



# IILAH

Institute for International  
Law and the Humanities



## IILAH Annual Report 2018



FRONT COVER IMAGE: *Art and Conflict: Investigating Cross-Disciplinary Methodologies* - 25 to 26 June 2018

AUTHORISED BY IILAH Director

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*Art and International Law: 14 - 15 May 2018*



# CONTENTS

MESSAGE FROM THE DIRECTOR.....	1
OVERVIEW.....	2
RESEARCH PROGRAMS.....	3
DIRECTORS and RESEARCH FELLOWS.....	4
Program Directors .....	4
Research Fellows .....	11
MEMBERS.....	14
GRADUATE RESEARCH STUDENTS.....	21
Current Graduate Research Students.....	21
Completed Graduate Research Students .....	27
EVENTS and ENGAGEMENT.....	28
Interdisciplinary Workshops.....	28
Symposia.....	29
Research Seminars.....	30
Book Launches and Public Events... ..	37
Doctoral Events.....	38
IILAH Reading Group .....	38
VISITING SCHOLARS .....	39
PUBLICATIONS.....	40
Books .....	40
Book Chapters.....	40
Journal Articles .....	42
Reference Works .....	44
Scholarly Contributions to Database/Website .....	44

# MESSAGE FROM THE DIRECTOR

In 2018, IILAH has continued to flourish as both an academic institution and as a community of diverse global scholars. As an institution, IILAH has contributed to the production of interdisciplinary international law research through our twelve core Research Programs each directed by faculty members of the Melbourne Law School. As a community, IILAH brought scholars together by hosting ten international visitors, holding over 26 events including seminars, public lectures and workshops, and by creating online platforms for academic collaboration. In 2018, IILAH continued to build its online presence and connect the IILAH community through our website, contributions to social media and weekly newsletter, now subscribed to by over 600 scholars, practitioners, researchers and interested members of the public from around the world.

This year's event calendar was marked by a number of significant collaborations including the Art and Conflict Workshop (25-26 June 2018) hosted by IILAH, the Victorian College of the Arts and the Ian Potter Museum of Art; the joint IILAH, Harvard Institute for Global Law and Policy Workshop, 'Learning from Failure' (5 June 2018); the Art and International Law Workshop (14-15 May 2018) hosted by IILAH in collaboration with visiting scholars from Queen Mary College at the University of London; and the Eavesdropping Symposium (24 July-28 October 2018) in collaboration the Ian Potter Museum of Art and Liquid Architecture.

Further, in partnership with MLS and the Laureate Program, IILAH continued to support the Melbourne Law School's Annual 'Melbourne Doctoral Forum on Legal Theory' (MDFLT) and foster and support graduate and early career researchers. As always, the Forum was accompanied by an IILAH Skills Circle targeted towards sharing academic skills with PhD students and researchers through an informal round-table. Now in its 11th year, the MDFLT's theme was 'Facts, Law and Critique' attracting 40+ presenters and participants.

In addition to these cornerstone events, IILAH hosted seminars on a range of topics including the UN as a modernist project, critical geography, climate change and adjudication as performance. Seminars were presented and convened by colleagues from the international IILAH community, including IILAH visitors: Dr Isobel Roele (Queen Mary College), Professor Gerry Simpson (LSE) and Dr Amanda Dale (Osgoode Hall Law School).

Lastly, this year IILAH's inaugural faculty reading group was in its third year with the theme 'The Office of the International Lawyer and the Plurality of International Law'. The reading group continued to provide research training to academics, doctoral students and colleagues from other facilities and institutions, and to contribute to the research culture of the Melbourne Law School through the creation of a collegiate space to engage with interdisciplinary, international law issues.

Alongside the institution's busy calendar, in 2018 the IILAH community worked to support a total of 26 graduate students, with Tayechalem Girma Moges and Hailegabriel Feyissa completing this year. We welcome Dr Shane Chalmers into the IILAH community in his new role as McKenzie Postdoctoral Fellow, and say goodbye to Drs Rose Parfitt and Rosemary Grey who have taken roles at Kent Law School and the University of Sydney, respectively. The IILAH directors and members produced a number of significant publications, the details of which can be found on page XXX of this report.

The achievements of this year would not have been possible without the hard work of each of the members of the IILAH community, in particular the IILAH Administrator, Connor Foley, who commenced with the institute in late 2017 and IILAH Fellow, Balawyn Jones.

As can be seen throughout this report, 2018 has been a busy year in the life of the institution not only in terms of numbers of events held or visitors hosted, but also in terms of the research leadership exercised by IILAH, generating immeasurable enthusiasm of our members, visitors and collaborators and the spirit of the IILAH community. We look forward to carrying this same commitment and passion into our activities in 2019.

# 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, China, Colombia, Egypt, Finland, France, India, Italy, New Zealand, South Africa, Sweden, Norway, 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 PROGRAMS

The activities of the Institute are currently organised around thirteen key research programs with fifteen research program directors. The programs build on the breadth of research expertise and interest amongst the faculty at Melbourne Law School, and represent areas of dynamic development and change in the fields of international and transnational law.

## **Australian Legal Histories**

Program Directors: Ann Genovese

## **Fragmentation and Regime Interaction in International Law**

Program Director: Margaret Young

## **Feminist and Queer Approaches to International Law**

Program Director: Dianne Otto

## **Indigenous Peoples in International and Comparative Law**

Program Directors: Kirsty Gover

## **International Criminal Law**

Program Director: Peter Rush

## **International Environmental Law**

Program Director: Jacqueline Peel

## **International Human Rights Law**

Program Directors: Hilary Charlesworth

## **Jurisprudences of the South**

Program Director: Shaun McVeigh

## **Law and Development**

Program Director: Jennifer Beard

## **Law, Science, Technology and Society**

Program Director: James Parker

## **Legal Biographies**

Program Directors: Ann Genovese, Shaun McVeigh and Peter Rush

## **Property and the International**

Program Director: Olivia Barr

# DIRECTORS and RESEARCH FELLOWS



**Professor Sundhya Pahuja**  
IILAH Director

Sundhya Pahuja's research focuses on the history, theory and practice of international law in both its political and economic dimensions. She has a particular interest in international law and the relationship between North and South, and the practice, and praxis, of development and international law. Sundhya has been awarded the American Society of International Law Certificate of Merit (2012), the Woodward Medal for Excellence in the Humanities and Social Sciences (2014) and a Fulbright Senior Scholar award which she took up in September 2016 at the Institute for Global Law and Policy at Harvard Law School. From 2012 – 2015, Sundhya concurrently held a Research Chair in Law at SOAS, University of London, and in 2014, served as Director of Studies in Public International Law at the Hague Academy of International Law. She has held visiting appointments at the LSE, NYU and UBC, currently serves as core faculty at the Harvard Law School Institute for Global Law and Policy Workshop, as Affiliate Faculty of the European Collaborative Doctoral Programme in Globalisation and Legal Theory, and holds Visiting Chairs at Birkbeck and SOAS. Sundhya's published works include the book *Decolonising International Law: Development, Economic Growth and the Politics of Universality* (Cambridge University Press, 2011), as well as the edited collections, *Reading Modern Law: Critical Methodologies and Sovereign Formations* (Routledge, 2012) (co-edited with Ruth Buchanan and Stewart Motha), and *Events: The Force of International Law* (Routledge, 2011) (co-edited with Fleur Johns and Richard Joyce). Sundhya is currently writing a book on *International Development* with Ruth Buchanan and Luis Eslava as part of the Routledge-Cavendish *Critical Approaches to Law* series. Her current projects also include an Australian Research Council funded project on International Law and the Cold War, with Gerry Simpson and Matthew Craven, and a large project on the history of the corporation in international law from the early modern period to the present day.



**Dr Olivia Barr**  
Program Director, Property and  
the International

Olivia Barr joined the Law School as a Senior Lecturer in February 2016. She completed her LLB (Distinction) and BA (Anthropology and Philosophy) at the University of Western Australia, an LLM at the University of British Columbia, and a PhD at Melbourne Law School. Prior to returning to Melbourne, Olivia was a Lecturer at the University of Technology, Sydney. She has also worked as a government solicitor, in law reform, and for the United Nations Permanent Forum on Indigenous Issues. With Dr Karen Crawley (Griffith University), she is the Managing Editor of the Australian Feminist Law Journal: A Critical Legal Journal. Olivia writes in jurisprudence, and her cross-disciplinary work engages with geography, anthropology, philosophy, architecture and contemporary public art practices. Her research focuses on questions of inheritance, especially ongoing relations between Anglo-Australian common law and Aboriginal law in Australia. Olivia recently published *A Jurisprudence of Movement: Common Law, Walking, Unsettling Place* (Routledge, 2016) in Routledge's "Space, Materiality and the Normative" series. Her current research concerns questions of lawful place, and argues for greater attention to the place-making practices of law.



**Dr Jennifer Beard**  
Program Director, Law and Development



Jennifer Beard is currently involved in research on the role of the not-for-profit sector in law and development and on migration law and policy in the Asia Pacific region. Jennifer was a member of the Migration Review Tribunal and the Refugee Review Tribunal from 2009 to 2014. In her research, Jennifer takes particular interest in the relationship between law and society and law and development. She is particularly interested in theories of the State and the role of law in the exercise of political power. Jennifer's five-year appointment to the Refugee and Migration Review Tribunals have strengthened her interest in due processes, accountability and justice in public and private governance across all levels of society. Her publications include a textbook co-edited with Professor Andrew Mitchell, *International Law: In Principle* (Thomson, 2009) and *The Political Economy of Desire: International Law, Development and the Nation State* (Cavendish-Routledge, 2007). Jennifer has been a visiting fellow at the University of British Columbia Law School where she taught a PhD Seminar on Legal Theory and Interdisciplinary Approaches to Law; a teacher of International Law, Trade and Development in the LLM Programme in the Department of International Law and Human Rights at the United Nations University for Peace in Costa Rica; and a visiting fellow at the University of Lund Law School.

**Professor Hilary Charlesworth**  
Program Co-Director, International  
Human Rights Law



Hilary Charlesworth is a Melbourne Laureate Professor at Melbourne Law School. She is also a Distinguished Professor at the Australian National University. Her research includes the structure of the international legal system, peacebuilding, human rights law and international humanitarian law and international legal theory, particularly feminist approaches to international law. Hilary received the American Society of International Law's award for creative legal scholarship for her book, co-authored with Christine Chinkin, *The Boundaries of International Law*. She was also awarded, with Christine Chinkin, the American Society of International Law's Goler T. Butcher award for 'outstanding contributions to the development or effective realization of international human rights law'. Hilary has held both an Australian Research Council Federation Fellowship (2005-2010) and an ARC Laureate Fellowship (2010-2015). Hilary has been a visiting professor at various institutions including Harvard Law School, New York University Global Law School, UCLA and the London School of Economics. She is a member of the Executive Council of the Asian Society of International Law and a past President of the Australian and New Zealand Society of International Law. Hilary was appointed by the Australian government in 2015 to a second term as a member of the Permanent Court of Arbitration. She is an associate member of the Institut de Droit International and served as judge ad hoc in the International Court of Justice in the Whaling in the Antarctic Case (2011-2014). In 2016 Hilary was awarded an Honorary Doctorate by the Université Catholique de Louvain in Belgium.



**Associate Professor Ann Genovese**  
Program Director, Australian Legal Histories  
Co-Director, Legal Biographies

Ann Genovese has, for over twenty years, in a variety of projects been researching and writing on the relationships between jurisprudence and historiography. This work addresses the epistemological resonance and dissonance between Law and History as disciplines and practices; the nature of legal archives and the responsibilities of custodians and writers towards them; and the sources, forms and techniques necessary to show how Australian people have lived with their law, since 1950. Ann has collaborated with leading scholars from law, history, feminist theory and indigenous studies, as well as with members of the judiciary and profession. She has been the successful recipient of ARC funding on several projects, most recently *The Court as Archive* (with Kim Rubenstein at ANU and Trish Luker at UTS). Ann's publications include: *Rights and Redemption* (UNSWP, 2008), (with Ann Curthoys and Alex Reilly), which has been widely reviewed, is included in many courses across disciplines, and has been cited by the High Court in *Northern Territory of Australia v Arnhem Land Aboriginal Land Trust* [2008] HCA 29 (30 July 2008); *Sovereignty: Frontiers of Possibility* (with Julie Evans, Patrick Wolfe, and Alexander Reilly) (UHP, ), and is the editor of two special editions of *Griffith Law Review* (2014, 2015) commemorating the thirtieth anniversaries of the *Koowarta v Bjelke Petersen* and *The Commonwealth v Tasmania*. She is an Advisory Board Member of the *University of Melbourne Archives*; and a member of the editorial board of *Australian Feminist Law Journal*. She has been a Visiting Research Fellow at the Centre for Public Law and Public Policy, University of Adelaide Law School; the Humanities Research Centre, ANU; Kent Law School. She is an Adjunct Professor at the UTS Faculty of Law.



**Associate Professor Kirsty Gover**  
Program Director, Indigenous Peoples in  
International and Comparative Law

Professor Kirsty Gover was appointed to the Melbourne Law School faculty in 2009. Her research and publications address the law, policy and political theory of Indigenous rights, institutions and jurisdiction. She is interested in the importance of Indigenous concepts of law and politics in settler state political theory, constitutionalism and international law. Professor Gover is the author of *Tribal Constitutionalism: States, Tribes and the Governance of Membership* (Oxford University Press 2010) and *When Tribalism meets Liberalism: Political Theory and International Law* (Oxford University Press 2014). Professor Gover is a graduate of New York University (NYU) JSD Doctoral Program, where she was an Institute for International Law and Justice (IJIL) Graduate Scholar and New Zealand Top Achiever Doctoral Fellow. She is Chair of Melbourne Law School's Reconciliation and Recognition Committee, Graduate Research Coordinator and Director of Melbourne Law School's Indigenous Peoples in International and Comparative Law Research Program.

**Associate Professor Shaun McVeigh**  
Program Director, Jurisprudence of the South  
Program Co-Director, Legal Biographies



Shaun McVeigh joined the law school at Melbourne University in 2007. He previously researched and taught at Griffith University in Queensland as well as Keele and Middlesex Universities in the United Kingdom. He has a long time association with critical legal studies in Australia and the UK. More recently he has been involved in convening a symposium "Of the South" that develops an account of lawful existence within the South. Shaun McVeigh has research interests in the fields of jurisprudence, health care, 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 legal inheritance of Australia and Britain.

**Professor Dianne Otto**  
Program Director, Feminist and Queer  
Approaches to International Law



Dianne Otto holds the Francine V. McNiff Chair in Human Rights Law. Her research interests include addressing gender, sexuality and race inequalities in the context of international human rights law, the UN Security Council's peace-keeping 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. She sat on the Expert Panel at the Asia-Pacific Regional Women's Hearing on Gender-Based Violence in Conflict held in Phnom Penh in 2012 and the Judicial Council of the Women's Court: Feminist Justice held in Sarajevo in 2015. Recent publications include "Feminist Approaches to International Law" in Florian Hoffman and Anne Orford (eds), *Oxford Handbook of International Legal Theory* (2016); "Queering Gender [Identity] in International Law" in *Nordic Journal of Human Rights* (2015); *Rethinking Peacekeeping, Gender Equality and Collective Security* (co-edited with Gina Heathcote 2014); and, *Gender Issues and Human Rights* (three edited volumes, Edward Elgar 2013). Dianne had the honour of being included in the Ai Weiwei artwork honouring Australian human rights advocates, which he created for the Andy Warhol/Ai Weiwei exhibition at the National Gallery Victoria 2015-2016.



**Dr James Parker**

Program Director, Law, Science,  
Technology and Society

James Parker's research focuses on the relations between law, sound and listening, with a particular emphasis on international criminal law, the law of war and privacy. In 2017, James' monograph *Acoustic Jurisprudence: Listening to the Trial of Simon Bikindi* (OUP 2015) was awarded the Penny Pether Prize (ECR) for scholarship in law, literature and the humanities. He has been a visiting fellow at the Program for Science, Technology and Society at the Harvard Kennedy School for Government, a faculty member at the Harvard Law School Institute for Global Law and Policy Workshop, and is an associate curator at Liquid Architecture, an Australian organisation for artists working with sound. His music and art criticism has appeared in publications such as *Tiny Mix Tapes*, *Frieze*, *Discipline*, *Sounding Out* and *Bloomsbury's How to Write About Music* (2015). More recently James was co-curator of *Eavesdropping*, a collaboration between Liquid Architecture and Melbourne Law School, comprising an exhibition, a public program, series of working groups and touring event which explores the politics of listening through work by leading artists, researchers, writers and activists from Australia and around the world. In 2018, *Eavesdropping* was staged at the Ian Potter Museum of Art in Melbourne. In 2019, it will be shown again at the City Gallery, Wellington, NZ.



**Professor Jacqueline Peel**

Program Director, International  
Environmental Law

Professor Jacqueline Peel is a leading, internationally-recognised expert in the field of environmental and climate change law. Her scholarship on these topics encompasses international, transnational and national dimensions, as well as interdisciplinary aspects of the law/science relationship in the environmental field and risk regulation. Professor Peel has been an active contributor to public policy formulation on climate change and environmental issues at the national and international level through her work on bodies such as the International Law Association's Committee on Legal Principles Relating to Climate Change, the International Bar Association's Working Group on a Model Statute for Climate Change Relief and the Australian Panel of Experts in Environmental Law. She has served on the Membership Committee of the American Society of International Law and as co-chair of its International Environmental Law interest group (2014-2017), and is currently a Council Member and Secretary of the Australia New Zealand Society of International Law. She is a member of the Editorial Board for *Climate Law*, the *European Journal of Risk Regulation* and the *Environmental and Planning Law Journal*. Professor Peel has received several prestigious awards such as a Fulbright Scholarship, NYU Hauser Scholarship and the Morrison Prize 2018 for her award-winning article with Dean Hari Osofsky (Penn State) on "Energy Partisanship". She is regularly invited to take part in expert panels at conferences and to deliver keynote addresses, such as the 2016 Mahla Pearlman Oration in Environmental Law. In 2017 she co-founded (with Dean Osofsky) the Women's Energy and Climate Law Network with the aim of fostering greater involvement of women in areas of energy and climate law-related scholarship and practice.



**Associate Professor Peter Rush**  
Program Director, Fragmentation and  
Regime Interaction in International Law  
Program Co-Director, Legal Biographies



Peter Rush came to the Law Faculty at the University of Melbourne in 1999. He has been a youthworker, an artist, a filmmaker and a scholar. Since 1988, he has taught in Law Faculties and Criminology Departments in Australia and in England. Courses taught have included criminal law, jurisprudence, legal discourse, gender and law, evidence, legal history and legal method, law and the body, law and criminal justice. In 2004/2005, he was a Karl Loewenstein Fellow in Political Science at Amherst College (USA). He is the author of several books on criminal law and edited collections on jurisprudence and poststructuralist legal theory. A longstanding member of the critical legal studies movement in the United Kingdom, he was coordinator of its national conference and a founding member of the interdisciplinary legal theory journal *Law & Critique*. Additionally, he has been invited to present papers and lectures at institutions in the United States and Canada, such as Amherst College, Carleton University, and New York University. In Australia, he 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. He contributes to community and professional debate concerning law reform, particularly in relation to both the law of sexual offences and the criminal law of HIV transmission. In 2000, he made a short documentary film concerning justice, aesthetics and colonialism in the city of Melbourne.

**Professor John Tobin**  
Program Co-Director,  
International Human Rights Law



John Tobin is a Professor in the Melbourne Law School at the University of Melbourne. He has a combined commerce/law degree with honours and a PhD from the University of Melbourne. He also has an LLM with distinction from the University of London. He has designed and taught several subjects in areas of international law, human rights, children's rights and public interest lawyering. He also coordinates the legal internship subject across the LLB, JD and Masters programs in the Melbourne Law School and coordinates the MLS Human Rights Alumni Network. In 2010 he was awarded the Barbara Falk Award for Teaching Excellence by the University of Melbourne and in 2011 he was awarded a national citation for outstanding contribution to student learning in the area of human rights. In 2006 he was a Visiting Professor at both the American Academy of Human Rights and Humanitarian Law, Washington College of Law, American University and in the Law School at New York University. In 2011 he was the Senior Scholar in Residence at the Center for Human Rights and Global Justice at NYU Law School.





**Associate Professor Margaret Young**  
Program 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. 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; and the editor of *Regime Interaction in International Law: Facing Fragmentation* (Cambridge University Press, 2012), which includes contributions from leading international, comparative and constitutional law scholars. A former Gates Scholar, she is currently working on a book on forests and climate change. Margaret Young joined Melbourne Law School in 2009. She was previously the William Charnley Research Fellow in Public International Law at Pembroke College and the Lauterpacht Centre for International Law, University of Cambridge, where she also lectured in Cambridge's LLM course on World Trade Organization (WTO) law. She has previously worked at the WTO (Appellate Body Secretariat) and the United Nations International Law Commission, was a former associate to the Chief Justice of the Federal Court of Australia and has practised as a solicitor at a major Australian national law firm. Margaret holds a PhD and an LLM from the University of Cambridge and a BA/LLB (Hons) from the University of Melbourne and has been a Visiting Scholar at Columbia Law School, and serves as an expert for the E15 Initiative convened by the International Centre for Trade and Sustainable Development and the World Economic Forum.



**Professor Anne Orford**  
Director Emeritus, IILAH

Anne Orford is Redmond Barry Distinguished Professor and Michael D Kirby Chair of International Law at Melbourne Law School and was the founding Director of IILAH. Her scholarship combines study of the historical and theoretical foundations of international law, analysis of developments in international legal doctrines and practice, and an engagement with central debates and concepts in related fields, in order to provide a clearer understanding of the role of international law in contemporary politics. Anne has been awarded an ARC Kathleen Fitzpatrick Laureate Fellowship and directs the Laureate Program in International Law at Melbourne Law School. She holds the Raoul Wallenberg Visiting Chair in International Human Rights and Humanitarian Law at Lund University, and has held numerous other visiting positions, including the Hedda Andersson Visiting Research Chair at Lund University, Visiting Professor at the Sorbonne Law School, Torgny Segerstedt Visiting Professor at the University of Gothenburg, and Senior Emile Noël Research Fellow at NYU Law School. She is a past President of the Australian and New Zealand Society of International Law, and has been awarded honorary doctorates of laws by Lund University and the University of Gothenburg, and the 2013 Woodward Medal for Excellence in Humanities and Social Sciences by the University of Melbourne. She was awarded an honorary doctorate of laws by the University of Helsinki in May 2017.

# Research Fellows

**Dr Kathleen Birrell**  
McKenzie Postdoctoral Fellow



Dr Kathleen Birrell is a McKenzie Postdoctoral Fellow at Melbourne Law School. Her research is strongly interdisciplinary, encompassing property law, native title, environmental and climate change law, human rights law and intersections between Indigenous peoples and the law, as well as critical legal theory, philosophy of law, sociolegal studies and law and literature. It engages with critical approaches to native title; comparative work on Indigenous and non-Indigenous approaches to property and environment, focusing on Indigenous ontologies and epistemologies; Indigenous rights at international law, including climate justice; and Indigenous and local community engagement in climate change mitigation and abatement activities. Her postdoctoral project investigates intersections between the global imperatives of international climate change initiatives and associated legal frameworks and their domestic implementation, international human rights, and the narratives of Indigenous communities. This research critically compares global and local ‘narratives’ of climate change and imagines the impact of climate change transitions for local and Indigenous communities. Following various philosophical and critical legal perspectives, her recently published book, *Indigeneity: Before and Beyond the Law* (Routledge, 2016), examines contested notions of indigeneity, the troubled juxtaposition of law and justice in the context of Indigenous legal claims and literary expressions, the contested history and jurisprudence of native title, international and national discourses of rights and recognition, postcolonialism and resistance in ‘settler’ nation states, and the mutually constitutive relation between law and literature.

**Dr Shane Chalmers**  
McKenzie Postdoctoral Fellow



Shane joined the Melbourne Law School in 2018 as a McKenzie Research Fellow. Before that he was a Teaching Fellow in the Melbourne JD (2017), an Australian Endeavour Research Fellow at the Oñati International Institute for the Sociology of Law (2016), and a doctoral scholar at the Australian National University (2012-2016). Shane works at the intersection of law and cultural studies, crossing disciplines in the humanities and social sciences, including philosophy, history, literary and visual studies, and sociology. His published research has contributed knowledge of the rule of law, legal pluralism, law and development, property theory, international law and human rights, aesthetic studies of law (literary and visual), and the philosophy of law. Central to all of his research, and teaching, is a concern with imperialism and social justice. Shane has published widely in leading international journals, including *Law, Culture and the Humanities*, *Law and Critique*, *Law & Social Inquiry*, *Social & Legal Studies*, *Humanity*, and *Law & Literature*. He is author of *Liberia and the Dialectic of Law: Critical Theory, Pluralism, and the Rule of Law* (Routledge, 2018) and co-editor of the forthcoming Routledge Handbook of International Law and the Humanities.



**Dr Rosemary Grey**  
MLS Postdoctoral Fellow

Dr Rosemary Grey was a Postdoctoral Fellow at Melbourne Law School (2016 - 2018). Her research focuses on gender issues in international criminal law, particularly the evolving law and practice regarding the prosecution of sexual and gender-based crimes. In June 2016, Rosemary joined Melbourne Law School to commence a two-year postdoctoral research project titled 'Prosecuting Gender Crimes at the International Criminal Court'. Informed by feminist critiques of international law, this project aims to identify and challenge gender discrimination in the interpretation of crimes within the jurisdiction of the ICC. In June 2017, she will deliver the International Criminal Justice Clinic at Melbourne Law School in partnership with Amnesty International.

Prior to coming to Melbourne Law School, Rosemary completed her PhD at the University of New South Wales (UNSW). Her PhD thesis, titled 'Prosecuting sexual and gender violence crimes in the International Criminal Court: Historical legacies and new opportunities', presented an in-depth study of all cases before the ICC from 2002-2014. While completing her PhD, Rosemary also lectured in international criminal law and other core subjects at UNSW Law. She also worked and volunteered with a number of Hague-based organisations including Women's Initiatives for Gender Justice, the International Bar Association, and the International Criminal Court. Dr Grey is now a Postdoctoral Fellow at the University of Sydney.



**Balawyn Jones**  
IILAH Fellow

Balawyn Jones is a PhD Candidate at the Asian Law Centre and Centre for Indonesian Law, Islam and Society, Melbourne Law School. She researches across the fields of Indonesian law and human rights, in particular with respect to gender, religion and law. She has an interest in the protection of women's rights in developing jurisdictions and her doctoral thesis examines criminal justice responses to domestic violence. She also currently holds the positions of Research Fellow at the Institute for International Law and Humanities and Teaching Fellow (Human Rights and Global Justice). Balawyn holds a Bachelor of Laws (Honours Class I) and Bachelor of Arts (extended Geography major) from the University of Queensland. Prior to joining Melbourne Law School, she worked as an Associate to the Federal Court and as the pro bono Legal Clinic Coordinator at Strategic Advocacy Human Rights (NGO). In the latter role, she supervised the development of strategic advocacy guides to argue defences against murder for battered women in domestic violence contexts in Afghanistan. She has also been involved in research projects on the death penalty in Papua New Guinea and jury reform in Tonga.

**Dr Adil Hasan Khan**  
McKenzie Postdoctoral Fellow



Adil Hasan Khan is currently a McKenzie Fellow at the Melbourne Law School. He completed his PhD in International Studies, with a specialisation in International Law and a minor in Anthropology and Sociology of Development, at the Graduate Institute of International and Development Studies (IHEID) in Geneva. His doctoral dissertation, titled *Inheriting Persona: Narrating the Conduct of Third World International Lawyers*, narrates the conduct of two generations of Third World international lawyers in their struggles to reimagine, re-found, and alternatively authorize international law, and identifies the defining struggle of the Third World in international law as being over temporal transmissions or inheritance. He was a Residential Institute Fellow at the Institute for Global Law and Policy (IGLP), Harvard Law School during 2016–2017. He obtained a B.A.L.L.B. (Hons.) from the National Law Institute University (NLIU) in Bhopal.

**Dr Rose Parfitt**  
ARC Discovery Early Career Researcher



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 concerns 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*. Dr Rose Parfitt left Melbourne Law School at the end of 2018 to take on the position of Lecturer at Kent Law School, UK.

# MEMBERS

**Dr Anna Arstein-Kerslake**



Dr Anna Arstein-Kerslake is an academic at Melbourne Law School where she developed, and leads, the Disability Human Rights Clinic (DHRC). From 2014-2017, she was the Academic Convenor of the Disability Research Initiative (DRI) at the University of Melbourne and she is now an Establishment Committee Member of the Melbourne Disability Institute. Prior to joining the University of Melbourne, she held a Marie Curie Research Fellowship at the Centre for Disability Law and Policy (CDLP) at (NUIG). Her work on the right to equal recognition before the law has been published widely, including her 2017 book, *Restoring Voice to People*, published by Cambridge University Press. She was a Chief Investigator on the Unfitness to Plead project, funded by the Australian Government, which is applied a human rights framework to investigate the problem of indefinite detention of people with cognitive disability as a result of unfitness to plead findings. She has also received several grants for the development of the international Disability Human Rights Research Network (DHRRN), which she founded in 2015 and spans Europe, India, the USA, and Australia. She has led several other small and larger scale research projects as well as law and policy reform projects. Notably, she provided support to the United Nations Committee on the Rights of Persons with Disabilities on a general comment on the right to equal recognition before the law. She has also participated widely in consultation with governments and other bodies, including: the United Kingdom Ministry of Justice, the Irish Ministry of Justice, Amnesty Ireland, Interights, and the Mental Disability Advocacy Center, among others.

**Professor Alison Duxbury**



Alison Duxbury is a Professor at Melbourne Law School and an Associate Director of the Asia Pacific Centre for Military Law. She is also the Chair of the International Advisory Commission of the Commonwealth Human Rights Initiative, a non-governmental organisation with offices in Delhi, Accra and London. Alison is a member of the Council of the Australian and New Zealand Society of International Law, the Executive Council of the Asian Society of International Law and the Board of Directors of the International Society for Military Law and the Law of War. Alison is a former Associate Dean of Melbourne's JD degree. She has been a Visiting Fellow at the Lauterpacht Centre for International Law in Cambridge, the Centre for Comparative and Public Law at the University of Hong Kong, the Oxford Institute for Ethics, Law and Armed Conflict and the Institute of Commonwealth Studies in London. Alison is the recipient of a Melbourne Teaching Citation, the Barbara Falk Award for Teaching Excellence and a National Citation for Outstanding Contributions to Student Learning. Her publications include *The Participation of States in International Organisations: The Role of Human Rights and Democracy* (Cambridge, 2011), a co-edited collection, *Military Justice in the Modern Age* (Cambridge, 2016), and a co-authored book, *Can ASEAN Take Human Rights Seriously?* (Cambridge, 2019).





**Professor Michelle Foster**

Michelle Foster is a Professor and the inaugural Director of the Peter McMullin Centre on Statelessness at Melbourne Law School. Michelle teaches Refugee Law and International Refugee Law at Melbourne Law School, and in 2017 taught in the International Summer School in Forced Migration at Oxford's Refugee Studies Centre. She will direct the inaugural Statelessness Intensive Course at Melbourne Law School in February 2019. Michelle has undertaken consultancy work for the United Nations High Commissioner for Refugees, and training of refugee tribunal members in New Zealand and Australia. She is Editor in Chief (with Laura van Waas) of the Statelessness and Citizenship Review. Michelle is also an Advisory Board Member of the Melbourne Journal of International Law, an Associate Member of the International Association of Refugee and Migration Law Judges, and joint case editor (with Professor H  l  ne Lambert) of the International Journal of Refugee Law. She is also a Board member of AMES Australia. Michelle has LLM and SJD degrees from the University of Michigan Law School, where she was a Michigan Grotius Fellow. She also holds an LLB and BComm (Hons 1 and the University Medal) from the University of New South Wales. Prior to her graduate studies she worked for the Commonwealth Attorney-General's Department, as Research Director for the Hon AM Gleeson AC (then Chief Justice of NSW) and Legal Research Officer in the Chambers of the NSW Solicitor-General and Crown Advocate.



Professor Raimond Gaita

Raimond Gaita is Professorial Fellow in the 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: *Good and Evil: An Absolute Conception* (1991), the award winning *Romulus, My Father* (1999), which was nominated by the *New Statesman* as one of the best books of 1999, by the *Australian Financial Review* as one of the best book of the decade and was made into a feature film starring Eric Bana, Frank Potente and Kodi Smit-McPhee; *A Common Humanity: Thinking About Love & Truth & Justice* (2000), which was nominated by *The Economist's* as one of best books of 2000; *The Philosopher's Dog*, which was short-listed for the New South Wales Premier's Award and The Age Book of the Year Award; *Breach of Trust: Truth, Morality and Politics* (2004); as editor and contributor of *Gaza: Morality Law and Politics* (2010); *Muslims and Multiculturalism* (2011); with Alex Miller and Alex Skovron, *Singing for All he's Worth: Essays in honour of J.G. Rosenberg* (2011); and *Who's Afraid of International Law* (edited with Gerry Simpson, 2017). Gaita has contributed extensively to public discussion about reconciliation, collective responsibility, the role of moral considerations in politics, the Holocaust, genocide, crimes against humanity, education (the nature of teaching as a vocation, the role of love in learning) and the plight of the universities.

### 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*.

### Professor Jurgen Kurtz



Jürgen researches and teaches in the various strands of international economic law including the jurisprudence of the World Trade Organization (WTO) and that of investor-state arbitral tribunals. He has a particular research interest in the impact of treaty-based disciplines on regulatory autonomy and development strategies. Jürgen has held research fellowships at the Jean Monnet Center for International and Regional Economic Law Justice at New York University Law School (as an Emile Noel Fellow), at the University of Michigan Law School (as Grotius Fellow), the Academy of International Law in The Hague and the European University Institute (as Fernand Braudel Senior Fellow) in Florence. In recent years, Jürgen has joined the Global Faculties of the Universidade Catolica in Portugal, the Centre for Transnational Legal Studies in London, Bocconi University in Milan, the University of Barcelona in Spain and the Singapore International Arbitration Academy at the National University of Singapore. Jürgen has acted as a party-nominated arbitrator in ICSID proceedings and as expert consultant to the World Bank, the European Union, the ASEAN Secretariat, UNDP and UNCTAD. He currently serves on the Executive Committee of the Society of International Economic Law and the editorial boards of the Journal of International Dispute Settlement and the Journal of World Investment and Trade. Jürgen Kurtz is currently on leave from Melbourne Law School to take up a position as Professor of International Economic Law at European University Institute.



**Associate Professor Wendy Larcombe**

Dr Wendy Larcombe joined the Law Faculty as a Senior Lecturer in January 2006. In addition to teaching Legal Theory, Legal Method and Reasoning and Legal Research in the JD, Wendy conducts research in the fields of law, gender and sexuality, and legal education. She has particular research interests in issues of subjectivity, autonomy and consent in the regulation of sexual/domestic violence and health care. In the field of legal education, her research concentrates on issues of student engagement, wellbeing and access and equity.



**Professor Andrew Mitchell**

Andrew is Professor at Melbourne Law School, Director of the Global Economic Law Network, Director of Studies (International Economic Law) in the Melbourne Law Masters, and a member of the Indicative List of Panelists to hear WTO disputes. He has previously practised law with Allens Arthur Robinson (now Allens Linklaters) and consults for States, international organisations and the private sector. Andrew has taught law in Australia, Canada, Indonesia, Singapore, and the US and is the recipient of four major grants from the Australian Research Council (including a Future Fellowship) and the Australian National Preventive Health Agency. He has published over 140 academic books and journal articles and is a Series Editor of the Oxford University Press International Economic Law Series, an Editorial Board Member of the Journal of International Economic Law and a General Editor of the Journal of International Dispute Settlement. He has law degrees from Melbourne, Harvard and Cambridge and is a Barrister and Solicitor of the Supreme Court of Victoria.

**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.

**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.



**Dr Cait Storr**

Cait Storr (BA (Hons), JD, GDLP, PhD) is a Lecturer in Property and Legal Theory. Her current research focuses on the historical intersections of the private law of property and the public international law of territory, particularly in postcolonial states. Her doctoral thesis, 'Nauru: International Status, Imperial Form and the Histories of International Law', won the Melbourne Law School Harold Luntz Graduate Research Prize and the University of Melbourne Chancellor's Prize, and will be published with Cambridge University Press in 2019. Prior to commencing PhD studies, Cait was a solicitor with Freehills (now Herbert Smith Freehills), acted as legal adviser to the Parliament of Nauru, and worked in Victorian Indigenous affairs, including with Ombudsman Victoria, the Department of Justice, and with Aboriginal Affairs Victoria. In 2016, she was appointed as the inaugural Research Fellow with the Institute of International Law and the Humanities; and in 2017, as a Melbourne Early Career Academic Fellow.



**Associate Professor Joo-Cheong Tham**

Joo-Cheong Tham is an Associate Professor at Melbourne Law School and has taught at the law schools of Victoria University and La Trobe University. His research spans the fields of labour law and public law with a focus on law and democracy; and the regulation of precarious work. He has also undertaken considerable research into counter-terrorism laws. He has published more than 40 refereed articles and book chapters, edited two collections and produced three monographs. His research has also been published in print and online media with Joo-Cheong having published more than 50 opinion pieces including in The Age, Australian Financial Review, The Guardian, Herald Sun and Sydney Morning Herald. Joo-Cheong regularly speaks at public forums and has presented lectures at the Commonwealth, South Australian and Victorian Parliaments. He has also given evidence to parliamentary inquiries into labour migration, terrorism laws and political finance laws; and has written key reports for the New South Wales Electoral Commission on the regulation of political finance and lobbying. In 2012, Joo-Cheong became the inaugural Director of the Electoral Regulation Research Network. The Network - an initiative sponsored by the New South Wales Electoral Commission, Victorian Electoral Commission and the Melbourne Law School - aims to foster exchange and discussion amongst academics, electoral commissions and other interested groups on research relating to electoral regulation.



### **Professor Tania Voon**



Tania Voon is Professor at Melbourne Law School, The University of Melbourne. She is a former Legal Officer of the Appellate Body Secretariat of the World Trade Organization (WTO) and has previously practised law with Mallesons Stephen Jaques and the Australian Government Solicitor. In addition to her current role, Tania has taught law at the National University of Singapore, Georgetown University, the University of British Columbia, the University of Western Ontario, the Australian National University, Monash University, and Bond University. Tania undertook her Master of Laws at Harvard Law School and her PhD in Law at the University of Cambridge. Tania is a member of the Indicative List of Governmental and Non-Governmental Panelists for resolving WTO disputes and the Roster of Panellists to assist in the resolution of trade disputes between parties to the Energy Charter Treaty. She has provided expert advice and training to entities such as the Australian Department of Foreign Affairs and Trade, the WTO, the World Health Organization, the United Nations Conference on Trade and Development, Telstra, and the McCabe Centre for Law and Cancer. In recent years she has been Senior Emile Noël Fellow at the Jean Monnet Center for International and Regional Economic Law & Justice at New York University School of Law (2014), Visiting Fellow at PluriCourts at the University of Oslo (2015), Visiting Fellow at the University of Cambridge (Lauterpacht Centre for International Law, Faculty of Law, and Clare Hall) (2016) and Scholar in Residence at WilmerHale's arbitration group in London (2016).

### **Associate Professor Amanda Whiting**



Dr Amanda Whiting is Associate Director (Malaysia) of the Asian Law Centre. She has been a member of the Centre since 1999, and she joined the School of Law as a Lecturer in 2004. She has been involved with the Australian Journal of Asian Law since its inaugural issue in 1999 and has been an editor since 2002. Her research is principally in the area of Malaysian legal and political history; human rights institutions and practices in the Asia-Pacific Region; and the intersection of gender, society, religion and the law (with particular reference to Malaysia). She is the author of scholarly articles, book chapters and media commentary about Malaysian law, society and history, dealing with the history and current struggles of the legal profession; human rights institutions and practices; the uncomfortable fit of women's rights, human rights and development; and the colliding and conflicting understandings of secular and religious law. Between 2009-2012, Amanda was the recipient of an Australian Research Council Post-doctoral Fellowship for the project "Lawyers, Civil Society and the State in Post-colonial Malaysia". Arising from that research she is currently writing a history of the legal profession in Malaysia, focusing on its role as defender of the rule of law.

# 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.

### **Nina Araneta-Alana**

Thesis: *Climate Finance in the Philippines: Investigating the Interplay of Legal Issues, Actors and Power Structures*

Supervisors: Margaret Young

The thesis aims to study the evolution of climate finance in the Philippines alongside the global emergence of this concept, establish the regulatory framework, and identify the current legal issues. Thereafter, the thesis will delve into the idea of increased participation of the private sector in climate financing. It will interrogate the interplay of public and private interests as well as the underlying power relationships in this phenomenon.

## **Renuka Balasubramaniam**

Thesis: *Supplementing Gaps in Social Protections Within the Malaysian Palm Oil Industry: A Role for Business?*

Supervisors: Amanda Whiting and Jennifer Beard

The Malaysian palm oil industry, despite being a critical driver of the state's economic growth is lightly regulated. Under-regulation contributes to deficient identification and alleviation of the harms caused by the industry. As in other former post-colonial states, the unintended outcome is that the interests of the subaltern or underclass communities as well as of the environment are subordinated to structural biases within dominant institutions. My thesis aims to evaluate the deficiencies of international law and transnational private regulation frameworks presently governing the industry and considers the extent to which domestic regulatory governance is potentially ameliorative.

## **Bernice Carrick**

Thesis: *Migration Status Equality in the Midst of the Border*

Supervisors: Jenny Beard and Beth Gaze

Worldwide 232 million people, or 3.2 per cent of the world's population, live outside their country of nationality. Although, in general, international human rights norms apply to such people, in practice, they are heavily and increasingly impacted by the recognition of state sovereignty over migration. My research aims to understand the rationales behind the distribution of equality and non-discrimination protections among residents of varying migration statuses in jurisdictions that employ parliamentary models of human rights protection. In the process it examines how equality and citizenship are understood in the law of each place, and investigates how jurisdictional disputes between the migration and equality law spheres are managed. This lays the ground for re-conceptualising the relationship between those spheres, with a view to ensuring the ongoing relevance and effectiveness of equality protections in the face of migration stratification.

## **Emily Cheeseman**

Thesis: *Bringing street children's rights to life: Non-government organisations (NGOs) in the Philippines*

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.

## **André Dao**

Thesis: *Human Rights for an Algorithmic Society?*

Supervisors: Sundhya Pahuja and Hilary Charlesworth

Overwhelmingly, scholars frame the connection between digital technologies - like artificial intelligence, machine learning, and the internet - and human rights as a question of what is to be done about technology. That is, the dominant frame assumes that the proper starting point of enquiry is to ask how human rights law can better regulate digital technologies. An ancillary frame, largely taken up by human rights practitioners and agencies, is to ask what digital technologies can do for human rights. The starting point here is to ask how digital technologies can help achieve the goals of human rights law.

Yet in accepting those frames, both scholars and practitioners make a series of assumptions: about law and technology as distinct objects of inquiry, about the normative desirability of human rights law and the normative neutrality of technology, and about the nature of the global society as the field upon which human rights law and digital technologies are to meet and interact. These assumptions, in turn, tend to obscure and even undermine the shared normative concern motivating scholars and practitioners in this area: to secure a just human future.

In contrast to the dominant frames, this project takes as its starting point the question of how we are to understand the relationships between human rights law and digital technologies, specifically, digital data. The thesis will examine this question in the context of the activities of the UN and its corporate partners, with a focus both on how these actors construct the relationship between digital data and human rights, and on what the relationship looks like when we look beyond that construction to the actual operation of the technologies in question. This approach allows for an examination of what conduct or action the various relationships (both as constructed and as actualised) between digital data and human rights make possible.

### **Debolina Dutta**

Thesis: *Activist Stories of Law: Adda with Sexworkers and Academics in Postcolonial India*

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.

### **Christopher Gevers**

Thesis: *African States' engagement with International Law: a theoretical exposition*

Supervisors: Anne Orford and Gerry Simpson (external)

Christopher's thesis is an intellectual history of Pan-Africanism and international law, from 1900 to 1963. It tells the story of the Pan-Africanist who sought to radically re-imagine the international order through their political writings, fiction and public activism. Through these alternative internationalisms, these intellectuals contested the orthodox accounts of the international legal order, then and now, by: (i) conceptualizing Global White Supremacy as a constitutive feature thereof, (ii) deconstructing its Eurocentric historiography, and (iii) unsettling and re-orienting its 'imaginative geography'.

### **Ingrid Landau**

Thesis: *Risks, Rights and Regulatory Efficacy: Can Human Rights Due Diligence Help Protect and Promote Rights at Work?*

Supervisors: John Howe and John Tobin

Ingrid's research explores the conceptual and practical implications of human rights due diligence for the promotion and protection of workers' rights. In doing so, the research aims to contribute to an understanding of how best to design and implement adequate human rights due diligence, and regulatory initiatives to support and promote such processes, with respect to workers' rights. It is hoped the research will contribute to understanding the nature, limits and implications of ongoing efforts to frame workers' rights as human rights.

### **Andrea Leiter**

Thesis: *International Investment Law - The making of a legal field*

Supervisors: Sundhya Pahuja and Hilary Charlesworth

Andrea's thesis studies the making of the field of international investment law over the course of the 20th century. The overall concern of the thesis is the constitution of investment law as a field of law and the consequent shift of authority to order the property relations between foreign investors and states. By tracing the practices at work and embedding them in their context, Andrea points to the boundaries of the legal field, uncovering the violent processes of exclusion that characterize the constitution of the field. In order to approach this question, Andrea revisits moments in the history of international investment law that have profoundly shaped its character.

## **Tim Lindgren**

Thesis: *Beyond the Universality of International Law: Jurisprudences, Ruptures and Futures from the Peripheries*

Supervisors: Sundhya Pahuja and Shaun McVeigh

This doctoral project examines the relationship between peoples' tribunals and international law, considering what it means to enact and perform resistance through peoples' tribunals as a legal form. Peoples' tribunals are often imagined as political spaces where an already determined international law is engaged, rather than spaces of law in themselves. This thesis, however, thinks through and with the intuition of peoples' tribunals as spaces of law. Pushing back against the story of the international law of nation-states as the only 'international' and 'law' there is, it attends and takes serious the jurisdictions and institutions that peoples' tribunals bring into being. The analysis centres upon three tribunal moments in the history of tribunals: The Russell Tribunal (1967), the Permanent Peoples' Tribunal (1988-1994) and the International Rights of Nature Tribunal (2015-2019). Drawing on jurisdictional thinking, histories of international law and development, and postcolonial and decolonial theories, it examines peoples' tribunals as scenes of rivalry internationals and laws in themselves. It attends the form that these tribunals take and the forms of law that are spoken in these tribunals. Thinking about what resistance through tribunals does to international law and what forms of resistance are possible through tribunals, it imagines peoples' tribunals as sites of struggle over what 'lawful' worlds we may inhabit.

## **Odette Mazel**

Thesis: *Can the master's tools dismantle the master's house? Queer perspectives on law, difference, and radicalism after marriage equality in Australia*

Supervisors: Ann Genovese and Elizabeth Gaze

Whilst the legalisation of same-sex marriage has been widely celebrated in Australia, it has also brought to the surface tensions for some LGBTIQ+ activists and queer theorists who see this legal achievement as a form of assimilation to a heteronormative ideal, rather than an expression of the right to be different. Taking a queer theoretical approach, and drawing on feminist and critical race scholarship, this project investigates the tensions involved in navigating the impulse toward equal rights and advocating social change, whilst keeping true to a more radical queer imaginary. Can the legal and marital institutions, deeply set with white, patriarchal privilege and homophobic histories provide us the tools with which to carve our future? Through an empirical examination that engages members of the LGBTIQ+ community, I am exploring how, why and when LGBTIQ+ people have worked with or without the law to bring about change, if and how the legal system has responded, and what the impacts or the implications of these approaches are. How do we navigate the entanglements of pragmatic practices and emancipatory ideals, and what does this tell us about the current relationship between law, praxis and the lived experience of LGBTIQ+ people in Australia at this point in time?

## **Juliette McIntyre**

Thesis: *Procedures of the International Court: Theory, Function and Practice*

Supervisors: Hilary Charlesworth and Margaret Young

This thesis asks the question "what do theories of adjudication and civil procedure tell us about how the Court should manage its procedures?" It will consider the extent to which underlying rationales regarding the role of pleading, access to justice, efficiency, and case management which inform civil procedure reform in domestic courts may be applicable to the International Court.

## **Claerwen O'Hara**

Thesis: *Queering Consensus in International Law*

Supervisors: Hilary Charlesworth and Sundhya Pahuja

Claerwen's doctoral project examines how the concept of 'consensus' operates in international human rights law—in areas such as consensus decision-making in international human rights organisations, the use of 'European consensus' by the European Court of Human Rights as an interpretive method, and customary international law. Using the case study of sexuality and gender, it explores the ways in which legal approaches based on the concept of 'consensus' can reinforce power relations, marginalise particular groups and experiences, and stifle dissent.



## **Alice Palmer**

Thesis: *Aesthetics of Image in International Environmental Law*

Supervisors: Lee Godden and Shaun McVeigh

This thesis seeks to reveal how concepts associated with the humanities inform determinations of 'outstanding universal' aesthetic value of natural heritage under the World Heritage Convention. Language derived from humanistic ideas of beauty, the sublime and the picturesque, together with a range of images, are used in World Heritage deliberations to describe nature from, in the words of the treaty, 'an aesthetic point of view'. The World Heritage Committee is, however, uncritical in its use of aesthetic methods, beholden to a concept of nature informed largely by European Romanticism. Contemporary humanistic approaches such as eco-criticism, providing a complex account of the aesthetic value in nature, are absent. The deliberate use of such contemporary humanistic methods and images to judge environmental aesthetics would facilitate critical inquiry without falling foul of the international legal principles that govern decisions of international bodies made under treaties.

## **Laura Petersen**

Thesis: *Law and Aesthetics after the Holocaust: Gestures of Justice and Restitution*

Supervisors: Peter Rush and Shaun McVeigh

Laura's 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, the thesis examines the legal, memorial and aesthetic processes involved in coming to terms with atrocity.

## **William Phillips**

Thesis: *The Why and Wherefore of Human Rights: Examining the grounding relations of human rights*

Supervisors: Hilary Charlesworth and Dale Smith

Human rights are frequently invoked to describe the types of wrongs that we find most objectionable. But do human rights do any more than this? Are they any more than rhetorical flourishes? In the face of the slaughter of civilians in Syria, the torture of suspected terrorists after 9/11, and other daily breaches of human rights, many theorists wonder whether human rights really exist at all. My thesis examines existing philosophical accounts of human rights and asks whether they can adequately defend a conception of human rights as rights properly so called. It looks at the existence conditions for human rights.

## **Robi Rado**

Thesis: *Trading in People and Trading in Services: The Political Economy of Indians' International Labour Mobility, the Development Project and International Law*

Supervisors: Sundhya Pahuja and Jurgen Kurtz

International law increasingly governs whether, and the manner in which, people may move to other countries to work. This regulation is often justified on the basis of claims about the link between migration and the development project. Using a case study concerning workers from India, Rabi's thesis will seek to develop a better understanding of the legal regimes governing international labour mobility, and of the relationship between those regimes and the development project. The thesis aims to elaborate the political economy of those regimes, and to unpack the assumptions underpinning, and interests driving, the expansion of international law and governance in this area.

## **Anna Saunders**

Thesis: *Enemy States and the United Nations: A Legal and Political History*

Supervisors: Anne Orford and Hilary Charlesworth

The enemy states clauses are an often-forgotten aspect of the origins of the United Nations. The thesis will redescribe those origins through examining the negotiations, practices of implementation, and subsequent erasure of the enemy state concept. The enemy states clauses in the Charter of the United Nations provided for a transitional period during which the major powers were allocated responsibility for the occupation and demilitarisation of Germany and Japan,

the detachment and administration of enemy state territory, and the conclusion of peace agreements. The thesis aims to critically assess the legacy of this formative period for the postwar international legal order, informing contemporary debates on international law's role in maintaining peace and security.

### **Oishik Sircar**

Thesis: *Ways of remembering: law, cinema and collective memory in the 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.

### **Ana Maria Palacio Valencia**

Thesis: *The Pacific Alliance: Assessing the Institutional Framework and Designing Reforms for Long-Term Consolidation*

Supervisors: Tania Voon and Andrew Mitchell

Ana María's doctoral thesis focuses on the Pacific Alliance (PA), a regional integration mechanism comprising Chile, Colombia, Mexico and Peru. The thesis examines the institutional framework, ideological underpinnings and the institutional practices developing within the PA to assess the current model of governance and its suitability in supporting the aim for deeper integration. The thesis identifies shortfalls and provides insights on possible adjustments to the PA framework and foresees potential constraints for these changes to take place.

### **Valeria Vazquez Guevara**

Thesis: *Living Together with Law after Violent Conflict: Truth Commissions, Peacebuilding and Technologies of International Jurisdiction*

Supervisors: Sundhya Pahuja and Shaun McVeigh

The thesis aims to understand the relationship between truth commissions and law, and how this relationship informs the problem of 'living together with law after violent conflict'. Truth commissions are generally understood as 'non-judicial' or 'quasi-legal' devices. Against this, the thesis follows the intuition that truth commissions have a distinct legal form, which shapes what 'living together' might entail. The analysis focuses on four truth commissions: Uganda (1974), Argentina (1983), Chile (1990), and El Salvador (1992). To do this, this thesis draws on jurisprudence related to historical, prudential and aesthetic consideration of form. Paying close attention to these truth commissions, the thesis contributes a new way of understanding the form and practices of truth commissions as both legal and lawful, and their relationship to shaping how societies live together after violent conflict.

### **Kay Wilson**

Thesis: *The relationship between resources and human rights in mental health law, policy and practice*

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 in 2018

## **Tayechalem Girma Moges**

Thesis: *Developing a transformative human rights approach towards 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.

## **Hailegabriel Feyissa**

Thesis: *The Ethiopian civil code project: reading a 'landmark' legal transfer case differently*

Supervisors: Pip Nicholson and Jennifer Beard

This thesis responds to calls for the re-examination of the legal transfer project that sailed through radically different times – times that saw the emergence in Ethiopia of successive political regimes with their own ideologically-driven legal modernisation projects. It critiques and provides an alternative account to existing scholarship on the Ethiopian Civil Code project. It examines how contests over the nature of state and society relationships in Ethiopia (1890s-2010) have shaped the project.

# EVENTS and ENGAGEMENT

## Interdisciplinary Workshops

### 5 June 2018: IILAH – IGLP Workshop ‘Learning from Failure’

Organisers: Dr Deval Desai (IHEID), Mr Christopher Gevers (MLS & KwaZulu Natal) and Dr Adil Hasan Khan (MLS). Convenors: Associate Professor Shaun McVeigh (MLS) and Professor David Kennedy (HLS)

On the 5 June 2018, in collaboration with the Institute for Global Law and Policy (IGLP) at the Harvard Law School (HLS), IILAH co-organized a one day workshop, titled 'Learning From Failure', in Cambridge MA. The workshop, which brought together a group of legal scholars and theatre and performance studies scholars, sought to engage with the problem (and potential) of living with, responding to and taking up failure in our current historical moment by lawyers. It included two plenary panels, one which focused on thinking with the Office of the Jurist and responding to failure, led by Professor Shaun McVeigh (MLS) and Professor David Kennedy (HLS), and the other, which focused on a theatrical and performance orientated engagement with failure, led by Professor Rustom Bharucha (JNU) and Professor Sara Jane Bailes (Sussex).

The aim of the event was also to workshop four papers that will comprise a Special Issue of the London Journal of International Law on the topic of 'Learning From Failure', scheduled for early 2019. The authors of these papers included Professor Vasuki Nesiah (NYU), Professor Vidya Kumar (Leicester) and Professor Adam Sitze (Amherst). The workshop was jointly organised by Dr Deval Desai (IHEID), Mr Christopher Gevers (MLS & Univ. of KwaZulu Natal) and Dr Adil Hasan Khan (MLS).

### 25 – 26 June 2018: Art and Conflict: Investigating Cross-Disciplinary Methodologies Workshop

Conveners: Laura Petersen (MLS), Federica Caso (UQ), Shawna Lesseur (University of Connecticut) and Stacey Vorster (University of Amsterdam)

This early career workshop was part of an international cross-disciplinary project on the themes of art and conflict. The two-day workshop connected this research project on art and conflict with experts, artists and other researchers working on common themes.

**Led by Laura Petersen (University of Queensland, Australia) and Shawna Lesseur (University of Connecticut, United States of America)**

- Laura Petersen (University of Melbourne, Australia)
- Stacey Vorster (University of Amsterdam and University of the Witwatersrand, Netherlands and South Africa)

In addition to the four directors, there were seven guest speakers and fifteen participants who attended, coming from varied international, interstate and Victorian locations. The attendees were from diverse University disciplines (including art history, jurisprudence, international law, international relations, public health, gender studies and criminology). The workshop also specifically reached out to the non-University sector. Some of the participants were practicing artists (from around Australia) whilst others were curators, for instance from the Australian War Memorial. The workshop involved institutional cross-faculty partnerships with the Victorian College of the Arts and the Ian Potter Museum. Collaborative events were held at three different venues: Melbourne Law School, the Ian Potter Museum and VCA. The workshop was co-funded by Universitas 21 and IILAH.

#### Events held:

- Presentation and discussion of eight work-in-progress papers.
- A film screening of the documentary *Until They're Gone* (Dir. C. Lockett) and a Q & A session with Dr David P. Chandler (Emeritus Professor of History, Monash University) at the VCA.
- A roundtable discussion between:
  - Ms Kathryn Brimblecombe-Fox (Artist); Professor Paul Gough (Artist, Pro-VC and Vice President, College of Design and Social Context, RMIT) and Mr Ryan Johnston (former Head of Art at Australian War Memorial; Director, Buxton Contemporary).



- A specially-curated art exhibition at the Founders Gallery, VCA.
- An art exhibition and discussion at the Ian Potter Museum of Art with Dr Olivia Meehan (Ian Potter Museum).
- A discussion with Indigenous Scholar in Residence, Dr Christine Black (Melbourne Law School, University of Melbourne).
- An ILLAH Public Seminar "Art's Superpowers: Law and the Crimes of Justice" given by Prof Desmond Manderson (Australian National University).



*Researchers take in Professor Desmond Manderson's (ANU) keynote address, "Art's Superpowers: Law and the Crimes of Justice", Art and Conflict: Investigating Cross-Disciplinary Methodologies Workshop: 25 - 26 June 2018*

## Symposia

### 24 July – 28 October 2018: Eavesdropping Symposium

Curated by: Dr James Parker and Mr Joel Stern

Presented by: the Ian Potter Museum of Art, Liquid Architecture and the Institute for International Law and the Humanities

Eavesdropping is a unique collaboration between Liquid Architecture, Melbourne Law School and the Ian Potter Museum of Art, comprising an exhibition, a public program, series of working groups and touring event which explores the politics of listening through work by leading artists, researchers, writers and activists from Australia and around the world.

Eavesdropping used to be a crime. According to Blackstone, in his Commentaries on the Laws of England (1769): 'eavesdroppers, or such as listen under walls or windows, or the eaves of a house, to hearken after discourse, and thereupon to frame slanderous and mischievous tales, are a common nuisance and presentable at the court-leet.' 250 years later, eavesdropping isn't just legal, it's ubiquitous. What was once a minor public order offence has become one of the most important politico-legal problems of our time, as the Snowden revelations made abundantly clear. Eavesdropping: the ever-increasing access to, capture and control of our sonic worlds by state and corporate interests.

But eavesdropping isn't just about big data, surveillance and security. We all overhear. Listening itself is excessive. We cannot help but hear too much, more than we mean to. Eavesdropping, in this sense, is the condition – or the risk – of sociality per se, so that the question is not whether to eavesdrop, but the ethics and politics of doing so. This project pursues an expanded definition of eavesdropping; one that includes contemporary mechanisms for listening-in but also activist practices of listening back, that are concerned with malicious listenings but also the responsibilities of the earwitness.



The exhibition received very positive write-ups and reviews. Professor Norie Neumark, for Art and Australia, called it "an outstanding activist-driven exhibition", that was 'thoughtfully curated' and 'a provocative, timely, and compelling experience for audiences.' In *The Wire*, the world's foremost publication for experimental music and the sonic arts, Philip Brophy wrote that the exhibition demonstrated 'rare rigour in focusing on how the artistic and the political collide both within the gallery confines and outside in the real world.' And for Anusha Kenny in the *Alternative Law Journal*, the exhibition invited 'those from outside the art world - including those within the legal profession - to participate in these conversations and to reconsider viewing law as uncreative, but rather to see it as a dynamic social phenomenon deserving of considered, critical listening.' In addition to these and many other reviews and write ups (*The Monthly*, *The Australian*, *Art Asia Pacific*, *Art Guide*, *Un Magazine*, *Memo Review*), the program generated significant radio coverage, including interviews with the curators and several participating academics and artists on ABC Radio National, PBS, RRR and 3CR, and considerable engagement on social media.

On the strength of all this, the exhibition has since been extended at the invitation of the City Gallery of Wellington between 17 August and 17 November 2019. The exhibition has also attracted funding for the publication of a book to accompany the 2019 exhibition.



Sean Dockray, "Always Learning", 2018, mixed media. Image courtesy of the artist, taken at the Ian Potter Museum of Art. Photography by Christian Capurro.

## Research Seminars

### 21 February 2018: Writing Creative Non-Fiction in Law

#### Philippe Sands QC in Conversation with Professor Hilary Charlesworth (MLS)

In his award-winning book, *East West Street: On the Origins of Crimes Against Humanity and Genocide* (Alfred Knopf/Weidenfeld & Nicolson 2016), lawyer and writer Philippe Sands QC explores how personal lives and history are interwoven. The book is part historical detective story, part family history, and part legal thriller. It explores the connections between Sands' work on 'crimes against humanity' and 'genocide', the events that overwhelmed his family during the Second World War, and an untold story at the heart of the Nuremberg Trial. In this conversation, Philippe Sands discussed the various types of writing in which he engages (book, stage, film, radio); how this turn came about; its relationship with more traditional forms of scholarship and legal writing; and how creative non-fiction can illuminate the law. Event co-sponsored by APCML, IILAH and ARC Laureate Program in International Law.

## 7 March 2018: Global Lawmakers: International Organizations in the Crafting of World Markets

With: Professor Terrence Halliday (ANU)

Terence Halliday presented a seminar on his new book *Global Lawmakers: International Organizations in the Crafting of World Markets*. Global lawmaking by international organizations holds the potential for enormous influence over world trade and national economies. Its impact reaches to state lawmaking and commercial behavior, whether of giant multi-national corporations or micro, small and medium-sized businesses. Who makes that law and who benefits affects all states and all market players. In *Global Lawmakers* (Cambridge University Press 2017), Susan Block-Lieb and Terence Halliday offer the first extensive empirical study of commercial lawmaking within the United Nations. Based principally on an ethnography of global lawmaking over many years, the book shows who makes law for the world, how they make it, and who comes out ahead. Block-Lieb and Halliday investigated intensively three episodes of lawmaking between the late 1990s and 2012: transport of goods by sea, corporate bankruptcy and restructuring, and secured transactions as a stimulus for bank lending.



*Professor Hilary Charlesworth (MLS) and Philippe Sands QC - 21 February 2018*

## 21 March 2018: Between Mission and Market: International Organisations and the Private Sector

With: Professor Jan Klabbers (University of Helsinki)

In this seminar, Professor Jan Klabbers explored the tension that exists between the putative public mission of intergovernmental organizations and the ways in which they relate to the private sector. In particular, he discussed the various ways intergovernmental organizations can (and do) interact with the private sector, and place the growing (awareness of) private sector involvement against the background of the leading functionalist theory of the law of international organizations. Event co-hosted by IILAH and the Laureate Program in International Law

## 27 March 2018: How big is the problem of violence against women?

Professor Sally Engle Merry (NYU)

Until the 1970s, there was very little research on violence against women and scant information on its frequency and distribution by race, class, age, and other social characteristics. It was generally understood as a problem of the poor, caused by drinking and “life style”. As the social movement against rape and domestic violence developed in many parts of the world during the 1980s, statistics on the incidence of these problems were essential in order to show that this was a pervasive and significant problem. But the demand for numbers in order to justify activism has long confronted difficult problems of how to count violence against women. The challenges include what to consider violence, how to gather data, how to encourage women to talk about their experiences with violence, and how to persuade governments to invest resources in doing this research. Criminal justice data notoriously undercounts the problem, so that victimization surveys have become the optimum strategy. There are now efforts to construct surveys at the global level in order to assess the extent of the problem.



Yet global efforts confront all the above problems as well as the need to understand variations by factors such as race, poverty, disability, urban/rural residence, and age. This requires disaggregating data on the basis of intersectional categories. But what are the relevant categories and how much it will cost to add more? Moreover, the need to count incidents of violence against women contradicts the ability to understand these actions as deeply embedded in conceptions of kinship, marriage, gender, and violence as well as the trajectory of ongoing relationships. Instead, quantification means they are seen only as isolated incidents.

## **17 May 2018: Empire in Motion: Indirect Rule, International Law and Our Colonial Global Order**

With: Dr Luis Eslava (Kent Law School)

Between 1935 and 1937, the International Missionary Council conducted the Bantu Education Kinema Experiment. Undertaken with the financial support of the Carnegie Corporation and the Colonial Development Fund and in coordination with the British Colonial Office and the colonial governments of the British protectorates and mandates in Central and East Africa, the objective of the Bantu Experiment was the production of silent educational films to be screened to 'native' people via mobile cinemas. Embracing the emerging principle of 'indirect rule', the films sought to capture 'the native point of view' by resorting to an 'ethnographic sensitivity' in regards to local cultures, concerns and needs. In its intention to educate 'natives' from 'within', the films used local actors, their tone was overtly pedagogical and plots were intentionally formulaic. Luis argued in this talk that the Bantu Experiment is a telling moment through which to examine the nature of modern international administration as it was configured in the inter-war period, and, most importantly, there was mobility and multiple late imperial locations. Luis suggests that this mobility and multiplicity of locations is a feature that continues to characterize the workings of today's international order, and the key role that 'indirect rule' plays in its functioning.

## **22 May 2018: Learning from Kanawayandan D'aaki. Is There (Still Only One Law)?**

With: Professor Dayna Scott (Osgoode Hall Law School)

In August 2017, the community of Kitchenuhmaykoosib Inninuwug (KI), or the people of Big Trout lake, re-visited a dispute with a mining company, Platinex, that had culminated ten years earlier with the jailing of several community members who became known as the "KI 6". In the court proceedings on the contempt of court charges, community members described the key concept in the community legal tradition: the notion of Kanawayandan D'aaki, roughly translated as "keeping my land". In 2006, the notion that KI community members could be respectful towards Canadian law and still be compelled to act in accordance with duties under their own law, was not cognizable to colonial Canadian courts.

In the 10 years that have passed since the dispute with Platinex, the community has been engaged in an active process of articulating and recording "its own law". It has drafted a Declaration of Sovereignty, a Governance Framework, a Water Declaration and a Consultation Protocol. The question that the community put to us as university researchers last August was whether the process of writing down all of this law would assist them in any future encounters with the Canadian legal system in disputes over resource extraction. In this seminar, Dayna presented highlights from the transcripts from two days of workshops with the people of KI as we explored these questions, across generational lines, in "the language" (Anishinii, or Oji-Cree) and English, and our analysis of what it means going forward for remote communities facing resource pressures in Ontario's far north.

## **28 May 2018: Transforming the Work of Geopolitical Indications to Decolonize Political Ecologies of Racialized Labor (and Build Resilient Place-Based Livelihoods?)**

With: Professor Rosemary Coombe (York University)

Critical scholarship on geographical indications (GIs) has increasingly focused upon their role in fostering development in the Global South. Recent work has drawn welcome attention to issues of governance and sparked new debates about the role of the state in GI regulation. Rosemary argued that this new emphasis needs to be coupled with a greater focus upon local social relations of power and interlinked issues of social justice. Rather than see GI regimes as apolitical technical administrative frameworks, it was argued that they govern emerging public goods that should be forged to redress extant forms of social inequality and foster the inclusion of marginalized actors in commodity value chains. In many areas of the world, this will entail close attention to the historical specificities of colonial labor relations and their neocolonial legacies, which have entrenched conditions of racialized and gendered dispossession, particularly in plantation economies.

## **7 June 2019: Legalism and the Lathan High Court in Emergency** With: Dr Patrick Graham (University of New England)

This seminar considered the High Court's treatment of emergency powers cases during the Second World War. Patrick explored the role and meaning of legalism as an adjudicative technique with a particular focus on rulings against the government. He also considered the scope afforded by this style of judicial method – in the adjudication of the executive's wartime legal powers – to unearth constitutional values.

## **21 June 2018: Living Together with Law after Violent Conflict: Truth Commissions, Peacebuilding and Technologies of International Jurisdiction** With: Ms Valeria Vazquez Guevara (Melbourne Law School, PhD Candidate)

Valeria's thesis aims to understand the relationship between truth commissions and law, and how this relationship informs the problem of 'living together with law after violent conflict'. Truth commissions are generally understood as 'non-judicial' or 'quasi-legal' devices. Against this, the thesis follows the intuition that truth commissions have a distinct legal form, which shapes what 'living together' might entail. The guiding research questions are two-fold: 1) what are the legal forms of the truth commissions; and 2) how do those legal forms, and practices shape the ways of 'living together'.

Part 1 gives an account of the legal forms deployed and developed in truth commissions by drawing on jurisprudence related to historical, prudential and aesthetic consideration of form. Part 2 examines how the practices of truth commissions shape forms of living together with law after violent conflict. The analysis focuses on four truth commissions: Uganda (1974), Argentina (1983), Chile (1990), and El Salvador (1992). Paying close attention to these truth commissions, the thesis contributes a new way of understanding the legal form and legal practices of truth commissions, and their relationship to shaping how societies live together after violent conflict.

## **25 June 2018: Art's Superpowers: Law and the Crimes of Justice** With: Professor Desmond Manderson (ANU)

Tucked away on a back stairwell in the Supreme Court of Mexico is one of the most remarkable images of legal violence to grace any legal institution in the world. Rafael Cauduro's contemporary masterpiece is a profoundly moving indictment of law's complicity in grotesque and everyday acts of injustice. But Cauduro's work is not just a representation or a critique. It transforms the very genre of murals on which it draws. In the process it nourishes, not just in the artist but the viewer, vital aesthetic capacities and insights – superpowers which invite us all to transcend the status quo. This event was part of the Art and Conflict Workshop and co-hosted with VCA. In 2018, Professor Desmond Manderson delivered this presentation as part of the Art and Conflict Workshop: Investigating Cross-Disciplinary Methodologies.



*The organisers of the Art and Conflict Workshop: Shawna Lesseur, Laura Petersen, Federica Caso and Stacey Vorster, 25 - 26 June 2018*

## **14 August 2018: Role of the Elected Members on the Security Council: Key Players or Lane Ducks? An International Law Perspective**

With: Professor Nico Schrijver (Leiden University)

Apart from the five permanent powers (P-5), the Security Council consists of ten elected members (E-10). They serve a term of two years only and hence they are also called the non-permanent members. Furthermore, unlike the P-5 they are not vested with the right of veto. At the same time, the E-10 play an indispensable role in the decision-making process: the Security Council can only take decisions if least 9 members vote in favour, with none of the P-5 casting a veto. The E-10 represent five different regions of the world. Apart from an equitable geographical distribution, they are also elected in view of their contribution to the maintenance of international peace and security and the other purposes of the UN. Both Australia and the Netherlands have served five times on the Council since 1945.

While fully realizing that the E-10 never form a homogeneous group, it is pertinent to identify and explore their joint strengths. What role for the E-10 is foreseen by the Charter, and how has this role evolved in practice? What are their chances and opportunities to employ what is in the toolbox of the Security Council? Are there any particular 'niches' for the E-10 in the Security Council, such as, for example, taking initiatives on rule of law issues, engaging in conflict prevention and debating the potential effects of climate change on peace and security? Can they serve as agents of the international community and norm setters? The seminar also discussed the reform of the Security Council, in particular from the perspective of the E-10. Event co-hosted by IILAH and the Asia Pacific Centre for Military Law

## **16 August 2018: From Paris to Pittsburgh and Back? The Changing Role of Cities in the Global Climate Change Regime**

With: Professor Helmut Aust (Freie University of Berlin)

In recent years cities have asserted themselves as relevant actors in the global climate change regime. International law practice and scholarship has so far only partly embraced this development. The self-asserting move of cities on the global level has been accompanied by a rhetoric according to which states would have failed to live up to their responsibilities with respect to the fight against climate change. Instead, cities would be well-positioned to fill this governance gap, in particular through global networks such as ICLEI and C40. This seminar discussed how this narrative is affected by the entry into force of the Paris Agreement on Climate Change.

This was seen as a milestone for the global climate change regime. It is also evidence for a cautious embrace of the importance of cities and other subnational authorities in this field. Yet, new questions arise after the announcement of a US withdrawal from the Paris Agreement. This has generated more attention than ever for what cities and other subnational authorities can do in this field. At the same time, the struggle between the US federal executive and US cities is emblematic for a wider debate on the future of the international (legal) order: how will the balance between states as central actors of the international system on the one hand and an increasingly assertive league of cities and subnational authorities be struck?

## **23 August 2018: Litigating before the International Court of Justice**

With: Peter Tzeng (Associate, Foley Hoag LLP)

In this seminar, Peter Tzeng shared his experience working as a clerk to Judge Hisashi Owada at the International Court of Justice, and also representing States before the ICJ. In particular, he discussed the structure and operation of the Court behind the scenes, and how ICJ litigation teams are organized and function.

## **24 August 2018: The Case That Never Was: Al Bashir and the Great Unsaid**

With: Dr Mia Swart (Research Director, Democracy and Governance Unit – Human Sciences Research Council)

The 2009 arrest warrant issued by the International Criminal Court for the arrest of Sudanese President Omar Al Bashir for charges of genocide, crimes against humanity and war crimes had important implications for South Africa. The fact that South Africa failed to arrest Al Bashir when he visited South Africa in 2015 triggered litigation against the South African government. It was expected that the case would be taken on appeal to the Constitutional Court and that that Court would have the final word on the question of whether Al Bashir was protected by head of state immunity. The litigation path of the Al Bashir case however ended at the Supreme Court of Appeal.



The fact that the case never reached the Constitutional Court has important implications. It means that the Constitutional Court never had the opportunity to make authoritative pronouncements on South Africa's obligations under the Rome Statute and customary international law and meant that the Court could not resolve the question of whether sitting heads of state charged with international crimes are protected by immunity. This seminar examined the flaws in the SCA case and speculatively considered the arguments the Constitutional Court could have made in this regard. In highlighting the flaws in the SCA case, the seminar focused on the SCA's thin and inadequate treatment of the norm of *jus cogens*.

### **31 August 2018: Terra Nullius in Hebrew? The Legal Geography of Indigenous Bedouins in Israel/Palestine**

With: Professor Oren Yiftachel (Ben-Gurion University of the Negev)

In this seminar, Professor Oren Yiftachel spoke about his new book which investigates the protracted legal, planning, and territorial conflict between the settler Israeli state and indigenous Bedouin citizens over traditional lands in southern Israel/Palestine. The authors place this dispute in historical, legal, geographical, and international-comparative perspectives, providing the first legal geographic analysis of the "dead Negev doctrine" used by Israel to dispossess and forcefully displace Bedouin inhabitants in order to Judaize the region. The authors reveal that through manipulative use of Ottoman, British and Israeli laws, the state has constructed its own version of *terra nullius*. Yet, the indigenous property and settlement system still functions, creating an ongoing resistance to the Jewish state. In this seminar, Professor Yiftachel critically examined several key land claims, court rulings, planning policies and development strategies, offering alternative local, regional, and international routes for justice.

### **3 December 2018: Transgender persons in Indian Courtrooms: Legal Rights Transformed or Status Quo Maintained?**

With: Surabhi Shukla (University of Oxford)

In this seminar, chaired by Prof. Dianne Otto, Surabhi Shukla analysed cases pre- and post- the Indian Supreme Court's transgender decision in *National Legal Services Authority v Union of India* (2014) ("NALSA"), which recognized transgender persons' right to self-determined gender regardless of medical intervention. Her analysis showed that these orders are not being implemented by lower courts in a consistent fashion. Shukla argued that they are instead implementing a status quo model. As long as a person claims a gender identity consistent with how they have been perceived, the courts have no problem in applying the self-determination directive. However, as soon as the claimant asserts a gender identity contrary to how they have hitherto been perceived, the courts need additional evidence of "sex re-assignment surgery" (SRS) or psychological examination. It happens in subtle ways such that if one does not pay attention, it would be unclear that the courts have implemented this bifurcated approach to applying the self-determination principle.

### **4 December 2018: Audio-visual recording of interrogations in Japan and Australia**

With: Associate Professor Peter Rush (Melbourne Law School) and Associate Professor Mari Hirayama (Hakuoh University)

The introduction of audio-visual recording of interrogation (取調べの録音録画) is one of a recent suite of legal and policy reforms in Japanese criminal law. It will come into force in 2019. Similar monitory procedures have existed in Australia for over thirty years, but recent changes in the conduct and style of police interviewing have called the audio-visual regime into question. Based on trial observations, as well as interviews with judges, police, prosecutors and defence lawyers in Japan, this seminar discussed two exemplary and recent cases – the 2016 Willis case in Victoria, and the 2018 Katsumata/Imaichi case in Tokyo. Both cases are murder trials. In the Willis case, the admission of an unrecorded lead-up conversation by police was the subject of adverse judicial comment. In the Katsumata/Imaichi case, the use of the audio-visual record as material evidence of the truth of the written confession was displaced by the Tokyo High Court in favour of circumstantial evidence. How are the legal reforms and the conduct of interrogation to be understood in relation with criminal law, its techniques and its forms of evidence?



*Professor Oren Yiftachel answers questions on his research, Melbourne Law School - 31 August 2018*

## **20 December 2018: Historiographical Materialism: Law, Art, Fascism, Resistance**

**Convenor: Dr Rose Parfitt (Kent Law School)**

After five-and-a-half years at MLS, Rose presented this seminar to reflect on some of the methodological experiments she's been lucky enough to have the opportunity to conduct during this period, with the support of her colleagues at IILAH, the Laureate Programme in International Law, and many others both within and beyond the Law School. The primary aim of her research, especially within the framework of the DECRA, has been to ask whether or not international lawyers, statesmen and diplomats during the inter-war period did, or did not, construct a recognisably 'fascist' approach to international law – a possibility that (with a few exceptions) has been rejected by the vast majority of international legal historians.

On the one hand, the approach she has taken to show that they did – spending many weeks at the Italian Ministry of Foreign Affairs archives and various other specialist libraries in Rome, searching for examples of 'state practice' and jurisprudence – has involved a relatively straightforward 'turn to history'. On the other hand, however, the question of what fascism was and is, of where it came and comes from, of how it relates to that which is 'not' fascism and, above all, of how to fight back against the kind of world that fascism calls into being is much, much more vexed, and has become only more vexed over the life of the project. In addition to pursuing a classic love-affair with the archive, therefore, Rose has also spent much of the last few years trying to come up with ways of addressing fascism's history and resurgence which are geared explicitly toward the task of resistance. All of the approaches she discussed involved a commitment to the idea that the relationship between 'then' and 'now' is a material one, and all of them involve an effort to rub out at least part of the line between thinking and making, whether metaphorically (e.g. history as shadow-box) or literally (e.g. cut-outs as critique).

# Book Launches and Public Events

## 18 October 2018: *Liberia and the Dialectic of Law: Critical Theory, Pluralism, and the Rule of Law*

**Dr Shane Chalmers**

Launched by: Associate Professor Jeremy Farrall

This event celebrated the release of *Liberia and the Dialectic of Law: Critical Theory, Pluralism, and the Rule of Law* (Routledge 2018) by Shane Chalmers. The book was launched by Associate Professor Jeremy Farrall and Shane Chalmers. *Liberia and the Dialectic of Law* examines the making and remaking of Liberia, from its conception as an idea of liberty at the beginning of the nineteenth century, to its reconstruction at the beginning of the twenty-first with the assistance of an international intervention to “establish a state based on the rule of law”. In doing so, the book shows how law is at the epicentre of a colonising power in Liberia that renders subjects as mere objects. At the same time, it exposes the instability of this power, by showing how law is enlivened by its subjects as it takes form in and through their lives and interactions. By bringing Theodor Adorno’s dialectical philosophy to bear on jurisprudence, this study of Liberia and the rule of law contributes to our understanding of how modern law remains animated by a contradiction that ultimately denies power any absolute hold, leaving law open to the self-expression of its subjects.

## 29 November 2018: *Gender Alterity and Human Rights: Freedom in a Fishbowl*

**Professor Ratna Kapur**

Convenors: Professor Sundhya Pahuja and Dr James Parker

IILAH hosted a panel discussion with Professor Ratna Kapur and IILAH scholars to launch her new book: *Gender Alterity and Human Rights: Freedom in a Fishbowl* (Elgar, 2018). The book was launched by a panel including: Daniela Alaattinoglu (Kathleen Fitzpatrick Visiting Fellow MLS and PhD Candidate EUI), Odette Mazel (PhD Candidate MLS), Claerwen O’Hara (PhD Candidate MLS) and Dianne Otto (Professorial Fellow MLS; Chair). Human rights are axiomatic with liberal freedom. Yet more rights for women, sexual and religious minorities has had disempowering and exclusionary effects. Revisiting campaigns for same-sex marriage, violence against women, and Islamic veil bans, *Gender, Alterity and Human Rights* lays bare how human rights emerge as a project of containment and unfreedom rather than meaningful freedom. Kapur provocatively argues that the futurity of human rights rests in turning away from liberal freedom and towards non-liberal registers of freedom.

## 5 December 2018: *Making Migration Law: The Foreigner, Sovereignty, and the Case of Australia*

**Dr Eve Lester**

Launched by: The Hon Catherine Branson AC QC

IILAH hosted a book launch to celebrate the publication of Eve Lester’s inaugural work *Making Migration Law: The Foreigner, Sovereignty, and the case of Australia* (CUP, 2018). The emergence of international human rights law and the end of the White Australia immigration policy were events of great historical moment. Yet, they were not harbingers of a new dawn in migration law. This book argues that this is because migration law in Australia is best understood as part of a longer jurisprudential tradition in which certain political economic interests have shaped the relationship between the foreigner and the sovereign. In this book, Eve Lester explores how this relationship has been wrought by a political-economic desire to regulate race and labour; a desire that has produced the claim that there exists an absolute sovereign right to exclude or condition the entry and stay of foreigners. Lester calls this putative right a discourse of ‘absolute sovereignty’. She argues that ‘absolute sovereignty’ talk continues to be a driver of migration lawmaking, shaping the foreigner-sovereign relation and making thinkable some of the world’s harshest asylum policies. Event co-hosted by IILAH and the Peter McMullin Centre on Statelessness.

# Doctoral Events

## **4-5 December 2018: The 11th Melbourne Doctoral Forum on Legal Theory (MDFLT)**

Organisers: Andrea Leiter, Tobias Barkley, Luís Bogliolo and Marnie Lloyd. Convenor: Professor Sundhya Pahuja

Facts sustain law and legal institutions. Contesting, debating, and then, 'finding' or establishing facts is seen as essential to the process of law-making that follows. But, far from acting on or applying to a set of pre-existing facts, law produces, writes and determines its own facts, knowledges and truths. And the politics, procedures and histories of legal facts, unlike the law itself, are often taken as given, establishing a dichotomy between contesting the legal and accepting what remains outside of, or prior to, law. The recent unsettling of our contemporary faith in facts, objectivity, and transparency as a form of public knowledge and a precondition for politics provides us with an opportunity to revisit the relationship between law and facts. This Forum invited presenters to critically examining the relationship between facts and law as it relates to graduate researchers and early career scholars' own research, bringing together scholars from a range of disciplines and backgrounds to think methodologically, theoretically and critically about law and legal theory.

## **19 November 2018: IILAH Skills Circle – Conference Presentations**

Organisers: Andrea Leiter, Tobias Barkley, Luís Bogliolo and Marnie Lloyd

In anticipation of the Melbourne Doctoral Forum on Legal Theory, the MDFLT organising committee and IILAH presented a short workshop, or IILAH Skills Circle. The IILAH Skills Circle is an informal roundtable organised to share experiences and advice about skills that are necessary in academia. This IILAH Skills Circle focused on how to give great conference presentations. Attendance was open to all PhD students and Early Career Researchers.

# IILAH Reading Group

In 2018, IILAH built upon the success of last year's faculty reading group. Running from 11 April until 14 November, the IILAH Reading Group focused on the theme of 'The Office of the International Lawyer and the Plurality of International Law'. This year's reading group sought to engage with a series of texts that take up questions of office, conduct and encounter. The reading group explored these three concepts in detail, especially with regard to how they apply to the work of a jurist and also how they interrelate with one another. The diverse composition of the Reading Group has linked emerging academics and doctoral students with some of our established researchers, and also brought in colleagues from outside the Faculty of Law and the University of Melbourne.



# VISITING SCHOLARS

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 2018 IILAH international and inter-state Visiting Scholars:

## **Adjunct Professor Ian Duncanson**

Griffith Law School, Socio-Legal Research Centre and Institute for Postcolonial Studies

1 January – 31 December

## **Associate Professor Judy Grbich**

Griffith Law School & Australian Feminist Law Journal (Editor-in-Chief)

1 January – 31 December

## **Dr Luis Eslava**

Kent Law School

29 January – 31 December

## **Dr Karen Crawley**

Griffith Law School & Australian Feminist Law Journal (Managing Editor)

1 March – 31 March

## **Dr Patrick Graham**

UNE School of Law

16 April – 2 May

## **Professor Ruth Buchanan**

Osgoode Hall Law School

16 April – 2 May

## **Dr Isobel Roele**

Queen Mary University of London & Centre for Law and Society in a Global Context (Deputy Director)

1 May – 14 June

## **Mr Francesco Corradini**

Graduate Institute of International and Development Studies, Geneva

23 July – 30 November

## **Professor Gerry Simpson**

London School of Economics and Political Science

23 August – 15 September

## **Dr Amanda Dale**

Osgoode Hall Law School

30 November – 8 December



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O'Donnell, E, *Legal Rights for Rivers: Competition, Collaboration and Water Governance*, Routledge, United Kingdom (2018)

## Edited Books

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