



THE UNIVERSITY OF
MELBOURNE

ilAH

Institute for International Law
and the Humanities

MELBOURNE LAW SCHOOL



IILAH Annual Report 2014

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Professor Hilary Charlesworth (ANU) speaking at the 'Feminist Encounters with International Human Rights Law' IILAH Public Lecture



*Professor Dianne Otto
Francine V McNiff Professor of Law
IILAH Director*

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MESSAGE FROM THE DIRECTOR

During 2014, IILAH continued to build its reputation as one of the leading international law research centres in the world, and its community of scholars and graduate research students continued to blossom. Many high profile International Visitors and outstanding Graduate Research Students were attracted to Melbourne Law School as a result. During the year, remarkable scholars from around the world participated in IILAH research events, including from universities in Canada, China, Finland, Germany, India, the Netherlands, Sweden, Switzerland, United Kingdom and the United States of America. Visitors hosted by IILAH included Professor Guimei Bau (Peking University) and Professor Dino Kritsiotis (Nottingham). IILAH's research activities also fostered collaborations with academics from other leading Australian universities and attracted the regular participation of many academics and research students not only from Melbourne Law School, but also from other Faculties and Schools within the University of Melbourne, including Criminology, Cultural Studies, Development Studies, Gender Studies, Historical and Philosophical Studies, Social and Political Science and Population and Health. Thanks to IILAH Programme Director Dr Mark McMillan, IILAH also became host to the Indigenous Nation Building Project during 2014, which considerably strengthened its links with indigenous scholars and communities.

At the heart of IILAH's work are its thirteen Research Programmes, which are directed or co-directed by fourteen Melbourne Law School faculty members, including young and established scholars. Two of these Research Programmes were newly established in 2014: Law, Sound and the International (with Dr James Parker as Director) and Legal Biographies (with Dr Ann Genovese, Associate Professor Shaun McVeigh and Associate Professor Peter Rush as Co-Directors). Other IILAH Research Programmes focus on human rights and refugee law, law and development, indigenous peoples, international criminal justice, jurisprudences of the South, and international environmental, investment and trade law. The Research Programmes provide Directors with an institutional platform from which to develop a visible record of research leadership in their field, foster active engagement with other scholars and students, and extend Melbourne Law School scholarly networks and collaborations globally. A further twelve faculty members participate in the IILAH community as members of IILAH, helping to determine priorities and contributing to research activities. As result, IILAH is able to showcase the impressive breadth of research expertise and dynamic mix of research interests at Melbourne Law School and bring them into meaningful dialogue under the broad banner of international law and the humanities.

Also enormously enriching IILAH's scholarly community are the 29 Graduate Research Students associated with IILAH. During the year, the Director met twice with the group and a number of these students organised IILAH seminars in their areas of research. IILAH supported, both financially and administratively, the 7th annual Melbourne Doctoral Forum on Legal Theory, *Borderlines: the Transnational and Domestic in Law and Legal Theory* (1-2 December), which attracted graduate students from around the country. IILAH also hosted the confirmation and completion seminars of five of its Graduate Research Students. I take this opportunity to extend IILAH's congratulations to the two PhD students who completed in 2014: Dr James Parker and Dr Deborah Whitehall. IILAH's graduate research students help, immeasurably, to sustain a cohesive, supportive and vibrant community of graduate research students at Melbourne Law School.

During 2014, two important new events were added to IILAH's calendar. One is an annual legal theory research symposium/workshop called *Provocations*, which aims to provide the opportunity for different IILAH Directors to collaborate on organising a major IILAH event that provides a forum for provocative (re)thinking of the callings, passions and effects of international law. The first, *On Lives Lived with Law*, was organised by Dr Ann Genovese, Associate Professor Shaun McVeigh and Associate Professor Peter Rush and was focussed on questions associated with how lives 'lived with law' might be lived, written and narrated. The participants, who came from across Australia, offered a range of thoughtful provocations from different disciplinary locations. The second innovation was the inspiration of IILAH's McKenzie Scholar, Dr Rose Parfitt. She proposed a new IILAH series of cross-disciplinary research seminars called *Constellations*, which is concerned broadly with questions of methodology. Rose organised the first two seminars in this series, *Thinking With Sound* and *The Minutes of Evidence Project*, which brought together panels of scholars and artisans to discuss a common substantive theme. In addition, IILAH's regular programme of research events continued, which included public lectures, a forum for international law junior faculty, a workshop for human rights tertiary teachers and one on contemporary critical legal theory in the Australian academy, 19 research seminars and four book launches. Of particular note was the Annual Junior Faculty Forum on International Law, which is convened each year by Professor Anne Orford, Professor Dino Kritsiotis and Professor JHH Weiler. The Forum attracted talented new international law scholars from around the world. More details about all these research events are provided later in this Annual Report. Together, they make an important contribution to promoting critical and interdisciplinary scholarship in international law and are often reflective of cutting-edge developments in the discipline.

IILAH's outstanding publishing record continued during 2014, and you will find a very impressive list of books, book chapters and scholarly articles later in this Annual Report.

The success of IILAH in 2014, as always, is due to the enthusiasm and creativity of all the faculty and students involved with it. I would like to thank Associate Professor Peter Rush and Professor Sundhya Pahuja who both stood in as Acting IILAH Directors for a few weeks while I was away on study leave. Also thanks to my research assistant, Ms Candice Parr, who has the uncanny ability to know exactly what I want from her. And most importantly, I want to make special mention of the enormous contribution made by Ms Vesna Stefanovski, who continues to fulfil her responsibilities as IILAH administrator with infectious enthusiasm and remarkable organisational skills, combined with immaculate care. She plays a crucial role in holding IILAH's community of scholars together, fostering and nurturing collaborations, as well as providing the significant administrative support that makes this all possible.

Professor Dianne Otto

Francine V McNiff Chair in Human Rights Law

OVERVIEW

The Institute for International Law and the Humanities (IILAH) is dedicated to integrating the study of international law with contemporary approaches to the humanities. IILAH facilitates and promotes innovative research and critical thinking on emerging questions of international law, governance, human rights and justice, positioning Melbourne Law School as one of the leading institutions for international legal scholarship in the world.

Aims and objectives

IILAH supports interdisciplinary scholarship on contemporary international law, relating in particular to the promotion of social and economic justice and giving voice to those who are marginalised by the historical commitments of international law. Many of the significant modes of thought that have framed the way in which international lawyers understand the world have developed in conversation with the humanities. IILAH continues this engagement by fostering dialogue with scholars working in disciplines such as anthropology, criminology, cultural studies, gender studies, geography, history, linguistics, literature, philosophy, politics and theology.

IILAH encourages the work of younger scholars and those developing new approaches to the field of international law, and facilitates engagement between scholars and the community of professionals and activists working on issues of international law and governance. It has developed networks with scholars from Canada, Colombia, Egypt, Finland, France, India, Italy, New Zealand, South Africa, Sweden, the United Kingdom and the United States. IILAH has a particular interest in developing links with scholars in the global South, in order to explore the shared legal legacies of colonialism.

Activities

IILAH hosts visits of distinguished and emerging international scholars; organises conferences, public lectures and research seminars, workshops and reading groups; supervises and supports the work of graduate research degree students; and undertakes and facilitates collaborative and interdisciplinary research projects within the University of Melbourne, as well as nationally and internationally. With these research activities IILAH contributes to ongoing debates about the theoretical foundation and practical effect of international law and the humanities in the political climate of today.

RESEARCH PROGRAMMES

The activities of the Institute are currently organised around thirteen key Research Programmes with fourteen Research Programme Directors. The programmes build on the breadth of research expertise and innovation amongst the faculty at Melbourne Law School, and represent areas of dynamic development and change in the fields of international, transnational and global law.

Australian Legal Histories

Programme Director: Dr Ann Genovese

Fragmentation and Regime Interaction in International Law

Programme Director: Associate Professor Margaret Young

Global Trade

Programme Director: Professor Tania Voon

Indigenous Peoples in International and Comparative Law

Programme Directors: Associate Professor Kirsty Gover and Dr Mark McMillan

International Criminal Justice

Programme Director: Associate Professor Peter Rush

International Environmental Law

Programme Director: Professor Jacqueline Peel

International Human Rights Law

Programme Directors: Professor Dianne Otto and Professor John Tobin

International Investment Law

Programme Director: Associate Professor Jürgen Kurtz

International Refugee Law

Programme Director: Associate Professor Michelle Foster

Jurisprudences of the South

Programme Director: Associate Professor Shaun McVeigh

Law and Development

Programme Director: Professor Sundhya Pahuja

Law, Sound and the International

Programme Director: Dr James Parker

Legal Biographies

Programme Directors: Dr Ann Genovese, Associate Professor Shaun McVeigh and Associate Professor Peter Rush

DIRECTORS AND STAFF

Director

Professor Dianne Otto

IILAH Director

Programme Co-Director

International Human Rights Law



Dianne Otto holds the Francine V McNiff Chair in Human Rights Law. Her recent publications include *Rethinking Peacekeeping, Gender Equality and Collective Security* (co-edited with Gina Heathcote, Palgrave-Macmillan 2014); *Gender Issues and Human Rights* (editor, vols I-III, Edward Elgar Publishing, Human Rights Law Series, 2013), and a bibliographic chapter, 'Feminist Approaches', in Tony Carty (ed) *Oxford Bibliographies Online: International Law* (Oxford University Press, 2012). Dianne's scholarly research in the field of public international law and human rights law is marked by its emphasis on melding theory with transformative practice. Her research interests include addressing gender, sexuality and race inequalities in the context of international human rights law, the UN Security Council's peacekeeping work, the technologies of global 'crisis governance', threats to economic, social and cultural

rights, and the transformative potential of people's tribunals and other NGO initiatives. Dianne's scholarship explores how international legal discourse reinforces hierarchies of nation, race, gender and sexuality, and aims to understand how the reproduction of such legal knowledge can be resisted. She draws upon a range of critical legal theories particularly those influenced by feminism, postcolonialism and queer theory.

Director Emeritus

Professor Anne Orford

IILAH Director Emeritus



Anne Orford is Michael D Kirby Chair of International Law and an Australian Research Council Future Fellow at Melbourne Law School. Her publications include *International Authority and the Responsibility to Protect* (Cambridge University Press 2011), *Reading Humanitarian Intervention* (CUP 2003), and the edited collection *International Law and its Others* (CUP 2006). Anne is the President of the Australian and New Zealand Society of International Law, and was the founding Director of the Institute for International Law and the Humanities at Melbourne Law School (2005-2012). She has been a Visiting Professor at the Sorbonne Law School and Lund University, the Torgny Segerstedt Visiting Professor at the University of Gothenburg, a Senior Emile Noël Research Fellow at NYU, and a Core Faculty Member of the Harvard Global Law and Economic Policy Workshop. She is a graduate of the

universities of Queensland, London, and Adelaide, and holds the degree of Doctor of Laws *honoris causa* from Lund University and the University of Gothenburg. Anne is currently working on a four-year project exploring transnational responses to famine and food insecurity from the era of formal empire to the present, and with Florian Hoffmann is co-editing the *Oxford Handbook on the Theory of International Law*.

Programme Directors

Associate Professor Michelle Foster



Programme Director
International Refugee Law

Michelle Foster is the Associate Dean (Research) at Melbourne Law School, as of July 2014. She has published widely in the field of international refugee law, and her work has been cited extensively in the international refugee law literature and also in judicial decisions in the UK, Australia and New Zealand. Michelle authored *International Refugee Law and Socio-Economic Rights: Refuge from Deprivation* (Cambridge University Press 2007), which has been widely and favourably reviewed in domestic and international law journals and was awarded the University of Melbourne's Woodward Medal in 2009. Michelle's teaching and research interests are in the areas of public law, international refugee law, and international human rights law. Since joining Melbourne Law School in 2005, Michelle has developed a new curriculum in Refugee Law in both the LLB and LLM degrees. Her current research is focused on an ARC Discovery Project with Professor James Hathaway entitled 'The Law of Refugee Status: A Theoretical and Comparative Analysis'.

Dr Ann Genovese



Programme Director
Australian Legal Histories and Legal Biographies

Ann Genovese is a Senior Lecturer with Melbourne Law School. Ann's publications include *Rights and Redemption: Law, History, Indigenous Peoples* (UNSW Press, 2008) (with Ann Curthoys and Alexander Reilly) and *Sovereignities: Frontiers of Possibility* (UHP, 2013) co-edited with Julie Evans, Patrick Wolfe, and Alexander Reilly. She researches the history and theory of the relations between Australian jurisprudence and political culture in the twentieth century. Ann's current projects focus on the history of the relationship between jurisprudence and feminisms since 1950; the histories of Australian public trials; and the responsibilities of legal institutions when they act as archives of the administrative state. Ann was awarded an ARC grant, and is writing a book on the history that explores the relationship between feminism and jurisprudence in late modern Australia.

Associate Professor Kirsty Gover



Programme Co-Director
Indigenous Peoples in International and Comparative Law

Kirsty Gover joined Melbourne Law School in 2009 and is chair of the Staff Equity and Diversity Committee. Her research and publications address the law, policy and political theory of indigenous rights, institutions and jurisdiction. She is the author of *Tribal Constitutionalism: States, Tribes and the Governance of Membership* (Oxford University Press 2010). Kirsty is interested in the role played by "indigeneity" in the constitutionalism of settler societies, and in the importance of indigenous concepts of law and politics in settler state political theory and international law. She is a graduate of the New York University (NYU) JSD Doctoral Program, where she was an Institute for International Law and Justice (IILJ) Graduate Scholar and New Zealand Top Achiever Doctoral Fellow. She is currently working on a book entitled, *When Tribalism meets Liberalism: Political Theory and International Law* (Oxford University Press, forthcoming), examining the ways in which indigenous self-governance influences the development of international law and international legal theory by altering the behaviours of states.

Associate Professor Jürgen Kurtz



Programme Director

International Investment Law

Jürgen Kurtz researches and teaches in the various strands of international economic law including the jurisprudence of the World Trade Organization and that of investor-state arbitral tribunals. Jürgen has published in a range of leading international law journals. He has a particular interest in examining the impact of treaty-based disciplines on regulatory autonomy and development strategies of member states. Jürgen was an Emile Noel Fellow at the Jean Monnet Center for International and Regional Economic Law Justice at New York University Law School, a Grotius Fellow at the University of Michigan Law School and was appointed a research fellow at the Hague Academy of International Law. Recently, he was the inaugural convenor of the General Course on International Investment Law of the Academy of International Trade and Investment Law, Macau. Jürgen acts as a consultant to a variety of governmental agencies, including AusAID, and inter-governmental agencies on law reform and implementation of investment and trade treaty commitments in developing countries.

Associate Professor Shaun McVeigh



Programme Director

Jurisprudences of the South and Legal Biographies

Shaun McVeigh is president of the Law, Literature and Humanities Association of Australasia. He has a long time association with critical legal studies in Australia and the UK. Shaun's recent publications include *Jurisdiction* (with Shaunnagh Dorsett, Routledge 2012). Shaun has research interests in the fields of jurisprudence and legal ethics. His current research projects centre around three themes associated with refreshing a jurisprudence of jurisdiction: the development of accounts of a 'lawful' South, the importance of a civil prudence to thinking about the conduct of law (and lawyers), and the continuing need to take account of the colonial inheritance of Australia and Britain.

Dr Mark McMillan



Indigenous Nation Building Research Team

Programme Co-Director

Indigenous Peoples in International and Comparative Law

Mark McMillan is a Wiradjuri man from Trangie, NSW. His research interests are in human rights in particular, the expression and fulfilment of those rights for Indigenous Australians. Mark is a member and Node Leader of the National Indigenous Research and Knowledges Network (NIRAKN). He was named National NAIDOC Scholar of the year for 2013. Mark is currently working on an ARC grant relating to Indigenous nation building. He leads two further ARC funded projects. The first relates to reconciliation processes in South Africa and Northern Ireland to determine whether there are lessons for Australia, as Australia moves to a federal constitutional amendment that might recognise Indigenous Australians in the document. The second relates to the 'Coranderrk' enquiry of 1881 – looking at how Australia's federation was influenced by particular Indigenous and non-Indigenous voices in Victoria. Mark intends on expanding his research outcomes to include the application of 'constitutionalism' to, and for, Indigenous Australians with a particular emphasis on the use of current constitutional law for the protections that were envisioned for Indigenous people in the constitutional referendum of 1967.

Professor Sundhya Pahuja



Programme Director
Law and Development

Sundhya Pahuja's research explores the changing role of law and legal institutions in the context of globalisation. Her research crosses traditional disciplinary boundaries and challenges distinctions between public and private behaviours and the categories of economic and non-economic in new ways. The various national and trans-national regulatory practices (including law) through which governance is effected, especially in the context of the relationship between North and South, are a particular concern. To this end, Sundhya's work engages with public international law, international economic law and a range of critical and philosophical approaches to law and legal theory, including postcolonial, post-structuralist and feminist theories.

Dr James Parker



Programme Director
Law, Sound and the International

James Parker joined Melbourne Law School in 2013. His research explores the many relations between law and sound, particularly in the context of international law. He is currently finishing work on a book entitled *Acoustic Jurisprudence: Listening to the Trial of Simon Bikindi* which looks at the trial of Simon Bikindi, who was accused, by the International Criminal Tribunal for Rwanda, of inciting genocide with his songs. His next research project will consider the experience and regulation of the use of extreme sound, sensory deprivation and enforced listening in torture practices, weaponry and elsewhere in the military-entertainment complex.

Professor Jacqueline Peel



Programme Director
International Environmental Law

Jacqueline Peel's teaching and research interests lie in areas of environmental law, domestic and international; risk regulation and the role of science; and climate change law. She has published a number articles and books on these topics. Jacqueline was awarded two ARC grants 2009-2012 and 2013-2015. In 2014, she is a Visiting Scholar at the Woods Institute for the Environment (Stanford University) examining regulatory aspects of the climate-energy-water nexus. Her current research focuses on the regulatory role played by litigation in domestic and international climate governance, collaborating with Professor Hari Osofsky (University of Minnesota Law School) and plans to publish a co-authored book, *Climate Change Litigation: Regulatory Pathways to Cleaner Energy*, through Cambridge University Press in 2014.

Associate Professor Peter Rush



Programme Director

International Criminal Justice and Legal Biographies

Peter Rush has been a youth worker, an artist, a filmmaker and a scholar. He has taught in law faculties and criminology departments in Australia and in England. In 2004-2005, Peter was the Karl Lowenstein Fellow in Political Science and Jurisprudence at Amherst College. He is the author of several books on criminal law and edited collections on jurisprudence, and on law and aesthetics. A longstanding member of the critical legal studies movement in the United Kingdom, Peter was coordinator of its national conference and a founding member of the interdisciplinary legal theory journal *Law & Critique*. He has been invited to present papers and lectures at institutions in the United Kingdom, United States and Canada, such as Birkbeck College, Carleton University, and New York University. Peter is a member of the editorial boards of several legal theory journals and has been active in the Australian Law and Literature Association and the Australian Law and Society Association. His areas of expertise include international criminal law, legal theory and jurisdiction, the histories and doctrine of criminal law, sexual assault law and its reform, legal aesthetics, and legal formations of trauma.

Professor John Tobin



Programme Co-Director

International Human Rights Law

John Tobin has published numerous reports and articles on human rights, including his book *The Right to Health in International Law* (Oxford University Press, 2012). He has provided human rights training and advice as a consultant and on a pro bono basis on numerous occasions to organisations such as UNICEF, Law Reform Commissions, the Victorian Equal Opportunity Commission, NGOs, statutory bodies, Government Departments and community groups. John is an Advisory Board member to the *Melbourne Journal of International Law* and *International Journal of Children's Rights*. He is the coordinator of the Melbourne Law School Human Rights Alumni Network and joint coordinator, along with Professors Hilary Charlesworth (ANU) and Andrew Byrnes (UNSW), of the Human Rights Teacher's Network. John is currently working on an ARC Discovery Grant with Professor Philip Alston (NYU), titled 'Children's Rights from Theory to Practice', an examination of the historical and philosophical foundations of children's rights and the measures required for their implementation.

Professor Tania Voon



Programme Director

Global Trade

Tania Voon is the author of *Cultural Products and the World Trade Organization* (Cambridge University Press, 2007), editor of *Trade Liberalisation and International Co-operation: A Legal Analysis of the Trans-Pacific Partnership Agreement* (Edward Elgar Publishing, 2013) and co-editor of *Public Health and Plain Packaging of Cigarettes: Legal Issues* (Edward Elgar Publishing, 2012), *The Global Tobacco Epidemic and the Law* (Edward Elgar Publishing, 2014), *Regulating Tobacco, Alcohol and Unhealthy Foods: The Legal Issues* (Routledge, 2014) and *Good Faith and International Economic Law* (Oxford University Press, forthcoming 2015). She is currently conducting research on international economic law and non-communicable diseases in conjunction with the McCabe Centre for Law and Cancer pursuant to major grants from the Australian National Preventive Health Agency and the Australian Research Council (Linkage Project), as well as research on Australia's trade and investment agreements pursuant to an Australian Research Council Discovery Project.

Associate Professor Margaret Young



Programme Director

Fragmentation and Regime Interaction in International Law

Margaret Young researches and teaches in the fields of public international law, international trade law, climate change law and the law of the sea. In 2013, she delivered a series of lectures on 'The Fragmentation of Public International Law' at the State University of Saint Petersburg, Russia. She is the author of *Trading Fish, Saving Fish: The Interaction between Regimes in International Law* (Cambridge University Press, 2011), which was awarded the International Union for Conservation of Nature (IUCN) Academy of Environmental Law Junior Scholar Prize in 2012. Her edited collection *Regime Interaction in International Law: Facing Fragmentation* (Cambridge University Press, 2012) includes contributions from leading international, comparative and constitutional law scholars and is based on the conference she convened at the University of Cambridge in 2009 on 'Regime Interaction in International Law: Theoretical and Practical Challenges'. She is currently researching and writing on the pluralist governance of forests, including emerging approaches to 'Reduce Emissions from Deforestation and Forest Degradation' (REDD) under the climate change regime.

Research Fellow

Dr Rose Parfitt

McKenzie Postdoctoral Research Fellow



Rose Parfitt joined IILAH in June 2013 after two years as Assistant Professor of International Law at the American University in Cairo. Rose's research is concerned with the relationship between theory and history in the study of international law, international relations and the history of political thought. She received her doctorate in 2011 from the SOAS School of Law (University of London). She is currently writing, or has recently published, on subjects including fascist colonialism; the Bandung Conference of 1955; the relationship between time and space in the construction of international legal subjectivity; the Futurist Giacomo Balla's 'anti-neutral suit'; the politics of international legal historiography; theories of state recognition and international personality; and the impact of the concept of 'earned sovereignty' on the right of peoples to self-determination, among other topics. Rose is currently working on a book based on her doctoral thesis. Its provisional title is *International Personality on the Periphery: The 'Abyssinia Crisis' and International Law*.

Research Staff

Ms Candice Parr

IILAH Research Assistant



Candice Parr joined the Institute for International Law and the Humanities as a research assistant for Professor Dianne Otto in November 2012. In this capacity Candice has examined the Security Council Resolutions on Women, Peace and Security and the associated scholarly and activist debates about what they make possible. She has also researched the work of 'people's tribunals', particularly those that have sought to draw attention to the hidden or neglected injuries suffered by women during armed conflict, and the role that 'shame' plays in the continuing ostracism and discrimination that many of them endure. Since completing the JD program in mid-2014, Candice has been employed at the Family Court of Australia, as Legal Associate to Justice Bennett. She was also one of the 2013 Editors of the *Melbourne Journal of International Law*. Her general areas of interest are feminist legal theory and critical race theory.

Staff

Ms Vesna Stefanovski

Research Centres Coordinator

IILAH Administrator



Vesna Stefanovski has been with the University of Melbourne since 2007 as the IILAH administrator. She manages the planning and implementation of a variety of events from seminars and reading groups to large public lectures, conferences, workshops and symposia. She liaises with numerous Melbourne Law School visitors from leading Australian and international academic, government and non-government institutions and facilitates their engagement with academics and the research life of Melbourne Law School. Vesna enthusiastically encourages a sense of scholarly community for all Graduate Research Students who research within international law and the humanities. She works closely with IILAH research programme directors and members. Vesna is also involved in maintaining the IILAH web page, as well as designing IILAH publications and flyers.

MEMBERS

Associate Professor Alison Duxbury



Alison Duxbury is Associate Dean (JD) and an Associate Director of the Asia Pacific Centre for Military Law, a collaborative initiative between Melbourne Law School and the Australian Defence Force Legal Service. She is also a member of the International Advisory Commission of the Commonwealth Human Rights Initiative, the Board of Directors of the International Society for Military Law and the Law of War and the Australian Red Cross International Humanitarian Law Committee (Victorian Division). Alison's major research interests are in the fields of international law, international institutional law and human rights law. Her book, *The Participation of States in International Organisations: The Role of Human Rights and Democracy* was published by Cambridge University Press in 2011. She is currently co-editing a book on military justice (with Associate Professor Matthew Groves) and is a member of the ASEAN Integration through Law Project, coordinated through the National University of Singapore (working on ASEAN and human rights with Dr Tan Hsien-Li).

Professor Raimond Gaita



Raimond Gaita is a Professorial Fellow at Melbourne Law School and the Faculty of Arts at the University of Melbourne and Emeritus Professor of Moral Philosophy at King's College London. Rai's books, widely translated, and among many include, the award winning *Romulus, My Father*, nominated by Australian Financial Review as one of the decades best books, also made into a feature film starring Eric Bana. In 2012 Rai began research for a new book for which he says, "if anything I wrote could be deserved to be called that, will be my magnum opus". The book would develop in one direction via engagement with psychology and evolutionary theory, an original philosophy of the place of human beings in nature, and in another, via political theory and jurisprudence, an original philosophy of politics and law. Rai is working on several publications, an article on genocide and evil for a series, *The History of Evil*, an article on punishment and the moral emotions in the *Criminal Law and Philosophy* journal and a collection of Rai's essays entitled *Dignity*.

Professor Lee Godden



Lee Godden holds a research and teaching position at Melbourne Law School. As well as her involvement with IILAH, Lee is the Director of the Centre for Resources, Energy and Environmental Law (CREEL). Accordingly much of her scholarship occurs in areas at the intersection of law and the humanities related to environmental law, indigenous rights and natural resource management. An exploration of the relationship between law and history in the context of native title law formed a theoretical foundation for much early research. A similar interdisciplinary focus has informed other aspects of her scholarship in property theory and environmental regulation and governance. Lee's work extends with engagement in public interest issues such as the impact of climate change on environmental law and water law and economic development for indigenous communities. Lee was appointed to the Australian Law Reform Commission as a part-time Commissioner in July 2013, in charge of the Inquiry into the *Native Title Act 1993*.

Ms Tanya Josev



Tanya Josev is a lecturer at Melbourne Law School. Tanya's research interest is in 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 is currently completing cross-disciplinary doctoral studies in the history of the public debate over "judicial activism" in the High Court of Australia. Tanya holds a BA, LLB(Hons) and Graduate Diploma in Legal Studies from the University of Melbourne. In 2010-11, Tanya was based at New York University's School of Law through her appointment as a Hauser Global Fellow. In 2013, the first part of her research into the history of the public debate over "judicial activism" was published in the *Public Law Review*. In addition, Tanya teaches across a variety of private law subjects in the Breadth and JD programs and has previously practised, and published, in related areas.

Associate Professor Wendy Larcombe



Wendy Larcombe teaches Legal Theory and Legal Method and Reasoning in the JD program. In addition, Wendy conducts research in the fields of law, gender and sexuality, and legal education with a particular research interest in theories of subjectivity, autonomy and consent and their application in a range of regulatory and institutional contexts. She has published widely on sexual violence and rape law reform in respected journals such as *Violence Against Women*, *Feminist Legal Studies* and the *Australian Feminist Law Journal*. Her current research projects investigate: the importance to the progressive criminalisation of marital rape of changes in the social role of marriage; evolving jurisprudence on 'reasonable grounds' for a belief in consent in rape law; alternative justice options for sexual assault survivors; and the role of educational institutions in supporting students' mental health.

Ms Cosima McRae



Cosima McRae joined Melbourne Law School's Institute for International Law and the Humanities as Research Fellow on the Indigenous Nation Building Project in January 2014. Previously, Cosi was the research assistant for the ARC Discovery Project Financial Literacy and Financial Wellbeing and published work on behavioural economics in law reforms to combat predatory targeting and financial exclusion of vulnerable consumers. Cosi currently works with a collaborative research team that partners with three Indigenous nations: Ngarrindjeri, Gunditjmara and Wiradjuri. Cosi is writing on how thinking, writing and acting as a nation challenges current Australian legal concepts of sovereignty; unsettling and resetting the institutional relationships between law schools and universities and Indigenous peoples; and intergovernmental relationships between Indigenous nations and settler governments in Australia. Cosi is committed to the principles of her research team of full and equal partnership with Indigenous nations that advance their rights as sovereign peoples.

Professor Andrew Mitchell



Andrew Mitchell's major area of interest is international economic law, in particular the law of the World Trade Organization (WTO). He has worked in the Trade Directorate of the Organisation for Economic Co-operation and Development (OECD), the Intellectual Property Division of the WTO, and the Legal Department of the International Monetary Fund (IMF). Andrew has published in numerous journals and books on areas including WTO law, international law, international humanitarian law and constitutional law. In addition to his Melbourne teaching, Andrew has taught WTO law to undergraduate and postgraduate students at Bond University, Monash University, and the University of Western Ontario, and to Australian and overseas government officials at the Australian Department of Foreign Affairs and

Trade and the International Development Law Organization respectively. Andrew also consults for the private sector and international organisations. He has been engaged by Telstra for a research project on trade and telecommunications issues and by the World Health Organization to advise on issues concerning the Framework Convention on Tobacco Control. In 2007, following a nomination by the Australian government, the WTO's Dispute Settlement Body added him to the indicative list of governmental and non-governmental panelists to hear WTO disputes.

Ms Paula O'Brien



Paula O'Brien is a Senior Lecturer at Melbourne Law School. Paula has a LLM from the University of Cambridge, specialising in international law. Paula researches in the area of health law, including international and comparative law perspectives in her work. Her current doctoral research is on alcohol regulation, including the labelling, advertising, pricing and licensing of alcohol as a global commodity. She regularly makes written and oral submissions to government inquiries and processes regarding the regulation of alcohol. Paula has recently published on the international right to health and the phenomenon of privatisation, as well as the global shortage of health workers and its implications for the fulfilment of the right to health. She is currently involved in an empirical research project on social justice and temporary migrant

workers in Australia, focusing on issues related to the accessibility of health care for migrant workers and their families.

Associate Professor Bruce 'Ossie' Oswald CSC



Bruce Oswald's research interests are in the areas of international humanitarian law, peace operations law, international peace and security law, military law, and international criminal law. Ossie teaches a range of post-graduate subjects at Melbourne Law School, including Principles of International Law, International Dispute Settlement Law, International Humanitarian Law, International Peace and Security Law, Institutions in International Law and UN Law and Practice. Ossie continues to serve in the Australian Army as a legal officer and has seen active service overseas as a member of the Australian Defence Force. For his service as the Legal Officer for the Australian Contingent serving in Rwanda, Ossie was awarded the Conspicuous Service Cross (CSC). Ossie is the Director of the Asia Pacific Centre for

Military Law at Melbourne Law School, as of 2014.

Professor Gerry Simpson



Gerry Simpson holds the Kenneth Bailey Chair of Law at Melbourne Law School. From 2010 to 2013 he was Director of the Asia Pacific Centre for Military Law at Melbourne Law School. Gerry is a Visiting Professor of Public International Law at the London School of Economics, where he held a Chair until 2009, and is currently an Open Society Fellow (based in Tbilisi, Georgia). Gerry is the author of *Great Powers and Outlaw States* (Cambridge, 2004) and *Law, War and Crime: War Crimes Trials and the Reinvention of International Law* (Polity 2007). He is currently working on a book about the literary life of international law and editing another *Who's Afraid of International Law* (with Rai Gaita) forthcoming in 2015.

Associate Professor Joo-Cheong Tham



Joo-Cheong Tham's key research areas are the regulation of non-standard work and political finance law. Joo-Cheong has also undertaken considerable research into counter-terrorism laws. He has published extensively and written more than 30 opinion pieces. Joo-Cheong regularly speaks at public forums and has presented lectures at the Commonwealth and Victorian Parliaments. He has also given evidence to parliamentary inquiries into terrorism laws and political finance law. Joo-Cheong has published *Money and Politics: The Democracy We Can't Afford* (UNSW Press, 2010). In 2011 he co-edited *The Funding of Political Parties: Where Now?* (Routledge, 2011) (co-edited with Keith Ewing and Jacob Rowbottom) and *Electoral Democracy: Australian Prospects* (Melbourne University Press, 2011) (co-edited with Brian Costar and Graeme Orr). Together with Graeme Orr, University of Queensland and Brian Costar, he is leading an Australian Research Council project, *Dollars and Democracy: The Dynamics of Australian Political Finance and its Regulation* (2010-2013).

Dr Amanda Whiting



Amanda Whiting joined Melbourne Law School as a Lecturer in 2004. She has been a member of the Asian Law Centre since 1999. She taught the following subjects in the (previous) LLB: Land, Race and Law in Southeast Asia, Law and Society in Southeast Asia, Law and Civil Society in Asia, History and Philosophy of Law, Property and Principles of Public Law. She has also taught in the Melbourne Law Masters Programme: Islamic Law and Politics in Asia and Citizens and Groups and States in Asia. Her research is in the area of human rights institutions and practices in the Asia-Pacific Region, gender and religion, and Malaysian legal history. She is Associate Director (Malaysia) of the Asian Law Centre. Amanda completed her honours degree in Arts at the University of Melbourne in 1981 and then taught seventeenth and eighteenth century history at the University's History Department over the next decade. She also has a Diploma of Education (1988) and a Graduate Diploma of Indonesian (1995) which was partly undertaken at Universitas Kristen Satya Wacana, Indonesia.

GRADUATE RESEARCH STUDENTS

Current Graduate Research Students

Florence Adong

Thesis: *The Responsibility to Prevent in International Law and Politics: Assessing the Responsibility of International Financial Institutions to prevent Conflicts*

Supervisors: Anne Orford and Bruce Oswald

By analysing the responsibility of the international community to prevent conflicts and mass atrocities through early intervention, this thesis places the responsibility of International Financial Institutions ('IFIs') within the parameters of international law, and shows the complexities and ambiguities that exist in the international legal framework. The research uses examples from Africa to examine the questions of international authority, jurisdiction and the restraint of discretion that arise from the responsibility to protect concept and go to the heart of international law and politics. This examination leads to the question of what consequences the renewed emphasis on responsibility to prevent in terms of economic and development assistance has for activities of IFIs. This thesis concludes that the emphasis of the responsibility to protect concept on prevention through early intervention in terms of economic and development assistance, is valuable in resolving crisis, if it is undertaken with genuine intentions and precaution as to the principles of law, and giving attention to much stronger and viable aspects of intervention that gives the state the tools to resolve the conflict.

Tom Andrews

Thesis: *A Jurisprudence of Procedure*

Supervisors: Peter Rush and Shaun McVeigh

This thesis develops a legal theory of criminal procedure as an example of the becoming of law and the law of its becomings. My work offers a critical account of contemporary transformations in criminal law. This thesis is concerned with how criminal law is authored, authorised and comes to express modes of authority as it is attached to world and event. If jurisprudence is traditionally concerned with the static categories of law - texts, concepts, definitions – then this thesis engages a tradition of dynamism and movement in order to reorient questions of technology, mediation and image to account for criminal procedure within the ambient social, political and economic situation broadly called neoliberalism.

Marie Aronsson

Thesis: *The Role of Covert Action in the Development of Jus ad Bellum*

Supervisors: Anne Orford and Kevin Jon Heller

The aim of this thesis is to illuminate the role that covert action plays in the formation of the law regulating the resort to force in international relations. In connecting theories of international custom formation with methodological debates on *jus ad bellum*, it argues that unacknowledged conduct plays a substantial, though often indirect, role in the development of the law.

Meg Brodie

Thesis: *Agents of Change: What power do national human rights institutions have to affect the process of transformative social change?*

Supervisors: Dianne Otto and Brian Burdekin (external)

Meg Brodie completed a BA (Hons) / LLB (Hons) at the University of Melbourne. Her PhD investigates national

inquiries conducted by the National Human Rights Commissions of Mongolia and India. Her fieldwork was supported by an Endeavour Research Fellowship. A lawyer, Meg has worked in both the corporate and not-for-profit sectors and currently sits on the Board of the Oaktree Foundation.

Emily Cheesman

Thesis: *Children's rights based approaches to policies, services and programmes for Filipino street children*

Supervisors: John Tobin and Helen Rhoades

Children's rights, particularly as articulated under the UN Convention on the Rights of the Child, have increasingly gained prominence in law and policy making in the Philippines. This has coincided with a shift in focus to a 'rights-based approach to development' or 'child rights programming' by international bodies and the broader development field. This research thesis considers how children's rights based approaches (RBAs) are conceived and applied by non-governmental organisations (NGOs) to service and design programmes for children colloquially known as 'street children' in Manila, Philippines. The research is framed through a detailed consideration of the legal, political, economic and cultural context within which NGOs operate, and investigates the factors that inhibit and facilitate the design and effective operation of RBAs.

Martin Clark

Thesis: *The Jurisprudential Foundations of Recognition in International Law*

Supervisors: Anne Orford and Kirsty Gover

Martin Clark holds honours degrees in law, history and philosophy from the University of Melbourne, and is a Research Fellow and tutor at Melbourne Law School. His MPhil will examine the writings of jurists on the theory and practice of recognition of states and governments in international law. The thesis will trace the intellectual history of theories of recognition to critically evaluate how and why those theories have developed over the centuries, and the effect of that development on early to mid-twentieth century writings on international law. A nuanced history of the concept will then lay the ground for re-evaluating the questions and answers offered in current debates on recognition in international law.

Julia Dehm

Thesis: *Reconsidering REDD+: Law, Life, Limits and Growth in Crisis*

Supervisors: Maureen Tehan and Margaret Young

Julia's research examines legal responses to the climate crisis through the United Nations Framework on Climate Change (UNFCCC) and other transnational forums in order to ask pertinent questions about the adequacy and equity of these approaches. A fundamental concern of her research is the increased marketisation of transnational environmental governance and the centrality of carbon emission trading schemes to international mitigation and adaptation measures and how such responses may foreclose possibilities for 'environmental justice.' Her doctoral thesis examines the social implications of a specific carbon offset scheme under the UNFCCC umbrella called Reducing Emissions from Deforestation and forest Degradation (REDD+) in order to investigate contemporary reconfigurations of imperial control by the global North over forested land and biological resources in the global South.

Sara Dehm

Thesis: *Ordering International Migration: Migrant Labour, Development and the Institutional Rationalities of Mobility*

Supervisors: Sundhya Pahuja and Anne Orford

Sara's thesis offers a genealogy of the idea of 'migration and development' in international institutions. It traces the creation and rationalisation of the international jurisdiction to administer migration in the post-WWII period, exploring how the international supervision of human mobility has shaped the dynamic between the First and Third Worlds and become a technique for disciplining Third World states, populations and individual citizen-subjects. In particular, her thesis engages with intellectual histories on statehood, demography, human security and the juridification of human movement.

Treasa Dunworth

Thesis: *The resurrection of human security in disarmament*

Supervisors: Tania Voon and Tim McCormack

The idea of human security - that people, not just states, should be at the centre of security discourse - has been gaining increasing traction in the last twenty years. Contemporary thinking in this area originated and developed mainly in the human rights area. This thesis will explore the evolution of the idea of "disarmament as human security" and critically assess its potential and pitfalls. The aim is to show that human security in disarmament is a much more powerful and profound idea than can be encapsulated in an incremental progression through different weapon-types, as currently witnessing. A genuine human security approach, taking human beings at the centre-point of analysis, would consider disarmament generally - all weapons - not weapons-types. The argument in this thesis is that this claim is not a new idea, but rather an idea that was strongly articulated in early disarmament efforts (1899 Peace Conference and beyond), but subsequently abandoned.

Debolina Dutta

Thesis: *Sluts vs Saviours: The 'Political Society' of Sex Workers in India and the Political Economy of the Global Rescue Industry*

Supervisors: Shaun McVeigh and Ann Genovese

In India, since colonial times, the subject of sex work has been a traditional site for feminist debates on questions of women's sexuality, equality and agency. The research in this thesis engages with non-lawyer Indian sex workers' activism to show how they collectively think with, act with, and live with law, and by doing so, how they produce knowledge about law and sex work in India. The argument is that Indian sex workers' activism is a 'feminist praxis'; and when addressed to law, is in itself a feminist jurisprudence. The thesis raises questions about the politics and modes of production of feminist jurisprudence in India, aiming to understand methodology as central to theory production. The aim is to enable an academic-activist exchange of knowledge, as a way of 'co-producing' feminist jurisprudence in India. This is distinct from an ethnographic production of feminist jurisprudence, through a researcher-researched encounter.

Maria Elander

Thesis: *In The Name of the Victim: The Figure and Figuration of the Victim in International Criminal Justice*

Supervisors: Peter Rush and Dianne Otto

Maria Elander holds a BA in Arabic and a BSS in Political Science from Uppsala University, and a MA in Human Rights Law from the School of Oriental and African Studies, University of London. Before commencing her PhD candidature, she worked as a research assistant at the American University of Cairo. Her PhD research examines the figure and the figuration of the victim in a critical reading of the discourse on international

criminal justice. In particular, the thesis asks what victim is figured in international criminal law, how the victim can speak in and through international criminal law, and how to understand the figurations of the victim that now exist in the field. To examine these questions, the research looks at the Extraordinary Chambers in the Courts of Cambodia (ECCC).

Bec Goodbourn

Thesis: *Sensing the city: space and subjective life of the laneways*

Supervisors: Alison Young and Peter Rush

Bec is interested in the everyday use of urban spaces; in looking at the way in which design and regulation affect physical and sensory experiences, and how physical and sensory experiences affect the ways in which we design and regulate. Her PhD research focuses specifically on the laneways of Melbourne's CBD. In problematising notions of bodies as discrete or stable forms, Bec argues for a greater understanding of the relationship between sensory and physical experience in the laneways, and the materiality of social, economic and political processes.

Carolyn Graydon

Thesis: *Domestic Violence in Timor-Leste: Is There a Place for Indigenous Justice Systems?*

Supervisors: Tim Lindsey and Dianne Otto

Carolyn worked as an advocate in the area of refugee and immigration law for several years and then with the United Nations in Timor-Leste as a human rights officer. This experience triggered her interest in Timorese women's responses to gender violence, more particularly their use of formal and indigenous justice systems. Carolyn's thesis focuses on indigenous processes of developing and protecting human rights, more specifically, justice processes and their potential for long term transformation so that they are better able to deliver the justice and protection sought by Timorese women. In 2006 and 2007 she lectured at Melbourne University in the subject Law and Society in Southeast Asia.

Joseph Kikonyogo

Thesis: *Sub-Saharan Africa and the WTO Negotiations on Agriculture*

Supervisors: Tania Voon and Pip Nicholson

Joseph's thesis analyses the Doha Round of Negotiations on Agriculture, and explore the challenges sub-Saharan African Members face in multilateral trade negotiations. I also question the efficacy of the proposals that have been put forward to assist sub-Saharan African Members to integrate into the multilateral trading system. In the analysis, I examine the importance of the agriculture negotiations to sub-Saharan Africa; the demands of the sub-Saharan African Members under the negotiation pillars of market access, domestic support and export subsidies; and the capacity of sub-Saharan African Members to negotiate with other Members. I conclude that sub-Saharan Africa will not achieve the development objective of the Doha Round.

Eve Lester

Thesis: *Making migration law work in Australia: paradoxes and prospect*

Supervisor: Sundhya Pahuja and Shaun McVeigh

The central question of my thesis asks which historical dynamics have shaped immigration law-making in Australia so as to circumscribe enjoyment of basic social and economic rights, and pivotally the right to work, by people who migrate as part of a survival strategy. To this end, my thesis analyses the influence of a matrix of societal dynamics, including the concept of sovereignty, race, religion and political economy and their role in shaping social and economic rights and realities for survival migrants in Australia.

Liz Macpherson

Thesis: *Indigenous water rights in Chile and Australia: Can indigenous water rights be sustainably integrated in water markets?*

Supervisors: Maureen Tehan and Kirsty Gover

Water planning frameworks underlying emerging Australian water markets do not adequately respond to indigenous demands for a water allocation for indigenous cultural and commercial use. This is because an indigenous water allocation is linked to prior recognition of indigenous groups and interests through the native title process, and native title water rights are difficult to establish, non-exclusive, and limited to non-commercial, traditional content. In Chile, where there is no recourse to native title, statute law has nonetheless been used to recognise water property rights for certain indigenous communities. The aim of this thesis is to suggest an improved legal mechanism for recognition of cultural and commercial indigenous water rights in Australia. The thesis will consider the potential for statutory recognition of indigenous water rights outside of native title, drawing on an analysis of the strengths and weaknesses of statutory indigenous water rights recognition in Chile, against the backdrop of existing Australian models for statutory recognition in Aboriginal land legislation.

Tayechalem Moges

Thesis: *Developing an Emancipatory Human Rights Approach to End the Practice of (girl) Early Marriage in Ethiopia*

Supervisors: Dianne Otto and Beth Gaze

The practice of early marriage remains prevalent in Ethiopia despite having received attention, criticism and intervention from international and national human rights actors. The durability of traditional support for the practice has led to questions about the effectiveness of individualized international human rights law in Ethiopia's communitarian society. Moreover, child wives remain at the periphery of these efforts as their role has been largely limited to providing stories of victimization. Drawing upon postcolonial and feminist perspectives, this thesis explores the emancipatory potential of international human rights law to end the practice of early marriage in Ethiopia from the perspectives of former child wives.

Josh Paine

Thesis: *The Contribution of International Courts and Tribunals to the Development of International Legal Meaning across Three Regimes*

Supervisors: Anne Orford and Margaret Young

This project aims to analyse the contribution of judgments of international courts and tribunals (ICTs) to the development of international legal meaning across three regimes, or distinct areas of international legal practice: investor-state arbitration, the 'generalist' world of interstate litigation in the International Court of Justice (ICJ) and regional human rights adjudication. It employs a rhetorical approach to international law, and is particularly interested in why interpretive claims are seen as persuasive or not in particular contexts. Accordingly, it places significant emphasis on the collective identities of the interpretive communities whose practices construct meaning. The aim is to combine an internal perspective that takes seriously interpretive arguments as understood by participants, with understanding of the broader sociological forces that shape and limit the possible outcomes of interpretive contestation in each regime. Such an analysis should improve understanding of the hermeneutics and (contested) identities of the three regimes, providing a stronger basis for assessing claims about their speciality or generality.

Ana Maria Palacio Valencia

Thesis: *A Comparative Analysis into the Determinants of the Resilience and Evolutionary Capacity of Integration Efforts in Latin American Sub-Regionalism through the Lens of the Pacific Alliance Project*

Supervisors: Tania Voon and Andrew Mitchell

This research project will assist in considering the institutional, political and economic issues, under a legal context, that need to be addressed within the Pacific Alliance project to support in achieving the goals of deepening economic integration and fostering the relations with the Asia Pacific Region. This will be accomplished by considering historic, contextual and also global determinants that create the different challenges for its successful consolidation. The research does not intend to provide general rules to solve all the issues behind the complex situation of Latin American Integration, but will specifically develop the legal underpinnings that should support the institutional, political and economic settings that the Pacific Alliance requires to address in order to consolidate a long-term architecture.

This research will be developed under a theoretical framework that although studies and compares this project to other projects (in the region and outside) it intends to assess its level of success by reference to the fulfilment of its actual goals rather than by the achievements of other regional projects. Comparative analysis will be an analytical tool guiding this study, but with the view to outline elements that need to be developed to comply with the aims set towards integration and regional cooperation.

Connal Parsley

Thesis: *Jurisprudence Without Law: Giorgio Agamben and the Juridical Tradition*

Supervisors: Peter Rush and Shaun McVeigh

His doctoral thesis extends his research interest in the relationship between visual culture and law, by conducting a jurisprudential reading of the Italian philosopher Giorgio Agamben. By exposing the significance of the category of the 'image' within both the juridical history of the legal person, and Agamben's revision of political ontology, the thesis aims to develop a new paradigm for understanding the relation between law, politics and theology in Agamben's work. In doing so, it develops an account of why Agamben's work potentially offers an exciting new path to contemporary jurisprudential thought.

Laura Petersen

Thesis: *Law and aesthetics after the Holocaust: gestures of justice and restitution*

Supervisors: Peter Rush and Shaun McVeigh

Laura Petersen is in the second year of her PhD at the Melbourne Law School at University of Melbourne. Her interdisciplinary research moves across visual art, fictional texts and jurisprudential memory to explore concepts of restitution. Basing her analysis in Germany after World War II, her project examines the legal, memorial and aesthetic processes involved in coming to terms with atrocity. Before returning to the University of Melbourne for her PhD study, Laura completed her Master of Arts in Comparative Literature at Freie Universität Berlin, supported by a DAAD scholarship. Her thesis (in German) considered the role of metafictional narratives in Holocaust memory, examining texts by W.G. Sebald, Vladimir Sorokin and Jonathan Safran Foer.

Robin Robinson

Thesis: *A question of jurisdiction: the recognition at common law of Australian Indigenous peoples' intra-group rights and interests under communal native title*

Supervisors: Maureen Tehan and Kirsty Gover

This thesis explores how best to protect the native title rights and interests held by individual native title holders with multi-affiliations as members of sub-groups, the wider native title holding group and as citizens of the State. It considers the propositions that intra-group native title rights and interests are vulnerable for want of legal and institutional safeguards. Further, their vulnerability is compounded by particular judicial methodology relating to the principle of communal native title and the strict interpretation of the doctrine of continuity. It investigates reforms to the jurisdictional arrangements between the State and the community of native title holders regarding the resolution of intra-group disputes, drawing on jurisprudence from other common law countries and international human rights law, as a means to safeguard intra-group native title rights and interests.

Dudi Rulliadi

Thesis: *Indonesian Public-Private Partnerships (PPPs): A Legal Study of Private Sector Participation in Infrastructure Development*

Supervisors: Anne Orford with Andrew Mitchell and Tim Lindsey

Taking Indonesia as a case study, Dudi's doctoral thesis will examine how the evolution of Public-Private Partnerships (PPPs), from its western origins to today's implementation within the broader context of international development policies and national legal reforms, shapes the manner in which PPPs are implemented in the Third World states.

Oishik Sircar

Thesis: *Assemblages of Affect: The Juridical Ordering of Collective Memory in 'New' India*

Supervisors: Dianne Otto and Sundhya Pahuja

This thesis studies one of the most litigated, mediatised and politically polarising events of mass religious atrocity in contemporary India – the 2002 anti-Muslim violence in the western Indian state of Gujarat – to understand the ways in which collective memories of violence and trauma, in a postcolonial, democratic, secular and developmental nation-state like India, are affectively assembled through encounters between public archives of the legal and the aesthetic. By analysing select cultural spaces and forms of memory production – criminal trials, feature and documentary films, literary and artistic works, and the everyday experiences of living lawfully reflected in the curation of the Museum of Resistance in Ahmedabad – the project argues that a 'jurisprudential-aesthetic' reading of how these 'assemblages of affect' remember/ re-describe/ re-count/ re-configure the event of atrocity, could render visible the roles secular law is called on to play by the nation-state, its 'citizens' and 'others', to make intelligible the event of mass violence, and order its aftermath.

Cait Storr

Thesis: *End State: Nauru and the International Legal Construction of Territory*

Supervisors: Sundhya Pahuja and Gerry Simpson

The international community has known since 2001 that some island states risk losing their entire territory due to climate change. This thesis mounts a critical response to the legal question of whether a state can survive total loss of territory. Whilst much attention is paid in international law to territorial limits and borders, it is habitually assumed that the content of the concept of territory is both uniform and fixed. This thesis constructs a legal history of Nauru from German annexation in 1886 to the contemporary era to demonstrate that territory is neither a fixed nor uniform concept, but a mode of juridical abstraction underpinned by a contingent set of normative assumptions about the relationship of people to land to government.

Marc Trabsky

Thesis: *Voices of the Dead: Law, Aesthetics and Mortality*

Supervisors: Peter Rush and Shaun McVeigh

Marc Trabsky in his doctoral research thesis offers an institutional account of the dead in law. It questions how the dead dwell in the office of the coroner, but also what the significance is of thinking through law by means of the institutions of the dead. The case studies used for the purpose of this thesis include the local history of the office of the coroner and the legal form of the death mask.

Kay Wilson

Thesis: *Mental Health Law: Abolish or Reform?*

Supervisors: Dianne Otto and Bernadette McSherry

Mental health law permits the detention and treatment of people with mental illness without their consent.

It has always been controversial and the subject of reform. However, recently critics, including international human rights bodies, have called for the abolition of mental health law on the grounds that it is discriminatory and unjustifiably deprives individuals of their liberty, legal decision-making capacity and bodily integrity. My thesis will take a normative and law-in-context approach to evaluating the justifications for mental health law and the arguments for and against its abolition, and present options for reform using a human rights conceptual framework.

Completed Graduate Research Students 2014

James Parker

Thesis: *Acoustic Jurisprudence*

Supervisors: Andrew Kenyon and Shaun McVeigh

James completed his undergraduate degree in jurisprudence at Oxford and his LLM by research at the University of McGill. His thesis argues for a specifically acoustic jurisprudence: one attentive, that is, to the acoustic dimensions of law and justice. It does so by means of a case study. Between September 2006 and December 2008, Simon Bikindi stood trial at the International Criminal Tribunal for Rwanda (the ICTR) in Arusha, Tanzania. Though the details of the case against him were complex, its essence was simple. In the early 1990s Bikindi was one of Rwanda's most well-known musicians and popular figures: a bona fide celebrity, 'probably the most talented artist of his generation,' 'Rwanda's Michael Jackson'. And by the end of 1994 his songs had quite literally soundtracked a genocide. At root, Bikindi stood accused of inciting genocide with his songs.

Deborah Whitehall

Thesis: *Hannah Arendt, Beginnings and Female Subjectivity in International Law*

Supervisors: Anne Orford and Ann Genovese

Deborah's research uses the work of Hannah Arendt as a resource for reworking familiar metaphors of human rights in ways that reveal the transformative potential of Law. She is particularly interested in how social and political theory can be used to generate questions about women's reproductive rights that reset the framework in which the options for reform might be considered. Deborah's project reflects her ongoing interest in the tensions between rights discourse in international human rights law and national law and the political and social trajectories in which human rights are given substance. Deborah has studied and taught law in Australia and the United Kingdom, and has experience in law reform, and as a solicitor in the public and private sectors.

RESEARCH EVENTS & ENGAGEMENT 2014

PROVOCATIONS SYMPOSIA

Commencing in 2014, IILAH established an annual series of legal theory symposia called *Provocations* in order to further engage and foster innovative scholarship and critical thinking in international law and the humanities. The *Provocations* events will provide a forum for provocative (re)thinking of the callings, passions and effects of international law. Participants are invited to consider the emancipatory possibilities and risks of contemporary international legal developments and the resulting ordering of relations of persons, places and events in the world.

8 December 2014: IILAH Provocations I Symposium, *On Lives Lived with Law*

On Lives Lived with Law was organised as part of the IILAH Legal Biographies Research Programme, co-directed by Dr Ann Genovese, Associate Professor Shaun McVeigh and Associate Professor Peter Rush.

The inaugural IILAH *Provocations* symposium considered the mode and manner in which we might address how lives are lived, written and narrated in relation to law. The symposium aimed to address the ways in which genres of biography, history and 'life-writing' have re-aligned the ways in which life and experience might be narrated. It also investigated contemporary and historical conducts and forms of life as they cross or engage with law. Finally, this symposium aimed to invite consideration of the ways in which addressing a life lived with law provides a way of investigating what it might mean to live in a 'lawful' rather than a 'lawless' South. The following topics were invited for investigation: On law, health, and justness; On south-centered lives; On literary, cultural and legal biography; On forms of life; On jurisprudence and histories of experience; On critical dispositions.

Symposium speakers included: **Christine Black**, Senior Research Fellow at the Northern Institute, Charles Darwin University; **John Docker**, Honorary Professor in the School of Philosophical and Historical Inquiry, The University of Sydney; **Ann Genovese**, Senior Lecturer, Melbourne Law School; **Adil Khan**, Graduate Institute of International and Development Studies, Geneva; **Marett Leiboff**, Associate Professor, School of Law, The University of Wollongong; **Catherine Mills** Associate Professor, Centre for Human Bioethics, School of Philosophical, Historical & International Studies, Monash University; **Kevin Murray**, Adjunct Professor, School of Art, RMIT; **Sundhya Pahuja**, Professor, Director IILAH Law and Development Research Program, Melbourne Law School; **Kim Rubenstein**, Professor, Director of the Centre for International and Public law, Australian National University and **Mary Spongberg**, Professor, Dean of the Faculty of Arts and Social Sciences, University of Technology Sydney.

CONSTELLATIONS SERIES

IILAH's McKenzie Postdoctoral Research Fellow, Dr Rose Parfitt, initiated a new IILAH series of cross-disciplinary seminars in 2014, which focus broadly on the question of methodology. The series is called *Constellations* and aims to bring together scholars from several different disciplines including law, history, philosophy, art theory, anthropology, international relations, sociology and political theory in order to work through some of the thornier methodological problems confronted by scholars across these different fields of study.

Each of the two *Constellations* seminars held during 2014 was built around a panel of four or five scholars, all of whom work in different ways on a common substantive theme. The panellists were invited to reflect on their personal methodological journeys – on what led them to select or develop a specific method, on their hopes for and fears about this choice, on what was gained by it and what was lost – and to discuss these journeys with each other and with the audience. For this reason, the seminar series borrows the concept of 'constellations' from Walter Benjamin. In Benjamin's work, the image of the constellation signified the advent

of a ‘Copernican revolution’ in historical method or historiography. Benjamin asserted that it was necessary for s/he who attempted to articulate ‘the past’ to discard the linear approach of ‘historicism’ – an approach whose effect was simply to support the status quo – and instead to take on a new role: that of recording ‘the constellation in which his [or her] own epoch comes into contact with that of an earlier one’. Such an approach ‘establishes a concept of the present as that of the here-and-now, in which splinters of messianic time are shot through’. One might agree or disagree with Benjamin’s approach. The purpose of the Constellations series is to get away from intellectual alignment in order to learn where points of reference might exist among the uncountable, and in many cases inter-estranged, research projects ongoing in Melbourne’s universities and elsewhere. The aim is to provide a spark for new ideas and fresh approaches to the theory (and practice) of method. Once detached from the linearity inherent in the idea of ‘discipline’ it is hoped that the various projects discussed during each seminar will trigger what Benjamin described as a ‘flash of awakened consciousness’, which might help illuminate the topography of some of the controversial problems confronting scholarship in the arts and social sciences.

23 May 2014: IILAH Constellations Series, *Thinking With Sound*

Panel: Dr Linda Kouvaras, Associate Professor Neil McLachlan, Dr James Parker and Mr Joel Stern

Convenor: Dr James Parker

The inaugural IILAH Constellations Series seminar focused on the methodological problems involved in ‘thinking with sound’ in the fields of law, neuropsychology, musicology, composition and performance and was organised by Dr Rose Parfitt, McKenzie Postdoctoral Research Fellow, Melbourne Law School.

James Parker, lecturer at Melbourne Law School and Director IILAH Law, Sound and the International Research Programme; **Neil McLachlan**, Composer, Instrument Maker, Associate Professor at the Melbourne School of Psychological Sciences and the Music and Auditory Neuroscience Laboratory; **Linda Kouvaras**, Composer and Senior Lecturer, Musicology, Melbourne Conservatorium of Music; **Joel Stern**, Artist, Musician, Composer and Curator, currently co-director of OtherFilm and previously Associate Lecturer in music at Queensland University of Technology.



Dr James Parker (IILAH), Dr Linda Kouvaras (Melbourne), Dr Rose Parfitt (IILAH), Associate Professor Neil McLachlan (Melbourne) and Mr Joel Stern (QUT)

10 October 2014: IILAH Constellations Series, *The Minutes of Evidence Project*

Panel: Dr Jennifer Balint, Ms Lilly Brown, Ms Caitlin Dullard, Dr Julie Evans, Dr Liz Jones, Dr Mark McMillan and Dr Nesam McMillan, with Dr Ann Genovese as chair

Convenor: Dr Rose Parfitt

Participants in the second IILAH Constellations Series seminar were involved in the ground-breaking *Minutes of Evidence* project. They shared their thoughts and experiences of collaborating across disciplines (from history to law to criminology), sectors (academia, performing arts, government, community), and media (from scholarly publications to theatrical performance to curricula materials for secondary schools).

Minutes of Evidence aims to spark new ways of engaging with history and structural justice in Victoria and elsewhere. It draws upon a little-known chapter of Victoria’s past, the 1881 Parliamentary Inquiry into the Aboriginal Reserve at Coranderrk, to invite new public conversations about historical and structural injustice and the possibility of a structural justice. Through research, education and performance and public engagement, the project creates a number of ‘meeting points’ in schools, on Country, in theatres and between scholars. Grounded in collaboration between indigenous and non-indigenous peoples, the project promotes awareness of the relationship between the past and the present and of responsibilities in the present to work towards future justice.

Jennifer Balint, lecturer in Criminology at the School of Social and Political Sciences, University of Melbourne; **Lilly Brown**, Early Career Indigenous Researcher, MoE project and Principal Tutor, Australian Indigenous Studies Program, Culture & Communication; **Caitlin Dullard**, Company Manager/Creative Producer at La Mama Theatre; **Julie Evans**, senior lecturer in Criminology at the School of Social and Political Sciences, University of Melbourne; **Liz Jones**, Artistic Director & CEO at La Mama Theatre; **Mark McMillan**, senior lecturer at Melbourne Law School; **Nesam McMillan**, lecturer in Global Criminology at the School of Social and Political Sciences, University of Melbourne; **Ann Genovese**, IILAH Research Programme Director, Melbourne Law School.



Dr Ann Genovese (IILAH), Ms Lilly Brown (Melbourne), Dr Jennifer Balint (Melbourne), Dr Nesam McMillan (Melbourne), Ms Caitlin Dullard (La Mama Theatre), Dr Julie Evans (Melbourne), Dr Rose Parfitt (IILAH), Professor Patricia Grimshaw (Melbourne) and Dr Mark McMillan (IILAH)



Professor Samuel Moyn (Harvard University) speaking at the IILAH and SHAPS Public Lecture 'The Political Origins of Global Justice'

PUBLIC LECTURES

9 May 2014: *Feminist Encounters with International Human Rights Law*

Speaker: Professor Dianne Otto

Introductory Remarks: Professor Hilary Charlesworth

Mistress of Ceremonies: Dr Ann Genovese

In celebration of the new Francine V McNiff Chair in Human Rights Law at Melbourne Law School, IILAH hosted a Public Lecture presented by the Inaugural Chair, Professor Dianne Otto. In this lecture, Dianne reflected on a number of encounters between feminism and the law in the context of international human rights law. These encounters have rarely been easy, despite an intuitive expectation that at least this body of law might be warmly receptive to feminist ideas. She argued that this uneasy relationship indicates just how difficult it is to change long-standing legal imaginaries of gender – even in a discourse that makes the highest claims to inclusivity. Nevertheless, Dianne suggested that this uneasiness might also be a sign of hope that the old certainties of gender are indeed under threat. Professor Hilary Charlesworth introduced Dianne by generously reflecting on her contribution to the discipline of international law, while Dr Ann Genovese, in her role as convenor, also offered some thoughtful introductory remarks.

Dianne Otto, IILAH Director and Co-Director of IILAH International Human Rights Law Research Programme, is internationally recognized for her work on gender in the context of international human rights law; **Hilary Charlesworth**, Professor of International Law and Human Rights at the Australian National University has been a beacon for the development of feminist perspectives in international law. She is Director of the Centre for International Governance and Justice in the Regulatory Institutions Network at ANU, holds an appointment as Professor of International Law and Human Rights in the College of Law, and holds an ARC Laureate Fellowship; **Ann Genovese**, Director of IILAH Australian Legal Histories Research Programme, Melbourne Law School.



Professor Dianne Otto (IILAH)



Professor Hilary Charlesworth (ANU)



Dr Ann Genovese (IILAH)

7 August 2014: IILAH SHAPS Public Lecture, *The Political Origins of Global Justice*, by Professor Samuel Moyn (Harvard University)

Convenors: Dr Barbara Keys and Professor Dianne Otto

Against the background of the broader history of the idea of human rights, this lecture investigated when and why the contemporary field of ‘global justice’ in philosophy and political theory was invented. Returning to the engagement of American liberals with the decolonization process in the 1970s, in the aftermath of the Vietnam war and even as more powerful tendencies were about to bring the welfarist ideal of the postwar era to an end, this lecture presented contemporary ‘cosmopolitanism’ as a response to a forgotten revolt of the global south against the prevailing economic order of our age.

Samuel Moyn, Professor, Harvard Law School, is the author of the acclaimed *The Last Utopia: Human Rights in History* (Harvard University Press, 2010). His recent works include *Human Rights and the Uses of History* (Verso Books, 2014) and the coedited volumes *Rethinking Modern European Intellectual History* (Oxford University Press, 2014) and *The Breakthrough: Human Rights in the 1970s* (University of Pennsylvania Press, 2014).

FORUMS

7-9 July 2014: Third Annual Junior Faculty Forum on International Law

Convenors: Professor Anne Orford, Professor Dino Kritsiotis and Professor JHH Weiler

The third Annual Junior Faculty Forum for International Law was hosted by IILAH at Melbourne Law School. Designed as an annual feature of the international law calendar, the Forum was inaugurated in May 2012 at the New York University School of Law and is convened each year by Professor Dino Kritsiotis, Chair of Public International Law, Faculty of Social Science, University of Nottingham; Professor Anne Orford, Michael D Kirby Professor of International Law & Australian Research Council Future Fellow, Melbourne Law School; and Professor J H H Weiler, President, European University Institute. The second Forum was held at the University of Nottingham in May 2013.

The Forum aims to bring together junior faculty working in the field of international law so that their work can be presented before an audience of peers and experts and discussed by established and senior scholars of the discipline. Junior faculty are selected through an open and competitive international process held every summer through the Forum website. As part of that process junior faculty work up the abstracts they have submitted into presentations for the Forum. The initiative is thus dedicated toward encouraging and facilitating the work of young international law scholars by creating an unrivalled environment of intellectual opportunity, stimulation and exchange.

Selected presentations from this year’s Forum, as in previous years, will be published in a special edition of the *European Journal of International Law* (Oxford University Press).



Third Annual Junior Faculty Forum Attendees



Forum Convenors: Professor JHH Weiler (EU), Professor Anne Orford (IILAH) and Professor Dino Kriticos (Nottingham)

WORKSHOPS

21 February 2014: *Human Rights Tertiary Teachers' Workshop*

Convenors: Professor Andrew Byrnes, Professor Hilary Charlesworth and Professor John Tobin

Co-hosted by the Centre for International Governance and Justice, RegNet (ANU) and the Australian Human Rights Centre (UNSW)

The fourth Human Rights Tertiary Teachers' Workshop was hosted by IILAH at Melbourne Law School. It brought together those engaged in teaching human rights in tertiary institutions from around the country and further afield, who shared ideas about what they teach and what their students learn, and how to teach and stimulate our students to learn effectively. Workshop participants were from a wide range of disciplines, including law, social work, political science, history and literature.

The workshop commenced with a keynote by Professor Ron McCallum AO, Chair of the UN Committee on the Rights of Persons with Disabilities, who spoke about the importance of taking disability rights seriously. Three panel sessions followed:

Teaching and learning about interdisciplinary perspectives on human rights, where legal academics discussed how they integrate non-legal perspectives into the classroom and non-legal academics from a range of disciplines discussed how they teach human rights.

Reflections on teaching and learning about human rights, where early career academics reflected on their experiences and the challenges associated with teaching human rights, which prompted discussion of how to best meet those challenges.

New resources, techniques and methods for teaching and learning about human rights, where panellists discussed new ways to teach human rights and enhance the learning of their students, including creative assessment regimes, the use of simulations, experiential opportunities, effective use of small group teaching and ideas about how to teach research methodologies to students.



Professor Ron McCallum AO, Chair of the UN Committee on the Rights of Persons with Disabilities

9-10 December 2014: IILAH CMCL Critical Futures Workshop, *Working with Law*

Conveners: Mr Tom Andrews, Ms Sara Dehm, Mr Jake Goldefein, Dr Rose Parfitt, Dr James Parker and Ms Cait Storr

The Critical Futures Workshop was a two day event organised by six Melbourne Law School early career researchers and graduate students that sought to open a discussion about the contemporary critical legal project in the Australian academy. Attended by thirty-five Australian and international legal academics working with critical approaches to law, the workshop sessions were organised around the themes of 'Critique', 'Law', 'Work' and 'Futures', and broadly addressed the question of what it means to be critical in the legal academy today, both as a form of life and of labour. Each session was loosely oriented around a set of readings and authors that engage explicitly with the workshop's themes. Critical Futures was jointly funded by IILAH and the Centre for Media and Communications Law (CMCL). A second event is proposed to be held in 2016 in Sydney in 2016.

SEMINARS

23 January 2014: *Reading the re-criminalization of sodomy in India: What does the Supreme Court's ruling hold for the future of sexual and queer rights in India?*

Panel: Ms Debolina Dutta, Associate Professor Dipika Jain and Mr Oishik Sircar

Convenor: Professor Dianne Otto

The panel of academic-activists critically reflected on the Indian Supreme Court's December 2013 judgment which held that Section 377 of the Indian Penal Code, which criminalises "carnal intercourse against the order of nature", is constitutionally valid. This verdict dismissed the historic 2009 *Naz Foundation* judgment of the Delhi High Court that read down Section 377 by de-criminalising adult, consensual and private non-penovaginal sex. The three panellists, who were involved in anti-377 mobilisations and are part of the queer rights movement in India, offered insights into issues concerning the possibilities and perils of the legal battle. In addition, this seminar marked the launch of the *Jindal Global Law Review's* 2013 special issue 'Law, Culture and Queer Politics in Neoliberal Times', edited by Oishik Sircar and Dipika Jain. All articles of the special double issue are freely downloadable from <http://jglr.jgu.edu.in/>.

Debolina Dutta, PhD candidate at Melbourne Law School, previously actively involved with the sex workers' movement in India; **Dipika Jain**, Associate Professor at Jindal Global Law School and visiting scholar at Melbourne Law School in 2014; **Oishik Sircar**, PhD candidate and teaching fellow at Melbourne Law School, and previously Assistant Professor at Jindal Global Law School.

25 February 2014: *Outlaws of Commerce: Federal Child Labour Reform in the United States, 1916-1941*

Speaker: Professor Barry Cushman

Convenor: Associate Professor Anna Chapman

Co-hosted with the Centre for Employment and Labour Relations Law

Professor Cushman traced the political and intellectual history of the efforts of child labour reformers to achieve their objectives through the use of various congressional powers in the trans-substantive context of American constitutional federalism. He paid particular attention to cognate developments in the regulation of convict labour, and the manner in which those developments informed and shaped the strategies of those devoted to child labour reform.

Barry Cushman, John P Murphy Foundation Professor of Law at the University of Notre Dame since 2012. Previously, he was the James Monroe Distinguished Professor of Law at the University of Virginia.

7 March 2014: *International Women's Day 2014 In Conversation*

Speakers: The Honourable Justice Susan Kenny and Professor Dianne Otto in conversation with Dr Ann Genovese

Convenors: Law Students Society (LSS) Women's Officers Amelia Eddy and Abbey Lay

To mark International Women's Day 2014, IILAH hosted an In Conversation to pause and take stock of what our responsibilities and experiences might be as women lawyers, and as lawyers concerned for how women encounter the law. Susan Kenny and Dianne Otto reflected on these questions, in conversation with Ann Genovese.

Susan Kenny, Federal Court judge since October 1998, prior to which she worked as a solicitor, an associate to Sir Ninian Stephen, a barrister and Queen's Counsel, and was appointed to the Court of Appeal of the Supreme Court of Victoria; **Dianne Otto**, Francine V McNiff Chair in Human Rights Law, IILAH Director and Co-Director of IILAH International Human Rights Law Research Programme, Melbourne Law School; **Ann Genovese**, Director IILAH Australian Legal Histories Research Programme, Melbourne Law School.



Dr Ann Genovese (IILAH), The Honourable Justice Susan Kenny (Australian Federal Court) and Professor Dianne Otto (IILAH)

27 March 2014: *Governing 'as if'*

Speaker: Dr Andrew Lang

Convenor: Associate Professor Margaret Young

Co-hosted with the Global Economic Law Network

Andrew Lang's paper discussed how practices of governance-through-knowledge were modified in response to a century of critiques of objectivity, which was described by Sloterdijk as the way that, in the 20th century, scientific disciplines 'live under constant suspicion' routinely suspected of 'providing knowledge that aggravates our condition rather than improves it'. The paper drew on some work in the sociology of knowledge, including the work of Jasanoff, Riles, Vaihinger and others, to identify a mode of 'governing as if': a pragmatic mode of governance which works not through the production of naturalised and objective knowledge, but rather by generating knowledge claims that foreground their own partiality, contingency and even fictionality as the basis of their legitimacy. It described the distinctive knowledge practices characteristic of this mode of governance, and shows how the 'legalisation' of knowledge production is central to it. The

paper further argued that the standard toolkit of critical responses to positivist social science, cannot furnish us with an adequate response to governance 'as if', neither positively nor normatively. The analysis is developed through a study of certain practices of the knowledge production in international economic law, having to do with the construction of market benchmarks in regulatory practice.

Andrew Lang, Reader in Law at the London School of Economics, teaches public international law, with a speciality in International Economic Law. He has a combined BA/LLB from the University of Sydney, and his PhD is from the University of Cambridge. He is a co-founder, with Colin Picker, and Director of the Society of International Economic Law.

1 May 2014: *What's Wrong With Incest?*

Speaker: Professor Vera Bergelson

Convenor: Associate Professor Peter Rush

Vera Bergelson's presentation looked closely at the crime of incest and asked a series of questions: can the state justify its punitive policies with respect to that crime? May those locked behind bars demand rational reasons from the government for subjecting them to stigmatisation and suffering? Ought not the government provide those reasons or lift its criminal sanctions?

Incest is a crime in most societies. In the United States, incest is punishable in almost every state with sentences stretching to 20 and 30 years in prison, and even life. The reasons traditionally proffered in justification of criminalization of incest include: respecting religion and universal tradition; avoiding genetic abnormalities; protecting the family unit; preventing sexual abuse and sexual imposition; and precluding immorality. Yet on a close examination they reveal their under- and over-inclusiveness, inconsistency or outright inadequacy. It appears that the true reason behind the long history of the incest laws is the feeling of repulsion and disgust this tabooed practice tends to evoke in the majority of population. Professor Bergelson argued that in the absence of wrongdoing, neither a historic taboo nor the sense of repulsion and disgust legitimises criminalisation of an act.

Vera Bergelson, Professor of Law and Robert E Knowlton Scholar at Rutgers School of Law, Newark, USA. She earned her PhD in philology from the Institute of Slavic and Balkan Studies, Russia, and her JD from the University of Pennsylvania Law School, USA. Vera's scholarship focuses on issues of criminal law theory. She has published widely including *Victims' Rights and Victims' Wrongs: A Theory of Comparative Criminal Liability* (Stanford University Press, 2009).

27 May 2014: *Your Fatwa Does Not Apply Here: The Human Rights Struggle Against Muslim Fundamentalism*



Professor Karima Bennouna (UCal Davis)

Speaker: Professor Karima Bennouna

Convenor: Professor Dianne Otto

Karima Bennouna's presentation focused on the work of women human rights defenders, whose stories reveal overlooked and important contemporary human rights struggles which represent one of the best hopes for ending fundamentalist oppression worldwide. From Pakistani peace activists to Tunisian feminists, from Chechen journalists to Algerian victims of terrorism, the courageous efforts of writers, artists, doctors, musicians, museum curators, lawyers, activists, and educators of Muslim heritage remain largely invisible at the international level; lost amid the heated coverage of Islamist terror attacks on one side and abuses perpetrated against suspected terrorists on the other. In an effort to change the conversation, Karima interviewed nearly 300 people from almost 30 countries, from Afghanistan to Mali and beyond.

Karima Bennouna, Professor of International Law, Davis School of Law,

University of California, a human rights lawyer and feminist, of Algerian descent and Muslim heritage. Her research has been published in leading international law journals and her article, 'Terror/Torture,' was designated one of the top 10 global security law review articles of 2008 by Oxford University Press. She visited Australia to launch her new book, *Your Fatwa Does Not Apply Here: The Human Rights Struggle against Muslim Fundamentalism* (Norton 2013).

26 June 2014: *Non-Binding International Instruments and the Role of Legislatures in Democratic States*

Speaker: Dr Cecily Rose

Convenor: Professor Dianne Otto

Cecily Rose discussed many non-binding international instruments, such as recommendations and guidelines, which influence domestic legal systems in ways that are similar to treaties. This is especially true, for example, in the fields of international environmental law, international financial law, and transnational criminal law. Yet, non-binding instruments do not require legislative approval, whereas in many democratic States, treaties must be approved by the legislature. Non-binding instruments thus raise questions about whether the executive-branch government officials typically involved in negotiating non-binding instruments are sufficiently accountable to the legislature and to other stakeholders. In many instances, other accountability-promoting measures, such as public consultations, may effectively compensate for the absence of accountability in the form of legislative approval.

Cecily Rose, Assistant Professor at the Grotius Centre for International Legal Studies, Leiden University. She completed her PhD at the University of Cambridge, where she wrote about the creation and adjudication of international anticorruption norms. Cecily previously worked as an associate legal officer at the International Court of Justice in The Hague, and at the Special Court for Sierra Leone in Freetown, Sierra Leone.

24 July 2014: *100% Zulu Boy: Judging Jacob Zuma, Obiter Dicta*

Speaker: Professor Mark Sanders

Convenor: Associate Professor Peter Rush

Mark Sanders discussed the Zulu identity and language in regards to his study of the Zulu language and the trial of Jacob Zuma for rape. In 2006, three years before becoming President of South Africa, Zuma was tried for rape and acquitted. In this lecture, drawn from his book *Learning Zulu: A Secret History of Language in South Africa*, Mark revisited the trial testimony of Zuma and other witnesses. As details of the trial fade into oblivion, it is remembered for the vehement demonstrations of Zuma's supporters outside the South Gauteng High Court. Among other slogans, their posters and t-shirts bore the words "100% Zulu boy." And it is vaguely recalled that Zuma said something in his testimony about Zulu culture and a woman 'wanting it'. Already polarized by Zuma's acquittal, the public was left with the imprint of a purism both cultural and linguistic, one reinforced by Zuma when he exercised his right to testify in Zulu, his mother tongue. If you were for or against Zuma, it appeared you also had to be for or against Zulu. This is an uncomfortable position to be in for somebody who has set out to learn Zulu. Mark discussed whether the learner of Zulu can, however, find other ways of making sense of Zuma's trial than the purism of the 100% and the for-or-against, and yet also account for how these trends came about. When an emphasis is placed on learning, other fault lines appear, and a purism is less easily sustained - not only language and culture, but law, including common law and African "customary" law, enter into vertiginous and consequential complicity.

Mark Sanders, Professor of Comparative Literature at New York University, is the author of *Complicities: The Intellectual and Apartheid* (Duke University Press, 2002); *Gayatri Chakravorty Spivak: Live Theory* (Continuum, 2006); *Ambiguities of Witnessing: Law and Literature in the Time of a Truth Commission* (Stanford University Press, 2007) and *Learning Zulu: A Secret History of Language in South Africa* (2014).

6 August 2014: *Anti-Impunity and the Turn to Criminal Law in Human Rights*

Speaker: Professor Karen Engle

Convenor: Professor Dianne Otto

Over the past fifteen years, the human rights movement has become almost synonymous with the fight against impunity. Increasingly, to support human rights means to favour criminal accountability for those individuals who have violated international human rights or humanitarian law. In recent years, it has also come to mean to be against amnesty for those who have violated such law. In this paper, Karen resists this relatively contemporary equation of human rights with anti-impunity and the attendant drive to criminal prosecutions. She contended that such a focus provides a way for all sides to avoid overt discussion of political questions regarding issues of both recognition and redistribution, while at the same time deploying in its political struggles a potentially potent weapon, of which the human rights movement has long been critical—the criminal justice system.

Karen Engle, Minerva House Drysdale Regents Chair in Law and Founder and Co-Director of the Bernard and Audre Rapoport Center for Human Rights and Justice at the University of Texas (Austin) Law School. She is also an affiliated faculty member of Latin American Studies and of Women's and Gender Studies. Karen writes and lectures extensively on international human rights law. She is author of *The Elusive Promise of Indigenous Development: Rights, Culture, Strategy* (Duke University Press, 2010), which received the Best Book Award from the American Political Science Association Section on Human Rights.



Professor Dianne Otto (IILAH), Associate Professor Peter Rush (IILAH), Associate Professor Bruce Oswald (APCML) and Professor Karen Engle (Texas)

12 August 2014: *China: Human Rights and Human Rights Education*

Speaker: Professor Guimei Bai

Convenor: Professor Dianne Otto

Guimei Bai's paper discussed human rights education in China. Human rights was a taboo topic in China 30 years ago. Things changed after the 1989 June Fourth Movement and the "Tiananmen Square Massacre". China has now ratified 6 of the 9 core UN human rights conventions. Human rights education at the university level started early this century, with the first step of training human rights teachers supported by three Nordic human rights institutions, particularly the Raoul Wallenberg Institute of Human Rights and Humanitarian Law. Now there are over 100 universities offering courses on human rights. Yet the topic of human rights is still sensitive for many Chinese governmental officials, and human rights education is still limited only to university level and sponsored mostly by foreign donations.

Guimei Bai, Professor of International Law and Human Rights Law, and Deputy Director of the Research Centre for Human Rights and Humanitarian Law, at Peking University Law School. Her publications (in Chinese) include *International Law* (2006, 2nd ed, 2010), *Self-Determination in International Law* (1999) and articles on theories of international law and human rights law.

14 August 2014: *Human Rights Treaties and Foreign Surveillance: Privacy in the Digital Age*

Speaker: Associate Professor Marko Milanovic

Convenor: Professor Anne Orford

Marko Milanovic discussed how the legality of surveillance programs, such as those organised by the US National Security Agency (NSA) and some of its partners, including UK and Australian signals intelligence

agencies, would be debated and assessed within the framework of international human rights law. He specifically considered the major human rights treaties to which the 'Five Eyes' and other states with sophisticated technological capabilities are parties. The 2013 revelations by Edward Snowden of the scope and magnitude of electronic surveillance have provoked intense and ongoing public debate. Privacy activists decry such programs, especially those involving the mass collection of the data or communications of ordinary individuals across the globe, arguing that they create an inhibiting surveillance climate that diminishes basic freedoms, while government officials justify them as being necessary for the prevention of terrorism. In the wake of the UN General Assembly's 2013 resolution on the right to privacy in the digital age, it can be expected that electronic surveillance and related activities will remain on the agenda of UN bodies for years to come, especially since the political relevance of the topic shows no signs of abating. Similarly, cases challenging surveillance on human rights grounds are already pending before domestic and international courts. The discussion has just started, and it will continue at least partly in human rights terms, focusing on the rights and interests of the affected individuals, rather than solely on the interests and sovereignty of states.

Marko Milanovic, Associate Professor at the University of Nottingham School of Law, Secretary-General and member of the Executive Board of the European Society of International Law, an Associate of the Belgrade Centre for Human Rights, and co-editor of EJIL: Talk!, the blog of the *European Journal of International Law*, as well as a member of the EJIL's Editorial Board. He has published in leading academic journals, including the *European Journal of International Law* and the *American Journal of International Law*, as well as his book *Extraterritorial Application of Human Rights Treaties: Law, Principles and Policy* (Oxford University Press, 2011).

10 September 2014: 'Society Owes Them Much': 'Veteran Defendants' and Criminal Responsibility in Australia in the Twentieth Century

Speaker: Associate Professor Arlie Loughnan

Convenor: Associate Professor Peter Rush

Criminal responsibility now forms the subject of a rich vein of both legal-philosophical and socio-historical scholarly work. Arlie Loughnan's paper aims to contribute to socio-historical scholarly work and offer a critique of legal-philosophical approaches to criminal responsibility, through a close examination of a particular body of case law. Her paper discusses the criminal law treatment of returned service personnel in Australia over the course of the twentieth century. This presents a unique means of examining something usually occluded in criminal law scholarship: social ideas about responsibility. Arlie argues that, premised on veterans as a distinct social category, ex-soldiers are accorded special status in criminal adjudication and sentencing practices – as 'veteran defendants'. The special status of 'veteran defendants' has two main aspects: 'veteran defendants' as enjoying 'enhanced subjectivity' at law, according to which they have a 'thicker' legal personality than other defendants, and as having 'diminished capacity' whereby they have impaired or reduced responsibility for crime. There is a historical interplay between these two aspects of the specialness of 'veteran defendants', with the latter becoming more prominent over time.

Arlie Loughnan, Associate Professor and ARC Research Fellow in the Faculty of Law, University of Sydney. Her interests include criminal responsibility, mental incapacity, and the historical development of criminal law doctrines and practices. She is the author of *Manifest Madness Mental Incapacity in Criminal Law* (Oxford University Press, 2012).

11 September 2014: Current Issues in Australia's Treatment of Refugees and Asylum-Seekers

Speakers: Associate Professor Michelle Foster and Ms Eve Lester

Refugee experts Michelle Foster and Eve Lester conducted a Q&A with Melbourne Law School students, discussing the current issues arising out of Australia's policies on and treatment of refugees and asylum-seekers.

Michelle Foster, Associate Professor at Melbourne Law School and Director IILAH Refugee Law Research Programme; **Eve Lester**, PhD Candidate, Melbourne Law School.

9 October 2014: *Walter Benjamin and the Messianic Promise of International Law*

Speaker: Dr Richard Joyce

Convenor: Professor Sundhya Pahuja

Martii Koskenniemi has described the work of Thomas Franck on emerging rights and legal orders in international law as containing 'a messianic argument and a Christian vision'. This 'messianic' quality is, however, only vaguely articulated by Koskenniemi. With the paper presented in this seminar Richard Joyce marks the beginning of a larger project in which strands of messianic thinking will be traced through key moments in the development of international law and modern sovereignty. Richard argues that the writing of Walter Benjamin offers a way of thinking about the potential of international law to free itself from limited (and limiting) projected visions of the world.

Richard Joyce, Senior Lecturer in the Faculty of Law, Monash University, and visiting scholar at IILAH, Melbourne Law School in 2014. He has degrees from the University of Melbourne and the University of London and is the author of *Competing Sovereignties* (Routledge, 2013) and co-editor (with Fleur Johns and Sundhya Pahuja) of *Events: The Force of International Law* (Routledge, 2011). His research combines critical legal theory, philosophy and international law, with a special focus on questions of sovereignty.

14 October 2014: *Cities in Global Governance – An International Law Perspective*

Philipp Speaker: Dr Helmut Aust

Convenor: Associate Professor Margaret Young

The growing role of cities in global governance is a widely noted phenomenon in a number of social sciences. The same is not true for international law. Helmut Aust's presentation discusses how international law structures are affected by the growing role of cities in global governance. What role, if any, has law to play in this regard? Drawing from a case study of how cities team up in associations such as the "C40" climate change leadership forum, it will be assessed how cities contribute to climate change governance. By virtue of cooperation with other actors such as the World Bank, C40 and other associations of cities gain influence in the formulation of global standards. A new paradigm arises: the law of global cities. This development challenges traditional notions of how international law is made and applied by its more traditional subjects, such as states and international organisations.

Dr Helmut Philipp Aust, Senior Research Fellow at Humboldt University Berlin, Faculty of Law. While a Visiting Scholar with the Institute for International Law and the Humanities (IILAH) he conducted research on his project "The Law of Global Cities". Helmut's publications include *Complicity and the Law of State Responsibility* (Cambridge University Press, 2011) and *Converging Approaches? Domestic Courts and the Interpretation of International Law* (Oxford University Press, 2015), co-edited with Georg Nolte.

18 November 2014: *The Assessment of Protection Needs in Swedish Migration Courts: Tracing the Political Origin of the court reform in 2006*

Speaker: Ms Livia Johannesson

Convenor: Associate Professor Michelle Foster

Livia Johannesson spoke about her PhD research, which problematises the functioning of judicial techniques to assess asylum claims in western liberal democracies by exploring the informal norms that saturate the Swedish Migration Courts, which are the appeal authority for asylum cases in Sweden. Livia argues that these courts, like any professional organisation, are guided both by formal rules and by informal norms that are reproduced in practices, discourses and authoritative texts. Through interviews with judges, litigators and public counsels, and observations of oral hearings, these informal norms are uncovered and analysed. One piece of the puzzle to understand these informal norms is to trace the Migration Court's political origin. The Swedish Migration court was established in 2006 in a political reform that, among other things, aimed to insulate the asylum procedure from the political branch. The analysis shows that this aim was achieved, but

it further asks how practices are shaped by the informal meaning-making of non-politically behaviour at the Migration Courts.

Livia Johannesson, PhD student in Political Science at the Stockholm University, Sweden. Livia was a Visiting Scholar with the Institute for International Law and the Humanities (IILAH) working on her research project, during November and December 2014.

19 November 2014: *Law, Identity and Dispossession – The Half-Cast Act of 1886 and Contemporary Legal Definitions of Indignity in Australia*

Speakers: Dr Mark McMillan and Ms Cosima McRae

Convenor: Dr Ann Genovese

Since 1788 over 70 separate pieces of colonial legislation have attempted to define and control the legal definition of Aboriginal people and Aboriginality. The colonial preoccupation with defining Aboriginal identity includes the *Aborigines' Protection Act 1886* (Vic). The impacts of the 1886 Act are well documented in written and oral histories, both contemporary and historical. The Act is infamously known as the 'half caste Act'. It played a fundamental role in dispossessing Indigenous Victorians of land, and denying basic civil and political rights including freedom of movement and association and access to the protection of the State. In this seminar Mark McMillan and Cosima McRae explore the resonance of the 1886 Act with the contemporary legal test of 'indigeneity', most recently critiqued by Justice Merkel in the Federal Court in *Shaw v Wolf*. They contend that the historic justifications and realities that shaped the thinking about Indigenous identity and classification remain in the contemporary legal test. In drawing attention to the historical, they contend that the contemporary test is implicated in the history of legal definitions that have dispossessed Indigenous people; of land, community, culture and identity.

Mark McMillan, lecturer at Melbourne Law School, Co-Director IILAH Indigenous Peoples in International and Comparative Law Research Programme and member of the Indigenous Nation Building Research Team; **Cosima McRae**, member of the Indigenous Nation Building Research Team.

25 November 2015: *Diagnostic of a successful business human rights campaign*

Speaker: Mr Chris Jochnick

Convenor: Professor Ian Ramsay

Co-hosted with the Centre for Corporate Law and Securities Regulation

Two years ago, Oxfam launched Behind the Brands targeting the 10 most powerful food and beverage companies on a range of human rights issues. Through a range of tactics – shareholder action, social media, consumer pressure, public stunts – the campaign has succeeded in wresting major commitments from global brands. This talk takes you inside the campaign and discusses what implications it has for future work in the field of business and human rights.

Chris Jochnick, Director of Private Sector at Oxfam America, lecturer at Harvard Law School and Senior Fellow at Melbourne Law School.

3 December 2014: *The Conundrum of Punitive Damages: Was it Ever So?*

Speaker: Dr Jason Taliadoros Discussant: Professor Emeritus Michael Bryan

Convenor: Dr Ann Genovese

The modern Australian common law conception of punitive damages has long troubled legal thinkers as it purports to go beyond the traditional role ascribed to tort law of compensation (and distributive justice) and overlaps with criminal law aims of retribution and punishment (or corrective justice). How might an historical analysis of the early analogues of punitive damages inform this conundrum? Modern punitive damages took their modern form in the 1763 English companion cases of *Wilkes v Wood* and *Huckle v Money* as a check on

arbitrary rule, although in the context of political wrangling between Whigs and Tories from the bench. Prior to this, the traditional accounts point to the English statutes from the 13th century, which imposed double or treble fines for certain kinds of offences. How can we explain these two signal moments? And how do we account for the five centuries in between in the development of notions of punitive damages, or its analogues?

Jason Taliadoros, Senior Lecturer in the School of Law at Deakin University, researches in the area of the history of ideas in the pre-modern period, particularly on notions of law and religion in the twelfth and thirteenth centuries. Jason has degrees in law and arts and a PhD from the University of Melbourne. He is the author of *Law and Theology in Twelfth-Century England: The Works of Master Vacarius* (c.1115/20 - c.1200) (Brepols, 2006) and numerous chapters and journal articles on this and related themes. He has a forthcoming co-authored book *Restitution Law in Australia* to be published by Thomson Reuters in October 2014.

Michael Bryan, Emeritus Professor at Melbourne Law School, has taught and published extensively on remedies, equity and trusts, restitution and legal history. He is an editor of *Ford and Lee: The Law of Trusts* (Thomson Reuters, 2012) with Harold Ford et al, and co-author of *Equity and Trusts in Australia* (Cambridge University Press, 2012) with Vicki Vann.

DOCTORAL EVENTS

20 March 2014: PhD Confirmation Seminar, *Interpretation, International Adjudication, Contested Regime Identities and (Dis)-Unity*

Mr Joshua Paine

Supervisors: Professor Anne Orford and Associate Professor Margaret Young

Joshua's thesis considers certain techniques used by international adjudicators to persuade relevant addressees of their interpretive claims in three regimes – investor-state arbitration, interstate litigation in the International Court of Justice, and regional human rights adjudication – and what these indicate about the fragmentation or unity of international law. It aims to shed light on what passes as persuasive argument in struggles to shape legal meaning conducted on the rather technical surface of international adjudication across multiple regimes. The concepts of interpretive communities and audience are used to develop a discursive, socially constructed account of legal meaning. Joshua elaborated on his methodology, which combines a perspective internal to legal-interpretive contestation with a mildly external perspective aimed at capturing key wider factors which shape and limit the possibilities of such argument within regimes. He also gave an overview of the aspects of each regime selected for analysis, and explained why they seem to offer insights into what passes as persuasive argument in each context and how they fit (or do not fit) together as part of any wider field of international adjudication and/or international legal argument.

24 July 2014: PhD Confirmation Seminar, *Developing an Emancipatory Human Rights Approach to End the Practice of (girl) Early Marriage in Ethiopia*

Ms Tayechalem Moges

Supervisors: Professor Dianne Otto and Associate Professor Beth Gaze

Drawing upon postcolonial and feminist perspectives, Tayechalem's thesis explores the emancipatory potential of international human rights law to end the practice of early marriage in Ethiopia from the perspectives of former child wives. The practice of early marriage remains prevalent in Ethiopia despite the existence of legal barriers and many interventions from international and national human rights actors. The durability of traditional support for the practice has led to questions about the effectiveness of individualized international human rights law in Ethiopia's communitarian society. Moreover, child wives remain at the periphery of these efforts as their role has been largely limited to providing stories of victimization.

20 August 2014: MPhil Formal Review, *A Conceptual History of Recognition of States and Governments in International Law*

Mr Martin Clark

Supervisors: Professor Anne Orford and Associate Professor Kirsty Gover

Martin's thesis examines the questions of where, how and why international lawyers developed the concept of recognition by tracking the debates and the situations that motivated and informed them. While Kosovo, Crimea and Palestine form the most recent challenges in a long history of conundrums for the doctrine of recognition of states and governments, issues of recognition were not always a central concern to international legal theory or practice. Martin's thesis contends that shifts in the concept are best explained by disagreements about how to glean general principles out of conflicting Great Power practice, informed by differing conceptions of the purpose and capacities of the international community, and the challenge to the old system posed by gradual integration of new states. The project also proposes and refines a much needed new methodology for doing conceptual history in international law, which was the focus of this presentation.

21 August 2014: PhD Confirmation Seminar, *Mental Health Law: Abolish or Reform?*

Ms Kay Wilson

Supervisors: Professor Dianne Otto and Professor Bernadette McSherry

Kay's thesis takes a normative and law-in-context approach to evaluating the justifications for mental health law and the arguments for and against its abolition, and present options for reform using a human rights conceptual framework. Mental health law permits the detention and treatment of people with mental illness without their consent. It has always been controversial and the subject of reform. However, recently critics, including international human rights bodies, have called for the abolition of mental health law on the grounds that it is discriminatory and unjustifiably deprives individuals of their liberty, legal decision-making capacity and personal integrity.

10 December 2014: PhD Completion Seminar, *Reconsidering REDD+ (Reducing Emissions from Deforestation and Forest Degradation): Law, Life, Growth and Limits in Crisis*

Ms Julia Dehm

Supervisors: Associate Professor Maureen Tehan, Associate Professor Margaret Young and Professor Lee Godden

Co-hosted with Centre for Resources, Energy and Environmental Law

Julia's thesis examines the social implications of Reducing Emissions from Deforestation and forest Degradation (REDD+), a specific carbon offset scheme under the United Nations Framework Convention on Climate Change umbrella, in order to investigate contemporary reconfigurations of imperial control by the global North over land and resources in the global South. It describes how the marketization of transnational environmental governance and the centrality of carbon emission trading schemes to international mitigation and adaptation measures operate to foreclose of possibilities for 'environmental justice'.

1-2 December 2014: IILAH Seventh Melbourne Doctoral Forum on Legal Theory,

Borderlines: the Transnational and Domestic in Law and Legal Theory

Convenors: Mr Martin Clark and Mr Jan Mihal

Melbourne Law School and the Institute for International Law and the Humanities hosted the seventh annual Melbourne Doctoral Forum on Legal Theory. The Forum brought together research students from all academic disciplines to engage with social, political, theoretical, and methodological issues raised by law and legal theory. The workshop is a welcoming, collegial and supportive forum that aims to foster intellectual and personal relationships between researchers and to help build a community of new scholars engaging with

interdisciplinary approaches to law and legal theory.

Borderlines constitute the boundaries between and within legal orders. While borders assert their permanency and inviolability, guarding who the law protects and who it disregards, we know that they are contingent, moveable, transient and above all human creations. The word 'borderline' evokes many conflicting meanings – sharp divides, permeations and transgression, centre and periphery, the invisibility of some distinctions and the starkness of others, abnormality and a lack of normalcy, and the imprecision and vagueness of resting 'on the borderline' – each of which speaks to the relations between different legal orders that take on many forms, all of varying permanency. This forum's theme challenged participants to think about law legal theory in its transnational and domestic orders and forms through the concept of the borderline.

Where do the borders fall between and within the transnational and domestic, and why? Transnational legal orders are wary of and antagonistic towards the borderline even as they assert its irrelevance. The domestic might be seen as the target, the market, or the audience of transnational law. Yet transnational law in an older, more strictly international sense treated the domestic as secluded; bordered away and free from international norms in all but the most serious of actions. How, where and why are these borders collapsed or reasserted? For domestic law the transnational can be welcomed as wisdom and cooperation or feared as threat and challenge. How does it border itself from the outside world? Why and how does the domestic subsume and contort that which it asserts is foreign? How does it 'tame' those things, behaviours, norms, and peoples it calls 'savage' or 'wild'? Where does the transnational and domestic lay their borders? Who proclaims and perpetuates them? How are the borderlines imagined and drawn in the academy, the court, the ministry and the legislature? And how do activists, peoples and social movements respond?

How should we theorise the way the interactions between these orders take place? Borderlines might at first seem a sharp '/' that divides and excludes. But those sharing divisive borders can also be linked and unified by them. When might the borderline between legal orders be better read as a confluence, congruence, harmony, interaction, influx, encounter, tension, intrusion, conflict, or indifference? Should legal orders be imagined spatially: as bordered shapes, levels, webs, spheres or something else? Where do legal scholars draw their borders, and how do legal ideas move across intellectual, cultural and political borders? Should the jurist position herself as domestic or transnational? And what might we learn from examining and taking up how other academic traditions – the humanities, social and empirical sciences – approach the domestic and transnational?

How do different legal traditions and cultures deal with the transnational and domestic? The civil and common law traditions locate domestic law within the nation-state and transnational laws across the borders states. But in what ways do we think beyond and against laws of the state? How is the transnational and domestic treated in other legal orders – religious, customary, indigenous – and where do they lay their own borders? How does the domestic and transnational respond to the non-national? Do these terms carry or connote different meanings for peoples, governments and organizations in the Global South/North, or East/West? And what treatment of those laws made other is needed for an order to function, to maintain its claim to authority over a body of people or law?

8 December 2014: IILAH Doctoral Roundtable with Professor Philip Alston

Convenor: Professor John Tobin

Eight PhD students from Melbourne and Monash Law Schools working in the area of human rights and international law took the opportunity to engage in a discussion of their research with Professor Philip Alston. There were also a small number of additional attendees. Although the roundtable was intended to be quite informal, participants prepared some specific questions or issues from their research for Philip to comment on, and spent a few minutes at the start of their allocated 15 minutes outlining these. Discussions were lively and informative, and the roundtable was greatly appreciated by all participants.

Professor Philip Alston, Co-Director of the Centre for Human Rights and Global Justice at NYU Law School, is the current UN Special Rapporteur on Extreme Poverty and the former UN Special Rapporteur on Extrajudicial

Killings. He was the Chairperson for the Committee on Economic Social and Cultural Rights and has edited over 30 collections and prepared over 150 articles on a broad range of issues related to international law and human rights.

BOOK LAUNCHES

14 March 2014: First Editions: *The Extraterritorial Application of the Human Right to Water in Africa* (CUP 2014) by Dr Takele Soboka Bulto

Launched by Professor Carolyn Evans (Dean, Melbourne Law School)

Convenor: Professor Dianne Otto

International human rights law has only recently concerned itself with water. Instead, international water law has regulated the use of shared rivers, and only states qua states could claim rights and bear duties towards each other. International human rights law has focused on its principal mission of taming the powers of a state acting territorially. Bulto challenges the established analytic boundaries of international water law and international human rights law. By demonstrating the potential complementarity between the two legal regimes and the ensuing utility of regime coordination for the establishment of the human right to water and its extraterritorial application, he also shows that human rights law and the international law of watercourses can apply in tandem with the purpose of protecting non-national non-residents in Africa and beyond.



Dr Takele Soboka Bulto (Canberra) and Professor Carolyn Evans (MLS)



Dr Takele Soboka Bulto (University of Canberra)

Takele Soboka Bulto, lecturer at the University of Canberra, is also a member of RegNet's, Centre for International Governance and Justice at ANU. Takele was a former judge of Oromia State Supreme Court in Ethiopia. He has published numerous research articles in Australian, American, African, Dutch and UK journals. He obtained his PhD from Melbourne Law School and in 2012 won the Chancellor's Prize for Excellence in a PhD Thesis for his *Wrongs and the River Between: Extraterritorial Application of the Human Right to Water in Africa*, which makes a significant contribution to thinking about the difficult problem of water-sharing and access to water between States.

This was the first in IILAH's new series of 'First Editions' which celebrates new scholarship in international law and the humanities.

7 August 2014: *Reclaiming American Virtue: The Human Rights Revolution of the 1970's* (Harvard University Press, 2014) by Dr Barbara J Keys

Launched by Professor Samuel Moyn (Harvard)

Co-hosted with Melbourne School of Historical and Philosophical Studies

The American commitment to international human rights emerged in the 1970s not as a logical outgrowth of American idealism but as a surprising response to national trauma, as Barbara Keys shows in this provocative history. *Reclaiming American Virtue* situates this novel enthusiasm as a reaction to the profound challenge of the Vietnam War and its tumultuous aftermath. Instead of looking inward for renewal, Americans on the right and the left alike looked outward for ways to restore America's moral leadership.

Barbara Keys, Senior Lecturer in the School of Historical and Philosophical Studies. Barbara's research interests are broadly in the areas of human rights, the effects of transnational movements and organizations on international affairs, the role of emotions in history, intercultural relations, and globalization.

17 September 2014: *Rethinking Peacekeeping, Gender Equality and Collective Security* (Palgrave-Macmillan 2014) edited by Professor Dianne Otto and Dr Gina Heathcote

Co-hosted with School of Oriental and African Studies, Centre for Gender Studies

Security Council resolution 1325 was a landmark in collective security, making the link between women's security and international peace and security. This book argues it is time to rethink the way the women, peace and security framework has impacted on peacekeeping, gender equality and collective security, drawing lessons from past practices and re-framing gender perspectives. From the hyper visibility of sexual violence to strategies for 'counting the women', this book considers the limitations of the contemporary women, peace and security agenda. It urges for a renewed structure that returns to the anti-militarist agenda associated with feminist thinking and one that recognises and responds to women's diversity and takes seriously the dangers of pursuing peace through the Security Council.

Dianne Otto, Francine V McNiff Chair in Human Rights Law at Melbourne Law School and IILAH Director. She is editor of *Gender Issues and Human Rights* (volumes I, II and III, Edward Elgar, 2013). **Gina Heathcote**, Senior Lecturer in the School of Law and in the Centre for Gender Studies, at the School of Oriental and African Studies (SOAS), University of London. She is author of *The Law on the Use of Force: A Feminist Analysis* (Routledge, 2011).

13 November 2014: *The Law of Refugee Status* by Professor James C Hathaway and Associate Professor Michelle Foster

Launched by The Honourable Michael Black AC QC, former Chief Justice of the Federal Court.



Building on the strong critical focus and human rights orientation of the first edition, this second edition undertakes an entirely original analysis of the jurisprudence of leading common law and select civil law states. The authors provide robust responses to the most difficult questions of refugee status in a clear and direct way. The result is a comprehensive and truly global analysis of the central question in asylum law: who is a refugee?

- Judges, lawyers and officials in the state parties bound by the Refugee Convention focus on this question every day, and will find it a valuable resource for their work;
- Engages not only with relevant international law, but also analyses the jurisprudence of leading common and civil law states in order to synthesise the most creative judicial thinking on refugee law and promote a genuinely global approach to refugee law;
- Tackles the hardest issues in contemporary refugee law in a direct and principled way, making this an indispensable resource for those engaged in creative thinking about how best to address involuntary migration.

A must-read for every lawyer, judge and official engaged in refugee protection, and for scholars of refugee law.



The Honourable Michael Black AC QC, Associate Professor Michelle Foster (IILAH) and Professor Adrienne Stone (CCCS)

ROUNDTABLE DISCUSSIONS

31 October 2014: IILAH CCCS Roundtable, *Making Sense of 'Maloney v R'*

Associate Professor Beth Gaze, Dr Ann Genovese, Associate Professor Kirsty Gover, Dr Coel Kirkby, Dr Mark McMillan, Ms Paula O'Brian, Professor Adrienne Stone, Associate Professor Maureen Tehan and Dr Lael Weis

Convenor: Associate Professor Kirsty Gover

In this roundtable, Melbourne Law School scholars discussed the significance and the consequences of *Maloney v R* for indigenous-settler relations and social justice in Australia.

In June 2013, the High Court decided that alcohol restrictions imposed by the Queensland government on

the aboriginal community of Bwgcolman (Palm Island) did not breach the *Racial Discrimination Act*, because they were “special measures” designed to “secure the adequate advancement” of a racial group. *Maloney v R* (2013) is a landmark case of almost unprecedented controversy, touching on many of the most difficult and politically volatile aspects of the relationship between Australian governments and indigenous peoples.

The case reignites longstanding debates about the meaning of equality and non-discrimination in Australian laws targeting indigenous peoples, the tension between public responsibility and paternalism in indigenous affairs, the status and powers of aboriginal institutions in the face of governmental unilateralism, the relation between individual claims and community self-determination in indigenous politics and the relevance of Australia’s international human rights obligations in litigation about indigenous policy.

10 December 2014: IILAH Roundtable on International Law and Human Rights with Professor Philip Alston (New York University)

Convenor: Professor John Tobin

An IILAH Roundtable with special guest Professor Philip Alston, UN Special Rapporteur on Extreme Poverty, created a space for a discussion between the leaders of Australia’s development and aid sector with Professor Alston regarding his mandate which concerns the nexus between human rights and extreme poverty in the post MDG world.

SYMPOSIUM

29 November 2014: SHAPS IILAH Symposium, *The Olympic Games and Human Rights*

Presenters: Dr Barbara Keys, Dr Soyoung Kwon, Professor Kristine Toohey AM, Mr Nicholas Bequelin, Mr Patrick Kelly and Professor Helen Lenskyj

Convenor: Dr Barbara Keys (School of Historical and Philosophical Studies)

Human rights pressures on the Olympic Games have risen dramatically in the last decade. In the 20th century, such pressures were largely limited to ensuring non-discrimination for athletes; now, demands extend to host country treatment of minorities, labour laws, freedom of the press and more. Leading human rights organizations such as Human Rights Watch and Amnesty International now devote substantial resources to researching and publicizing human rights issues associated with the Games, fuelling media interest and public awareness.

The symposium brought together academics, representatives of sports organizations, and human rights advocates to discuss growing human rights concerns in relation to the Olympic Games. Some of the questions discussed in the symposium: Should the Olympic Games promote human rights, and if so, which rights matter, for whom, and why? Why have the Olympic Games become a target for human rights groups? How has the “Olympic movement” responded to this pressure? What is Australia’s responsibility with respect to the human rights issues that affect the Olympics?

FILM SCREENINGS AND DISCUSSIONS

2 May 2014: *After Atrocity: Indian Democracy and Secularism in the wake of the Gujarat Pogrom*

Speaker: Associate Professor Irfan Ahmad (Australian Catholic University)

Convenor: Mr Oishik Sircar (PhD Candidate, Melbourne Law School)

Irfan Ahmad discussed the 2002 anti-Muslim pogrom in Gujarat, contemporary India's most litigated, mediatized and politically polarizing event of state supported mass violence with clips from Rakesh Sharma's critically acclaimed documentary, 'Final Solution'. The sophisticated organisation of the violence, the macabre forms of brutality and extent of state involvement, particularly police inaction, was unprecedented in scale. Narendra Modi, a Hindu nationalist politician who was chief minister of Gujarat in 2002, is now being touted as India's next prime minister. Modi has been accused of having orchestrated the pogrom in furtherance of the Hindu right wing ideology of establishing a Hindu nation. However, he has escaped legal culpability. What are the futures secularism in the world's largest democracy in the wake of an event of mass atrocity like the Gujarat pogrom?

Irfan Ahmad, Associate Professor of Political Anthropology at the Institute for Religion and Critical Enquiry, Faculty of Theology and Philosophy, ACU, Melbourne, author of *Islamism and Democracy in India: The Transformation of the Jamaat-e-Islami* (Princeton University Press, 2009), which is short-listed for the 2011 ICAS (International Convention of Asian Scholars) Book Prize for best study in the field of Social Sciences.

Rakesh Sharma's 'Final Solution' is an award winning feature length documentary offering a devastating account of the Gujarat pogrom. It was banned in India when released.

21 August 2014: *Women, War and Peace "I Came to Testify"*

Convenors: Dr Lesley Pruitt and Professor Dianne Otto

The five-part television series sets out to challenge the conventional wisdom that war and peace are men's domain. The series reveals how the post-Cold War proliferation of small arms has changed the landscape of war, with women becoming primary targets and suffering unprecedented casualties. Yet it also shows how women are simultaneously emerging as necessary partners in brokering lasting peace and as leaders in forging new international laws governing conflict. It is a co-production of THIRTEEN and Fork Films and was screened on public television (PBS) in the US in 2011.

"I Came to Testify" is described as "the moving story of how a group of 16 women who had been imprisoned and raped by Serb-led forces in the Bosnian town of Foca broke history's great silence – and stepped forward to take the witness stand in an international court of law. Their remarkable courage resulted in a triumphant verdict that led to new international laws about sexual violence in war."

This screening and discussion was the first of a five-part special series co-hosted by the Women's Peace and Security Academic Collective (WPSAC).

Indigenous Nation Building Project

IILAH is the Melbourne Law School home to the Indigenous Nation Building Project, which examines the theory and practice of Indigenous ‘nation building’ in Australia in order to promote Indigenous self-governing authority and capacity.

Internationally, Indigenous nations (including in Australia) are engaged in processes of nation building, whereby they are seeking to expand their substantive decision-making power and self-governing authority, create legitimate and effective governing institutions of their own design, set strategic direction and develop public spirited leadership. Based on the growing evidence that competent Indigenous self-governance is a necessary precursor to community and economic development.

Funded by a Melbourne School of Government Cluster Grant, the Indigenous Nation Building Project uses a distinct collaborative research model. It is designed to engage emerging theory about Indigenous nation building, provide the ‘raw material’ for hypothesis testing, and inform communities and policy-makers. Within these broad objectives, the project has three specific aims:

- To examine the Indigenous ‘movement’ for self-governance in Australia;
- Compare the Australian movement to those in other English settler states and embed Australian Indigenous nation building in a broader international context;
- Contribute to international dialogues about Indigenous nationhood within a nation-state, especially by observing choices made in a context (Australia) notable for the absence of formal recognition by colonial governments.

While it is anticipated that the research project will make a significant contribution to international and domestic scholarship, a guiding principle for the research team is that the project is undertaken, not only for research sake, but so that the information generated might support Aboriginal and Torres Strait Islander nations, communities and/or peoples to increase their capacity to be self-determining. To this end, specific research projects will be created with representatives of three Indigenous Nations who are research partners: Gunditjmara Nation, Victoria; Ngarrindjeri Nation, South Australia and Wiradjuri Nation, NSW.

The project links a diverse range of scholars from universities in Australia and the United States, allowing for a multi-disciplinary approach to nation building research. These are: Dr Yoko Akama, (RMIT University), Professor Larissa Behrendt (University of Technology Sydney), Professor Stephen Cornell (University of Arizona), Ms Debbie Evans (Charles Sturt University), Associate Professor Steve Hemming (Flinders University), Professor Miriam Jorgensen (University of Arizona, Harvard University, and University of Melbourne), Dr Mark McMillan (Melbourne Law School), Ms Faye McMillan (Charles Sturt University), Ms Cosima McRae (Melbourne Law School), Dr Raymond Orr (University of Melbourne), Professor Daryle Rigney (Flinders University), Dr Alison Vivian (University of Technology Sydney), Mr Peter West (RMIT University), and Dr Asmi Wood (ANU).



Dr Mark McMillan (ILAH and Indigenous Nation Building Project)

Visiting Scholars 2014

IILAH brings leading international legal scholars and professionals to Melbourne Law School, and builds international linkages and networks for colleagues and students through a programme of public lectures, seminars, roundtables, visitors and major ARC-funded international workshops. Many of the visitors to IILAH have established strong working and co-publishing relationships with Melbourne Law School faculty and doctoral students as a result. These are the 2014 IILAH international and Australian Visiting Scholars:

Professor Diamond Ashiagbor

School of Law, SOAS
University of London
20 March - 12 April 2014
Academic host: Associate Professor Shaun McVeigh

Professor Vera Bergelson

Professor of Law and Robert E Knowlton Scholar
Rutgers School of Law
31 March - 11 May 2014
Academic host: Associate Professor Peter Rush

Ms Indira Rosenthal

International Secretariat, London
Amnesty International
31 March - 31 July 2014
Academic host: Professor Dianne Otto

Professor Dino Kritsiotis

School of Law
University of Nottingham
27 May – 11 July 2014
Academic host: Professor Anne Orford

Mr Benjamin Schokman

Human Rights Law Centre
1 July - 28 February 2015
Academic host: Professor John Tobin

Dr Richard Joyce

Faculty of Law
Monash University
1 July - 31 December 2014
Academic host: Professor Sundhya Pahuja

Dr Jason Taliadoros

School of Law
Deakin University
14 July 2014 - 28 February 2015
Academic host: Dr Ann Genovese

Mr Connal Parsley

Kent Law School
University of Kent
15 July - 29 July 2014
Academic host: Associate Professor Shaun McVeigh

Professor Bai Guimei

Faculty of Law
Peking University
2 - 16 August 2014
Academic host: Professor Dianne Otto

Dr Adil Hasan Khan

Graduate Institute of International and Development Studies
Geneva, Switzerland
1 October - 20 February 2015
Academic host: Professor Sundhya Pahuja

Dr Helmut Philipp Aust

Public International Law and European Law
Humboldt-Universität zu Berlin
1 October 2014 - 31 March 2015
Academic host: Associate Professor Margaret Young

Ms Livia Johannesson

Department of Political Science
Stockholm University, Sweden
1 November - 20 December 2014
Academic host: Associate Professor Michelle Foster

PUBLICATIONS

Books

James C Hathaway and **Michelle Foster**, *The Law of Refugee Status* (Cambridge University Press, United Kingdom, 2nd ed, 2014)

Gina Heathcote and **Dianne Otto** (eds), *Rethinking Peacekeeping, Gender Equality and Collective Security* (Palgrave-Macmillan, United Kingdom, 2014)

Peter Rush and Olivera Simic (eds), *The Arts of Transitional Justice: Culture, Activism, and Memory after Atrocity*, (Springer, United States, 2014)

Tania Voon, Andrew Mitchell and Jonathan Liberman (eds), *Regulating Tobacco, Alcohol and Unhealthy Foods: The Legal Issues* (Routledge, United Kingdom, 2014) i-xvi, 1–378

Andrew Mitchell and **Tania Voon** (eds), *The Global Tobacco Epidemic and the Law* (Edward Elgar, United Kingdom, 2014) i-xviii, 1-339

Book Chapters

Michelle Foster, ‘Why We Are Not There Yet: The Particular Challenge of “Particular Social Group”’ in Efrat Arbel, Catherine Dauvergne and Jenni Millbank (eds), *Gender in Refugee Law: From the Margins to the Centre* (Routledge, United Kingdom, 2014) 17-45

Cheryl Saunders and **Michelle Foster**, ‘The Australian Federation: A Story of the Centralization of Power’ in Daniel Halberstam and Mathias Reimann (eds), *Federalism and Legal Unification: A Comparative Empirical Investigation of Twenty Systems* (Springer, United States, 2014) 87-102

Ann Genovese, ‘Goode v Goode: The Practice of Feminist Judgment in Family Law’ in Heather Douglas, Francesca Bartlett, Trish Luker and Rosemary Hunter (eds), *The Australian Feminist Judgments; Righting and Rewriting Law* (Hart Publishing, United Kingdom, 2014) 375-379

Kirsty Gover, ‘Inter-Indigenous Recognition and the Cultural Production of Indigeneity in the Western Settler States’ in Avigail Eisenberg, Jeremy Webber, Glen Coulthard and Andree Boisselle (ed), *Recognition versus Self-Determination: Dilemmas of Emancipatory Politics* (2014)

Jürgen Kurtz, ‘Building Legitimacy Through Interpretation in Investor-State Arbitration: On Consistency, Coherence and the Identification of Applicable Law’ in Zachary Douglas, Joost Pauwelyn and Jorge Vinuales (eds), *The Conceptual Foundations of International Investment Law* (Oxford University Press, United Kingdom, 2014) 257-296

Jürgen Kurtz, ‘Science as a Common Proxy for Rational Regulation Across International Trade and Investment Law’ in Kuei-Jung Ni and Bryan Mercurio (eds), *Trade, Science and Technology in International Law* (Routledge, United Kingdom, 2014) 134-154

Mark McMillan and Cosima McRae, ‘Law, Identity and Dispossession – The Half-Caste Act of 1886 and Contemporary Legal Definitions of Indigeneity in Australia’ in Zoe Laidlaw and Alan Lester (eds), *Indigenous Communities and Settler Colonialism* (Palgrave Macmillan, Australia, 2014) 233-244

Anne Orford, ‘The Politics of Anti-Legalism in the Intervention Debate’ in David Held and Kyle

McNally (eds), *Lessons from Intervention in the 21st Century: Legality, Feasibility and Legitimacy*, (Global Policy, e-book, 2014)

Anne Orford, 'Hammarskjöld, Economic Thinking, and the United Nations' in Henning Melber and Carsten Stahn (eds), *Peace, Diplomacy, Global Justice, and International Agency: Rethinking Human Security and Ethics in the Spirit of Dag Hammarskjöld* (Cambridge University Press, 2014) 156-89

Dianne Otto, 'Gendering the Right to Social Security in the Era of Crisis Governance: the Need for Transformative Strategies' in Beth Goldblatt and Lucie Lamarche (eds), *Women's Rights to Social Security and Social Protection* (Hart, United Kingdom, 2014) 215-238

Dianne Otto and Gina Heathcote, 'Rethinking Peacekeeping, Gender Equality and Collective Security: An Introduction' in Gina Heathcote and Dianne Otto (eds), *Rethinking Peacekeeping, Gender Equality and Collective Security* (Palgrave-Macmillan, United Kingdom, 2014) 1-20

Dianne Otto, 'Beyond Stories of Victory and Danger: Resisting Feminism's Amenability to Serving Security Council Politics' in Gina Heathcote and Dianne Otto (eds), *Rethinking Peacekeeping, Gender Equality and Collective Security* (Palgrave-Macmillan, United Kingdom, 2014) 157-172

Jacqueline Peel, 'Addressing Climate Change Inequities: The Contribution of a Feminist Judgment' in Heather Douglas, Francesca Bartlett, Trish Luker and Rosemary Hunter (eds), *Australian Feminist Judgments: Righting and Rewriting Law* (Hart Publishing, United Kingdom, 2014) 133-137

Jacqueline Peel, 'International Law and the Protection of the Global Environment', in Regina S Axelrod and Stacy D Vandever (eds), *The Global Environment: Institutions, Law, and Policy* (CQ Press, United States, 4th ed, 2014) 53-82

Tania Voon and Andrew Mitchell, 'Introduction' in Andrew Mitchell and Tania Voon (eds), *The Global Tobacco Epidemic and the Law* (Edward Elgar, United Kingdom, 2014) 1-8

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