning in implied freedom cases from the common law method and from the High Court's established methods of reasoning.

I understand this concern, but I do not think that the use of proportionality will necessarily have this result. Any method can be applied badly and in a formulaic way if judges adopt an uncritical approach to its application. But I do not think that this is inevitable. I think that proportionality can certainly be adapted to take account of both precedent and methods of common law reasoning. Indeed, when you go through the steps of the proportionality analysis, one question you might ask yourself is how have similar cases been resolved? Are there points of analogy or points of distinction between previous cases? And I suspect that counsel will form arguments in that way. So it is not necessarily, in careful judicial hands, inconsistent with the common law method and will ultimately become rather close to the kind of 'calibrated' approach that Justice Gageler prefers. This will of course depend on sensitive and thoughtful development over the future but I certainly think it is possible that proportionality will be developed in this way.

THE CONSTITUTION TRANSFORMATION NETWORK

The Constitution Transformation Network (ConTransNet) brings together researchers and practitioners to explore the phenomenon of constitutional transformation. We have expertise in constitutional law, comparative constitutional law, international law, military and international humanitarian law and regional law. If you would like more information on our work, please check out our [ConTransNet website](#) and [subscribe to our quarterly newsletter](#).

Our Recent Activities

ConTransNet team hosted and participated in a range of seminars and workshops over the period from January to June 2019. The team is fortunate to have Dr Dinesha Samararatne, Postdoctoral Fellow at the ARC Laureate Program at CCCS, and Ms Jayani Nadarajalingam, Lecturer with the Melbourne School of Government, to have joined ConTransNet. A very warm welcome to Dinesha and Jayani! The team also celebrated Dr Tom Daly's recent appointment as Assistant Director Melbourne School of Government.

The month of March 2019 was particularly busy. On 25 March 2019, a [ConTransNet seminar](#) presented by guest speaker Associate Professor Anatole Boute, The Chinese University of Hong Kong, discussed an interesting domestic response from Central Asia to the emerging challenges posed by China's Belt and Road Initiative (BRI) projects, one of the key regions on the Belt and Road area.

In the same month, Professor Cheryl Saunders undertook a knowledge exchange visit to Myanmar from 22-27 March, where she made a series of presentations on constitutions and federalism, under the auspices of International IDEA and its MyConstitution program in Myanmar. Read more about the Knowledge Exchange: Myanmar [here](#). On 29 March 2019, ConTransNet members Cheryl Saunders and Anna Dziedzic participated in a workshop "[Global Constitutionalism: Asian and Pacific perspectives](#)" organised by the Chinese University of Hong Kong Faculty of Law, exploring the movement of constitutional ideas across borders and how politics in Asia and the Pacific have responded. The Workshop as a whole was important for examining the phenomenon of global constitutionalism in Asia-Pacific contexts.

Co-Convenor Tom Daly embarked on a US tour in late March-early April to discuss democratic decay and renewal: At Princeton University, he spoke on 'Institutionalising the People as a Democratic Defence' at the conference 'The Other 'Transitology': Pathways into and out of Authoritarianism in the Twenty-First Century – Empirical and Normative Perspectives', organised by the Constitutionalism Under Stress ([CONSTRESS](#)) project. He also attended a one-day brainstorming session on rule-of law challenges within the EU organised by the [RECONNECT](#) (Reconciling Europe with its Citizens through Democracy and Rule of Law) project; At Harvard, Tom gave a talk on 4 April about the design of, and challenges in developing, the Democratic Decay & Renewal ([DEM-DEC](#)) online resource, chaired by Professor Mark Tushnet; At University of Chicago, Tom gave a talk on 8 April on 'Writing Resistance against Tyranny into the Constitution: Lessons from Germany and Venezuela', hosted by Professor Tom Ginsburg; At Cardozo Law School, Tom attended the IACL Roundtable 'A Passion for

Civil Liberties: Building on the Legacy of Norman Dorsen' in his capacity as Co-Editor of the [IACL-AIDC Blog](#).

Our recent publications

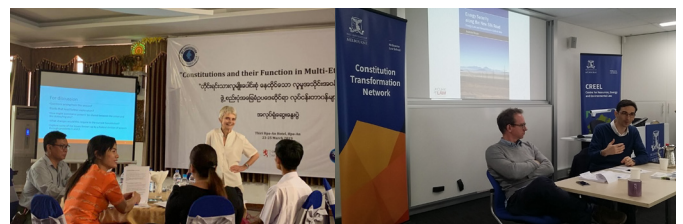
In February, Will Partlett published an ICON blog post on "[Russia's contested constitutional review](#)". The blog is part of a series of posts Will will publish in 2019 which aim to explore the significance of constitutionalism in post-Soviet Eurasia. His blogs preview aspects of a book he is currently writing on this subject. This blog examined a recent Russian Constitutional Court decision examining the legitimate limits on the ownership rights of foreign citizens.

In April, Tom Daly published '[Democratic Decay: Conceptualising an Emerging Research Field](#)' (2019) 11(1) Hague Journal on the Rule of Law 9, the lead article in a Special Issue on 'Rule of Law Decay'. He argues that conceiving of the existing literature as a research field can help map the landscape, maximise the analytical utility of key concepts, identify resonances and duplication and help to ensure this emerging quasi-field develops in a more coherent manner.

In May 2018, the [Australian Government established an independent review of the Australian Public Service](#) (APS), to ensure it would be fit-for-purpose for coming decades. In support Prof Cheryl Saunders and Prof Michael Crommelin from ConTransNet collaborated with Dr Ben Rimmer on a report, "[Australian Federalism: Working better with other jurisdictions](#)", which examines how the APS partners with other jurisdictions, and Australia's First Nations. While the paper focuses on Australia, the question of how the public sector works in systems of multi-level government is critical in systems of devolved government elsewhere.

CTN Policy Brief

Dr Dinesha Samararatne authored the [CTN Policy Brief](#) titled "Direct Public Participation in Constitution-Making". The Policy Brief examines the practice of public consultation in constitution-making. The brief discusses the growing momentum for public participation and the normative arguments which support the practice. The Policy Brief points out however that clarity is required in understanding the purpose, modalities and outcomes of public participation in constitution-making.



Website: <http://law.unimelb.edu.au/constitutional-transformations>

Twitter: [@ConTransNet](#)

LAUREATE PROGRAM IN COMPARATIVE CONSTITUTIONAL LAW

About the Laureate Program

The [Laureate Program in Comparative Constitutional Law](#) focuses on balancing diversity and social cohesion in democratic constitutions, a critical problem that becomes increasingly urgent as nations grapple with the challenges of highly diverse multi-cultural societies. The Kathleen Fitzpatrick Visiting Fellowship supports female, early career researcher through the Kathleen Fitzpatrick Fellowship Scheme. The Laureate Program is funded by the Australian Research Council annually from 2016 – 2021.

Our Team

Under the auspices of the Laureate Program, a diverse group of researchers have been assembled to pursue these questions. The program is led by **Professor Adrienne Stone** who, as Kathleen Fitzpatrick Australian Laureate Fellow, directs the program. Professor Stone's work on freedom of speech, judicial reasoning, constitutional institutions and comparative method provide a framework for the project. Post-doctoral Fellows **Dr Erika Arban** and **Dr Dinesha Samararatne** round out the senior research team. Dr Arban's work on federalism has a special focus on issues raised by socio-economic difference and Dr Samararatne's focuses on constitution-making in post-war contexts. Over the last year, the team has been assisted by **Colette Mintz** and **Joshua Quinn-Watson** as Research Associates. The Program is managed by **Gabrielle Dalsasso**.

Our Students

In 2018, two PhD students joined the Laureate Program team. Darshan Datar is working with Professor Adrienne Stone and Associate Professor Farrah Ahmed on a project about judicial understandings of religion, and Toerien van Wyk is working with Professor Adrienne Stone and Professor Cheryl Saunders on a project pertaining to freedom of information.

Our Visitors

The [Kathleen Fitzpatrick Visiting Fellowships](#) supports female, early career researchers through the Kathleen Fitzpatrick Fellowship Scheme, and is funded by the Australian Research Council annually from 2016 – 2021. The Kathleen Fitzpatrick Visiting Fellows program brings outstanding female researchers to the Laureate Program for up to two months each year.

The first two of our eight visitors in 2019 - **Dr Maria Cahill** and **Dr Peta Stephenson** - have participated in a variety of seminars, workshops, presenting their work and nurturing valuable connections to help progress their research and their career.



Professor Adrienne Stone
Australian Laureate Fellow



Dr Erika Arban
Post-doctoral Fellow



Dr Dinesha Samararatne
Post-doctoral Fellow



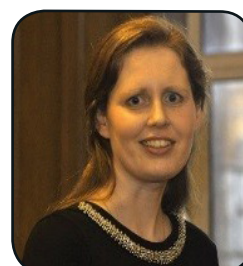
Toerien Van Wyk
PhD Candidate



Darshan Datar
PhD Candidate



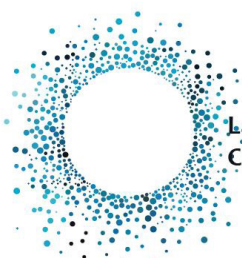
Gabrielle Dalsasso
Program Manager



Dr Maria Cahill
Kathleen Fitzpatrick
Visiting Fellow



Dr Peta Stephenson
Kathleen Fitzpatrick
Visiting Fellow



Laureate Program in
Comparative Constitutional Law

RECENT EVENTS

The Jim Carlton Annual Integrity Lecture 2019 The next long wave of reform - where will the ideas come from? 25 March 2019

In this 2019 Jim Carlton Integrity Lecture, **Terry Moran AC** talked about the period of Australian national development after World War II and the acceptance of macro- and micro-economics as the source of policy ideas from the early 1980s that led to the conversion of the Australian Public Service (APS) to economics as an ideology. He then addressed the public's eventual disenchantment with what this period had delivered before suggesting ideas for reform of the APS to ensure it is fit for the emerging challenges we face or the discussion of public law matters in the common law world.

For further details and lecture recording see the link:
<http://go.unimelb.edu.au/sbq6>

The Office of the Commonwealth Ombudsman: Four Decades On 30 April 2019

In this special CCCS seminar, the 10th and current **Commonwealth Ombudsman, Mr Michael Manthorpe** engaged in a conversation with Associate Professor Kristen Rundle. The dialogue between the Ombudsman and Associate Professor Rundle structured around three broad themes – ‘From History to the Present’, ‘Environment’, and ‘Relationships’ – was designed to invite discussion of such questions as how the purpose of the office of the Ombudsman has developed over time, how changes in the delivery of government services have affected the role of the Ombudsman, and the capacity of the office of the Ombudsman to adapt to changes in its relationships with citizens, media, and entities of government.

For further details and seminar recording see the link:
<http://go.unimelb.edu.au/xf5x>



Terry Moran AC speaking at the Jim Carlton Annual Integrity Lecture, 25 March 2019



Mr Michael Manthorpe, Commonwealth Ombudsman and Associate Professor Kristen Rundle in conversation, CCCS Seminar, 30 April 2019



Professor Alison Duxbury on a panel at the Asian Law Institute Conference 2019 at the National University of Singapore
11 June 2019



Professor Adrienne Stone receiving a ‘Guest of Honour’ Certificate from the city of Buenos Aires along with the President and Vice President of the Ibero American Association of Constitutional Law, 22-24 May 2019

CCCS BROWN BAG SERIES

19 February 2019, Tuesday

‘Something new under the sun? A NZ-centric critique of comparative constitutional law scholarship on the Anglo-Commonwealth “model” of human rights’, **Professor Claudia Geiringer** (Victoria University of Wellington)

5 March 2019, Tuesday

Panel Discussion: ‘Looking Ahead - Key Constitutional Developments Worldwide in 2019’

Panelists:

Professor Cheryl Saunders, Professor Adrienne Stone, Associate Professor Tarun Khaitan, Dr Anna Dziedzic, Associate Professor Will Partlett, Ms Hayley Pitcher, Dr Tom Daly, Dr Scott Stephenson and Mr Arturo Villagrán

14 March 2019, Thursday

‘Freedom of Political Speech as an ‘Implied Freedom’ in Australia’, **Professor Ron Krotoszynski** (University of Alabama)

19 March 2019, Tuesday

‘Abortion Protests and the Limits of Freedom of Political Communication: *Clubb v Edwards; Preston v Avery*’, **Professor Adrienne Stone** (Melbourne Law School)

26 March 2019, Tuesday

‘Treaty withdrawal in comparative constitutional and international law perspectives’, **Dr Caitlin Goss** (University of Queensland)

2 April 2019, Tuesday

‘An update on Brexit & its constitutional implications’, **Dr Scott Stephenson** (Melbourne Law School)

9 April 2019, Tuesday

‘Chapter III constitutional implications of present proposals to merge the Family Court into the Federal Circuit Court’, **The Hon. Diana Bryant, Professor Michael Crommelin and Professor Belinda Fehlberg** (Melbourne Law School)

16 April 2019, Tuesday

‘Fear Speech’ or How Violent Conflict Escalation Relates to the Freedom of Expression’, **Professor Antoine Buyse** (Netherlands Institute of Human Rights (SIM) at Utrecht University)

7 May 2019, Tuesday

‘The High Court’s Timber Creek decision (*Griffiths v N.T.*): Compensation for the Extinguishment of Native Title’, **Dr Angus Frith** (Melbourne Law School)

9 May 2019, Thursday

‘Australia’s Common Law Constitution’, **Mr Nick Petrie** (University of Cambridge)

14 May 2019, Tuesday

‘Social Capital and the Limits of Freedom of Association’, **Dr Maria Cahill** (University of Oxford)

28 May 2019, Tuesday

‘Statutory displacement of the prerogative in Australia and the United Kingdom’, **Dr Peta Stephenson** (Queensland University of Technology)



CCCS Brown Bag Seminar 7 May 2019

Dr Angus Frith presenting on “The High Court’s Timber Creek decision (*Griffiths v N.T.*): Compensation for the Extinguishment of Native Title”

LEGAL THEORY WORKSHOP

The Legal Theory Workshop series meets regularly to discuss unpublished works-in-progress on a variety of theoretical and normative issues in the law. Unless otherwise noted, all workshop meetings were held on Fridays, from 12.30pm-2.30pm

Guest presenters for Semester One 2019 (22 March – 24 May 2019):

22 March 2019

Dr Suzanne (Suzy) Killmister (Monash), ‘Human Dignity and Human Rights’.

Commentator: Dr Julian Sempill (Melbourne).

29 March 2019

Dr Jesse Wall (Otago), ‘Consent and Other Minds’.

Commentator: Associate Professor Dale Smith (Melbourne).

12 April 2019

Dr Caitlin Goss (University of Queensland), ‘History and the Constitution’.

Commentator: Associate Professor Will Partlett (Melbourne).

3 May 2019

Dr Rayner Thwaites (University of Sydney), ‘Identifying the Foreigner: Proof of Foreign Nationality and the Status of Citizenship’.

Commentator: Dr Anne Carter (Deakin).

* Workshop co-sponsored by Peter McMullin Centre on Statelessness

24 May 2019

Dr Arie Rosen (University of Auckland), ‘Economic Liberty and the Fragmentation of Contract Law’.

Commentator: Professor Andrew Robertson (Melbourne).



Dr Scott Stephenson presenting a CCCS Brown Bag Seminar
2 April 2019



Dr Maria Cahill presenting a CCCS Brown Bag Seminar
14 May 2019



Professor Adrienne Stone at the Ibero-American Congress of Constitutional Law in her capacity as President of the International Association of Constitutional Law
22-24 May 2019



Professor Alison Duxbury on her book launch “Can ASEAN take Human Rights Seriously?” at the National University of Singapore, 12 June 2019

FORTHCOMING EVENTS

The Centre for Comparative Constitutional Studies will host a series of conferences, seminars and events in 2019. For more information on these and other events see <https://law.unimelb.edu.au/centres/cccs/events>

Conferences

2019

CCCS Constitutional Law Conference

26 July 2019

To Register go to:

<https://law.unimelb.edu.au/centres/cccs/events/2019-cccs-constitutional-law-conference>

Melbourne Law School

Public Lecture

2019

2019 Allen Hope Southey Memorial Lecture

“Engineers: The Drama of its Day in the Climate of its Era”

25 July 2019

To Register go to:

<https://law.unimelb.edu.au/events/details?event=12675>

Melbourne Law School



THE UNIVERSITY OF
MELBOURNE

Melbourne Law School

Constitutional Law Conference 2019

Friday 26 July

Centre for Comparative Constitutional Studies (CCCS)

Registration closes Monday 22 JULY

We warmly invite you to the Centre for Comparative Constitutional Studies 2019 **Constitutional Law Conference** to be held at Melbourne Law School on Friday 26 July 2019.

The conference will officially commence on the evening of **Thursday 25 July** with a **public lecture** delivered by **The Hon. Justice Stephen Gageler AC** on '*Engineers: The Drama of its Day in the Climate of its Era*'.

The conference on **Friday 26 July** will be comprised of panels on 'Engineers: The Next 100 Years', 'The Constitution and National Security: Internal and External', 'Constitutional Dimensions of Property', and 'Recent Developments in Freedom of Political Communication'. **Confirmed speakers** include Dr Stephen Donaghue QC, Mr Bret Walker SC, Mr Graeme Hill,

Mr Craig Lenehan, Laureate Professor Emeritus Cheryl Saunders AO, Professor Michael Crommelin AO, Emeritus Professor Jeff Goldsworthy, Professor Adrienne Stone, Dr Cameron Moore, Dr Lael Weis and Dr Anne Carter. **Cases to be discussed** include *Spence v Queensland*, *Clubb v Edwards*, *Preston v Avery*, and *Northern Territory v Griffiths* (a.k.a. the *Timber Creek* case).

The conference will close with a book launch to celebrate the publication of **Dr Dylan Lino's** *Constitutional Recognition: First Peoples and the Australian Settler State* (Federation Press, 2018), with remarks by **Professor Marcia Langton AM**. At the conference dinner **The Hon. Kenneth M Hayne AC QC** will deliver **after-dinner remarks** on the subject of 'On Royal Commissions'.



Professor Adrienne Stone



Associate Professor Kristen Rundle

Registration rates:

Early Bird Registration Fees (Student): \$160

Early Bird Registration Fees (Academic): \$360

Registration Fees (General): \$520

Conference Dinner: \$120

For conference programme visit : <http://go.unimelb.edu.au/zk4x>

For registration please visit: <http://go.unimelb.edu.au/n34x>

For more information, visit <http://go.unimelb.edu.au/qxq6>



Centre for Comparative Constitutional Studies

Constitutional Law Conference 2019

Melbourne Law School

Woodward Conference Centre, Level 10, Melbourne Law School

Thursday 25 & Friday 26 July 2019

FINAL PROGRAMME

THURSDAY 25 JULY

6:00 PM – PUBLIC LECTURE

- **The Hon. Justice Stephen Gageler AC** (High Court of Australia)
'Engineers: The Drama of its Day in the Climate of its Era'

Friday 26 JULY

8:30 AM – Registration and coffee

9:00 AM – Session One

Engineers: The Next 100 Years

Speakers:

- Dr Stephen Donaghue QC (Commonwealth Solicitor General)
Spence v Queensland
- Laureate Professor Emeritus Cheryl Saunders AO (Melbourne)
Would you recommend this case to others? Engineers and Constitution building
- Emeritus Professor Jeff Goldsworthy (Melbourne)
Engineers and Interpretive Methodology

10:30 AM – Morning tea

11:00 AM – Session Two

The Constitution and National Security: Internal and External

Speakers:

- Mr Bret Walker SC (Fifth Floor St James Hall Chambers)
National Security and the Constitution: The Blurred Line between the Internal and the External
- Dr Cameron Moore (UNE/ANU/UOW)
Limiting the Indefinable? Use of Force under the War Prerogative and the Foreign Affairs Prerogative

12:30 PM – LUNCH



Centre for Comparative Constitutional Studies

Constitutional Law Conference 2019

Melbourne Law School

2:00 PM – Session Three

Constitutional Dimensions of Property

Speakers:

- Professor Michael Crommelin AO (Melbourne)
Non-Statutory Executive Power over Public Land and Resources
- Mr Graeme Hill (Owen Dixon Chambers West)
Compensation for Extinction of Native Title: The Case of Timber Creek
- Dr Lael (Lulu) Weis (Melbourne)
'On Just Terms', Revisited

3:30 PM – AFTERNOON TEA

4:00 PM – Session Four

Recent Developments in Freedom of Political Communication

Speakers:

- Professor Adrienne Stone (Melbourne Law School)
Abortion Protests and the Limits of Free Political Communication
- Mr Craig Lenehan (Fifth Floor St James Hall Chambers)
Public Servants, Elections, and Freedom of Political Communication
- Dr Anne Carter (Deakin Law School)
Proportionality Analysis and Facts

5:30 PM – END OF CONFERENCE

5:45 PM – BOOK LAUNCH

Dr Dylan Lino (UWA), *Constitutional Recognition: First Peoples and the Australian Settler State* (Federation Press, 2018)

Remarks: **Professor Marcia Langton AM**

7:00 PM – DINNER (Woodward Dining Room, Level 10, Melbourne Law School)

After-dinner speaker: **The Hon. Kenneth M Hayne AC QC – 'On Royal Commissions'**

CCCS members are active researchers and teachers across a broad range of public law issues. Many are available to give presentations or to consult on public law projects, particularly contributing a comparative perspective to domestic issues. They are also interested in discussing potential projects with prospective research students.

Co-Directors

Professor Adrienne Stone
Associate Professor Kristen Rundle

Research Centre Members

Laureate Professor Emeritus Cheryl Saunders AO, Foundation Director
Professor Michael Crommelin AO
Professor Alison Duxbury
Professor Michelle Foster
Professor Jeremy Gans
Professor Beth Gaze
Professor Kirsty Gover
Professor Pip Nicholson
Professor Joo-Cheong Tham
Professor Jason Varuhas
Associate Professor Farrah Ahmed
Associate Professor William Partlett
Associate Professor Glenn Patmore
Associate Professor Dale Smith
Associate Professor Margaret Young
Dr Julian Sempill
Dr Scott Stephenson
Dr Lael 'Lulu' Weis
Ms Penny Gleeson
Ms Paula O'Brien

Post-doctoral Research Fellows

Dr Erika Arban (Laureate Program in Comparative Constitutional Law)
Dr Tom Daly (MLS Post-doctoral Fellow)
Dr Shireen Morris (McKenzie Post-doctoral Fellow)

PhD Students in Residence

Elizabeth Hicks
Charmaine Rodrigues
Anjalee De Silva
Joshua Snukal
Toerien Van Wyk

Research Fellow (Laureate Program in Comparative Constitutional Law)

Dr Anne Carter

MLM Research Associates

Hayley Pitcher

JD Research Associates

Priyanka Banerjee
Zoe Brown
Sophie Clapin
Jake Herd
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Postal Address

Centre for Comparative Constitutional Studies
Melbourne Law School
The University of Melbourne VIC 3010 Australia

General Enquiries

Telephone +613 8344 1011



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