



CCCS NEWSLETTER #42

JUNE 2020

Welcome to the 42nd edition of the Centre for Comparative Constitutional Studies newsletter, a guide to news and events at the Centre.

For the most up to date news, follow us on twitter or online

- CCCS: [@cccsmelbourne](https://twitter.com/cccsmelbourne)
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- Cheryl Saunders: [@cherylsaunders1](https://twitter.com/cherylsaunders1)
- Scott Stephenson: [@s_m_stephenson](https://twitter.com/s_m_stephenson)
- William Partlett: [@WPartlett](https://twitter.com/WPartlett)
- Jeremy Gans: [@jeremy_gans](https://twitter.com/jeremy_gans)
- Tom Gerald Daly: [@DemocracyTalk](https://twitter.com/DemocracyTalk)
- Erika Arban: [@e_arban](https://twitter.com/e_arban)
- Toerien van Wyk: [@toerien](https://twitter.com/toerien)
- Our website: law.unimelb.edu.au/cccs
- Laureate Program in Comparative Constitutional Law website: law.unimelb.edu.au/laureate-programs/lpccl
- Centre members also blog at Opinions on High: blogs.unimelb.edu.au/opinionsonhigh/
- The IACL Blog: iacl-aidc-blog.org



Centre for
Comparative
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Melbourne Law School

DIRECTORS' REPORT

The last six months for the CCCS have been as they have been for everyone – a time of fast adjustment to a very new set of realities, restrictions and, we hope, opportunities. We are immensely proud to be able to publish this newsletter, full of reports of the work of our community, while still very much in the midst of the radical changes to our personal, professional and national lives being wrought by the COVID-19 public health crisis. We have all tried – very hard – to not let the many difficulties that have accompanied these sudden and comprehensive changes to our circumstances quell the momentum of our many trajectories of public law research, or even more importantly, our community spirit.

Evidence of that spirit was our decision to **switch our signature Tuesday lunchtime 'Brown Bag' seminars to 'Zoom'** as soon as we were no longer allowed to occupy our usual home at 185 Pelham St. Among the silver linings of this unexpected need to change format was how it enabled us to extend the reach of the Brown Bag series to a wider group of people. The result has been that at any one Brown Bag over the past three months we have been able to welcome members of our community from all over the country and indeed the world. This has included regular appearances from the members of the Australian legal profession who sit on our CCCS Advisory Board, and real-time interactions from colleagues in Hong Kong, South Korea, Canada, Nepal and Israel, to name just a few.

All of this has been made possible by the ever-remarkable efficiency of our CCCS Administrator, **Aftab Hussain**, and the wonderful grace and leadership of **Erika Arban**. The time is long overdue to pay tribute to Erika's outstanding contributions to CCCS during the period of her postdoctoral fellowship with Adrienne Stone's Laureate Program in Comparative Constitutional Law, which have included 18 months as principal organiser of our Brown Bag series. We hope you will enjoy our special **Member Feature** on Erika on **page 10-11**, in which she shares her thoughts on such topics as federal theory and what public lawyers can learn from music.

The COVID-19 pandemic has also seen the **engagement activities of CCCS members** take on a new urgency, not to mention less familiar forms. Though the appetite has remained for expert **textual commentary** on the many public law questions arising from the unfolding emergency, the fact that we have not been able to offer the kind of 'live' public seminars that we ordinarily would during such an extraordinary period of the history of our nation and the world has led us to cultivate a much more **significant 'online' presence**. Credit is especially due here to the efforts of **Professors Adrienne Stone, Cheryl Saunders, Michael Crommelin and Joo-Cheong Tham** for their many public 'appearances' through videos and live 'webinars' presented through various channels.

In addition to details that can be found in our **Member Updates** on **pages 1-6**, we have put together a summary of **CCCS**

COVID-19 Resources on the CCCS website for those interested in reviewing them. Readers will be able to access (awaiting publication as at the date of this newsletter) the submission we made to the **Senate Select Committee Inquiry into COVID-19** on 28 May 2020 on the CCCS website shortly. We are currently working on a further submission to the **Senate Standing Committee for the Scrutiny of Delegated Legislation inquiry into the exemption of delegated legislation from parliamentary oversight**, due later this month. All CCCS submissions to government inquiries are available on our website: <https://law.unimelb.edu.au/centres/cccs/cccs-submissions-and-reports>.

Despite continuing uncertainty about when we might all be able to meet 'in person' again, we are moving forward with our plans to organise our bi-annual **CCCS Constitutional Law Conference**. For our **2021** conference we are planning to examine some of the deeper issues associated with the public law features of the COVID-19 response, with a view exploring what this era is teaching us about the commitments of constitutional order in contemporary conditions. We have our fingers crossed that our 2021 conference will be able to proceed as we are planning, and look forward to informing our community about its details as soon as we can.

Book launches and other events to celebrate the **publications** of our members have of course also been put on hold during this period, but the work of our individual academics most definitely has not: numerous books and articles are **currently in press**, albeit often also affected by delays outside of their authors' control. All in time! Please see our Member Updates for details.

As with previous newsletters, we are delighted in this edition to continue our practice of publishing 'feature' articles of members on our alumni and current community. In addition to the special Member Feature on **Erika Arban** already noted, we were thrilled to be able to catch our former Laureate Program colleague **Stijn Smet** to discuss his research on the work of the European Court of Human Rights, and former CCCS Assistant Director **Katy LeRoy**, now the Deputy Parliamentary Counsel for Queensland, to be interviewed for our **Alumni Features**. We are indebted to the generosity of Erika, Stijn and Katy, and to our wonderful **CCCS JD Research Associates, Jacob Kairouz, Andrew Hermann, Priyanka Banerjee**, for their work in making these features possible, not to mention such an enjoyable read.

Proof that the world doesn't stand still, congratulations to our former CCCS Research Associate, **Anna Saunders**, who (travel permitting!) will be heading to Harvard University at the end of the North American summer to take up her prestigious scholarship for graduate study, the **Knox Fellowship**. We are also immensely pleased to share that **Darshan Datar**, PhD candidate with Adrienne Stone's Laureate Program in Comparative Constitutional Law, was recently offered the World Constitutional Law (WCL) Scholarship to spend two funded months at the

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Humboldt University of Berlin. The Scholarship is designed for two Indian students to work under the mentorship of Professor Philipp Dann to publish a paper in the VRÜ (Zeitschrift Verfassung und Recht in Übersee) journal. We hope also to soon share the announcement of a **new podcast** to be produced in association with Adrienne Stone's Laureate Program – stay tuned for that.

With very best wishes from us to all of our community,



Professor Adrienne Stone



Professor Kristen Rundle



CCCS Brown Bag Seminar, Panel Discussion on “Looking Ahead - Key Constitutional Developments Worldwide in 2020” held on 10 March, 2020, Melbourne Law School.

This seminar was the last CCCS in person event before social distancing rules were put in place due to the pandemic.

CENTRE UPDATE

Adrienne Stone, Director

Book

Carolyn Evans and Adrienne Stone *Open Minds: Academic Freedom and Freedom of Speech* (Black Inc, La Trobe University Press, in press) (with Jade Roberts). <https://www.blackincbooks.com.au/books/open-minds>

Publications

Frederick Schauer and Adrienne Stone, *Oxford Handbook on Freedom of Speech* (OUP, in press)

'Proportionality and its Alternatives', (2020) 48 Federal Law Review 123: <https://ssrn.com/abstract=3473516>

Presentations

Convenor of LAW IN THE TIME OF COVID-19 and appeared in two of its virtual events:

'What does COVID19 mean for Parliamentary Accountability?' <https://law.unimelb.edu.au/covid-19/what-does-covid-19-mean-for-australian-parliamentary-accountability>

Webinar: Constitutional Government in a Pandemic (moderator), 7 May 2020. <https://www.youtube.com/watch?reload=9&v=7yZ80IE-rIQ&feature=youtu.be>

Panellist, Life After Coronavirus: The Expert View; <https://pursuit.unimelb.edu.au/articles/watch-episode-2-life-beyond-coronavirus-the-expert-view>

Appointments

Steering Committee (External Member), Centre for Comparative and Transnational Law, Chinese University of Hong Kong

Kristen Rundle, Co-Director

Forthcoming publications

Kristen Rundle, 'Office and Contracting-out: An Analysis', (2020) 70(3) *University of Toronto Law Journal* (special symposium on 'The Idea of Office in Public Law, Private Law and Jurisprudence')

Kristen Rundle, 'Administrative Discretion and Governing Relationships: Situating Procedural Fairness', in Denise Meyerson, Catriona Mackenzie and Therese MacDermott (eds), *Procedural Justice and Relational Theory: Empirical, Philosophical, and Legal Perspectives* (Routledge, 2020).

Presentations:

'Fuller's Relationships: Revisiting the Rule of Law', University of Victoria, Faculty of Law, Faculty Seminar Series, 4 March 2020, Victoria, Canada.

'Populism, Constitutionalism and the Administrative State', presented at 'Constitutionalism in the Age of Populism', An International Conference at the University of Victoria, Canada, 6-8 March 2020.

Submissions to Government Inquiries

Michael Crommelin, Kristen Rundle, Cheryl Saunders and Adrienne Stone on behalf of the Centre for Comparative Constitutional Studies, 'Submission to the Senate Select Committee Inquiry on COVID-19', 28 May 2020

Online

Kristen Rundle, Response to 'What are the Greatest Challenges Populism Poses to Democracy?' in Democracy and Its Futures, online video series hosted by EUCANet (Europe-Canada Network) <https://www.eucanet.org/index.php/component/content/article/41-news-media/1-what-s-new/866-populism-and-the-need-to-analyze-how-governments-relate-to-their-citizens-when-dealing-with-populism?Itemid=101>; see also YouTube <https://www.youtube.com/watch?v=8XK2ZBhdQQ> (published May 2020)

Cheryl Saunders AO, Foundation Director

Publications

Cheryl Saunders, 'Common law constitutionalism under a codified Constitution' in Simon Mount and Max Harris (eds) *The Promise of Law* (Wellington, LexisNexisNZ, 2020), 11.

Cheryl Saunders, 'Global Constitutionalism: Myth and Reality', in Jason NE Varuhas and Shona Wilson Stark (eds), *The Frontiers of Public Law* (Bloomsbury, London, 2019), 19.

Cheryl Saunders, 'The possibilities and pitfalls of bicameralism in federal democracies', in Alain-G. Gagnon and Johanne Poirier (eds), *Canadian Federalism and its Future*, (MQUP, Quebec, 2020), 26.

Cheryl Saunders, 'Federalism and Constitutionalism: Challenges Presented by Dominant Conceptions of the Unitary State', in John Kincaid (ed), *A Research Agenda for Federalism Studies*, (Cheltenham: Edward Elgar Publishing, 2019), 39.

Cheryl Saunders, 'Comparative Law' in Rob Pascoe, ed, *Speeches and papers of the Hon Robert French, AC*, (Federation Press, 2020), 261.

Blog posts and other notes:

Cheryl Saunders 'The Impact of Climate Change on the Australian Federation', *Constitutionnet*, 6 March 2020, <http://constitutionnet.org/news/impact-climate-change-australian-federation>.

Cheryl Saunders, 'Constitutions and International Law', *Constitution Brief*, International IDEA, February 2020, <https://www.idea.int/sites/default/files/publications/constitutions-and-international-law.pdf>

Cheryl Saunders, 'The constitutional status of Indigenous Australians', *Verfassungsblog*, 28 February 2020, <https://verfassungsblog.de/the-constitutional-status-of-indigenous-australians/>

Cheryl Saunders, 'Irish Reunification: Perspectives from Elsewhere', *LACL-AIDC Blog*, 12 March 2020, <https://blog-iacl-aidc.org/irish-unification/2020/3/12/irish-re-unification-perspectives-from-elsewhere>

Engagement

Member, Royal Constitutional Commission Expert Panel, Royal Commission into Natural National Disaster Arrangements, 12 May, 2020.

Submission to the Royal Commission into Natural National Disaster Arrangements on a *Constitutional Framework for the Declaration of a State of Emergency*.

Cheryl Saunders, 'What is Australia's National Cabinet', *Law and Covid-19* video, Melbourne Law School, May 2020, <https://www.youtube.com/playlist?list=PLhOOBpoQndRkbS-jMJR3tj4Uf5thg2gQZ>

Participant, *Federation of the Future*, NSW Review of Federal Financial Relations, Sydney, 17 February 2020

MLM teaching

Bringing in the People (with Tom Daly) March 2020.

Centre Members

Erika Arban

Publications

Erika Arban, "Editorial: Cities and the Global South" *Verfassung und Recht in Übersee VRÜ/WCL* Vol. 53, No. 1 (2020) (I also organised the special issue on "Cities and the Global South" featuring three contributions from papers presented at the Workshop "Cities in Federal Theory" convened at MLS in June 2019)

Book reviews:

Erika Arban, "Revolutionary Constitutions: Charismatic Leadership and the Rule of Law" by Bruce Ackerman, *Modern Law Review* (2020) (published online on 20 February 2020) (with Dinesha Samararatne & Eleonora Bottini) DOI: 10.1111/1468-2230.12520

Erika Arban, "The nationalism of the rich: Discourses and strategies of separatist parties in Catalonia, Flanders, Northern Italy and Scotland" by Emmanuel Dalle Mulle, *Regional & Federal Studies* (2020) (published online on 20

January 2020) DOI: 10.1080/13597566.2020.1715368

Conference presentations:

Solidarity and its constitutional limits: Sri Lanka as a case-study – Workshop on Constitutional Resilience in South Asia – Melbourne Law School – Melbourne (Australia), December 2019 (with Jayani Nadarajalingam)

Tom Daly

Appointments

Appointed as Associate Professor and assumed an expanded role as Deputy Director of the School of Government, including responsibility for the School's flagship political programs, the Pathways to Politics Program for Women, and the McKinnon Prize in Political Leadership.

Publications

Article

'Illiberal Democracy: Time to Stop Using a Problematic Term?'. Special issue of the leading Italian journal *Percorsi Costituzionali*, on 'Constitutionalism in Illiberal Democracy'.

Blog Posts

'Democracy and the Global Emergency – Shared Experiences, Starkly Uneven Impacts' *Verfassungsblog* (15 May 2020) - link [here](#).

'DEM-DEC Research Update Editorial: Global Democracy and the Fierce Urgency of 2020' *Verfassungsblog* (18 February 2020) – link [here](#).

Video

'Australia's Pandemic Response' for the video series 'Global Responses to COVID-19', produced through a partnership between the New Zealand Centre for Public Law at Te Herenga Waka—Victoria University of Wellington, the Center for International and Area Studies at Northwestern University and International IDEA. Launched 12 May. Full series [here](#).

Democratic Decay & Renewal (DEM-DEC)

COVID-DEM Infohub

On 3 April DEM-DEC launched a new project, [COVID-DEM](#), which curates and publishes analysis of the pandemic's impact on democracy worldwide. It contains 8 sections: databases, academic research, policy analysis, 'super-blog' curating analysis across almost 40 blogs, media analysis, webinars, podcasts, and videos. It has become a leading global database used by thousands in over 115 states worldwide. COVID-DEM is updated daily and issues 2-3 bulletins per week containing key updates. To join the mailing list you can fill out the form [here](#) or simply e-mail covidDEM@gmail.com.

Global Research Updates

Global Research Update for January 2020 is available [here](#). Monthly updates have been temporarily suspended to divert resources to COVID-DEM.

Teaching

Designed and delivered a new elective subject on the School of Government's Master of Public Administration (MPA) addressing the crucial role of an independent public service in upholding a healthy liberal democracy: *Democracy, Power, and the Public Service* (21-24 April 2020).

Co-designed and co-taught new MLM subject 'Bringing in the People' with Prof. Cheryl Saunders (25-31 March 2020).

Engagement

Global Campaign

'Statement on the Unprecedented Threat to Democratic Freedoms in Hong Kong', was issued by the International Coalition for Democratic Renewal (ICDR) on 29 March - link [here](#). (I was a co-author of the statement, as a member of the ICDR).

Senate Hearing

Invited expert at the first hearing for the Senate Inquiry into Nationalism, National Identity and Democracy, 7 February 2020. Transcript [here](#). Submission ('Toward Democratic Renewal' [here](#)).

Interview

Discussion of the above Senate Inquiry hearing on ABC radio's PM program, 7 February 2020.

Presentations

Invited panellist, 'Pathway to Peace', at Monash Future Thinkers conference 'War: On People and the Planet', 13 May 2020. Structured discussion with Dr Margaret Beavis, Nobel Peace Prize laureate.

Invited panellist, 'Is the future of Indian Democracy secure?', Melbourne Law School, 12 March 2020

Alison Duxbury

Blog

An article, 'The World Health Organization as Pandemic Police?': <https://pursuit.unimelb.edu.au/articles/the-world-health-organization-as-pandemic-police>

Presentations

'Germs and Justice' – Part 1, with Jeannie Paterson and Jason Bosland, interview on ABC with Jon Faine: <https://law.unimelb.edu.au/covid-19/video-germs-and-justice-part-1-covidsafe>.

Anna Dziedzic

Publications

Foreign judges: Pacific practice and global insights (2019) 24(2) *Commonwealth Judicial Journal* 26-29

'Popular Protest: Constitutional democracy in crisis or constitutional democracy in action?' *Public Jurist: Constitutional Democracy in Retreat*, January 2020, 20-23.

Research reports

[Greater Autonomy and Independence for Bougainville: Institutional Options and Issues for Transition](#) (Bougainville Referendum Research Project, National Research Institute of Papua New Guinea, 2020) (with Cheryl Saunders).

[Comparative Regional Report on Citizenship Law: Oceania](#) (Global Citizenship Observatory, Robert Schuman Centre for Advanced Studies, European University Institute, Comparative Report 2020/01).

'Women and Constitutions in Action', ConTransNet Policy Brief informed by discussions at the [Australia-ASEAN Women in Constitution-Building Capacity Development Program](#) (with Dinesha Samararatne)

Media contributions

'Land and Titles Court plan lacks clarity, expert says', (Contribution to report by Sapeer Mayron, Samoa Observer, 3 May 2020, p 14.

'[Reflecting custom in a written constitution: Constitutional proposals in Samoa](#)', International IDEA: ConstitutionNet, 26 May 2020,

'[Debating Constitutional Change in Samoa](#)' The Interpreter, 5 May 2020

Beth Gaze

Presentations

Presentation to National Council of Women Victoria on the Gender Equality Act 2020 (Vic), 6 May 2020.

Commentator, seminar by Associate Professor Alysia Blackham on 'Age discrimination in a pandemic: COVID-19 and inequality at work', Melbourne Law School, 11 May 2020.

Convener and presenter at panel discussion 'Building A Toolkit for Investigating Sexual Harassment' (co-convener Amy Oppenheimer), Berkeley Center on Comparative Equality & Anti-Discrimination Law, Conference on Global Resistance to Sexual Harassment/Violence Conference, June 8-9 2020 (University of California, Berkeley).

Tarun Khaitan

Tarun Khaitan, 'Religion in Human Rights Law: A Normative Restatement' (co-authored with Dr Jane Norton, 2020) 18(1) *International Journal of Constitutional Law* 111-129

Tarunabh Khaitan, 'The Indian Supreme Court's Identity Crisis: A Constitutional Court or a Court of Appeals?' (2020) 4(1) *Indian Law Review* 1-30

Special Mention award by the *International Journal of Constitutional Law* (I•CON) under its Best Article Prize 2020: <https://www.wadham.ox.ac.uk/news/2020/may/special-mention-for-wadham-fellow>

Shireen Morris

Book Chapter

Shireen Morris, 'Parliamentary Scrutiny and Insights for a First Nations Voice to Parliament' in Laura Grenfell and Julie Debjnak (eds), *Law Making and Human Rights* (Thomson Reuters, 2020). <https://legal.thomsonreuters.com.au/law-making-and-human-rights/productdetail/127563>

Presentations

Presented at the AACL forum on the Love/Thomms decision: http://www.aacl.asn.au/events/love-v-commonwealth-constitutional-recognition-indigenous-australians_15052020.

Presented a national online talk to Clayton Utz on Indigenous constitutional recognition and the Uluru Statement, 19 May 2020.

Presented at "Love v Commonwealth: Constitutional Recognition of Indigenous Australians?" webinar, 3 June 2020. <https://www.monash.edu/law/news-and-events/events/love-v-commonwealth-constitutional-recognition-of-indigenous-australians>

Forthcoming Book

"A First Nations Voice in the Australian Constitution" comes out in August: <https://www.bloomsburyprofessional.com/uk/a-first-nations-voice-in-the-australian-constitution-9781509928927/#:~:text=About%20A%20First%20Nations%20Voice,Uluru%20Statement%20from%20the%20Heart>.

Media

Appeared on TV in this episode of Living Black, investigating the political response to the Uluru Statement: <https://www.sbs.com.au/ondemand/video/1739413571568/Living-Black-S27-Ep8-Voiceless>

William Partlett

Publications

East Asian Socialism and East Asian Legality: A Response to Ewan Smith, 14 *ASIAN JOURNAL OF COMPARATIVE LAW* 380-382 (2019) (with F Hualing, J. Gillespie, & P. Nicholson).

Expanding Revision Clauses in Democratic Constitutions, in *REDRAFTING CONSTITUTIONS IN DEMOCRATIC REGIMES: THEORETICAL AND COMPARATIVE PERSPECTIVES* (Gabriel Negretto ed.) (Cambridge University Press 2020), pp. 53-77.

Engineers' Problematic Comparative Legacy, *PUBLIC LAW REVIEW* (2020) (forthcoming).

Blog Post

William Partlett, 'Russia's Unconstitutional Zeroing Amendment' IACL-AIDC Blog (16 March 2020) <https://blog-iacl-aidc.org/2020-posts/2020/3/16/russias-unconstitutional-zeroing-amendment>

Presentations

Constitutionalism and State-Building in Post-Soviet Eurasia, Conference on Constitutionalism in Asia (Center for Asian Legal Exchange, Nagoya University, Japan), 26-28 January 2020.

Dinesha Samararatne

Presentations

Co-presentation with Assoc Prof William Partlett, 'Constitutionalism as National Discourse' at the weekly Brown Bag seminar of the Centre for Comparative Constitutional Studies at the Melbourne Law School (28 April 2020).

Panellist for 'Looking Ahead – Key Constitutional Developments Worldwide in 2020' at the weekly Brown Bag seminar of the Centre for Comparative Constitutional Studies at the Melbourne Law School (19 March 2020).

Participant at the Global Scholars Academy of the Institute for Global Law & Policy of Harvard Law School, convened in partnership with the Graduate Institute of Geneva in Geneva, Switzerland (5-8 January 2020).

Publications

From South Africa to Sri Lanka: Prospects of Travel for 'Transformative Constitutionalism' 15 (1) 2020 *Asian Journal of Comparative Law* 1.

Book review co-authored with Erika Arban and Eleonora Bottini, Bruce Ackerman, *Revolutionary Constitutions: Charismatic Leadership and the Rule of Law*, Belknap Press: Harvard University Press, 2019 (Online Version of Record,

February 2020, *Modern Law Review*).

'Judicial Interpretation of Human Rights' in Sri Lanka: State of Human Rights 2018 (Law & Society Trust, 2020).

Co-authored with Anna Dzedzic 'Women and Constitutions in Action' policy brief for Constitution Transformation Network of Melbourne Law School, University of Melbourne, Australia (Policy Brief No 001/2020).

COVID-19 related work

'Governance, the 'least-worst' alternative and COVID-19' *The Island* 10 May 2020

Editorial: COVID-19 Global Pandemic, IACL Blog 24 March 2020 (written on behalf Erika Arban and Tom Daly).

Other

Joined the Editorial Team of the *Indian Law Review* as Notes Editor, May 2020.

Scott Stephenson

Publications

'Against Interpretation as an Alternative to Invalidation' (2020) 48 *Federal Law Review* 46–68.

'Rejoinder to Raban' (2020) 48 *Federal Law Review* 276-78.

Joo-Cheong Tham

Publications

Joo-Cheong Tham and K D Ewing, 'Labour Provisions in Trade Agreements Neoliberal Regulation at Work?' (2020) 17 *International Organizations Law Review* 153-77. https://www.researchgate.net/publication/341643542_Labour_Provisions_in_Trade_Agreements_Neoliberal_Regulation_at_Work_2020_17_International_Organizations_Law_Review_153-77

Media

Appearance on *Life Matters*, RN 'Weighing our obligations to workers on temporary visas', 20 May 2020. <https://www.abc.net.au/radionational/programs/lifematters/weighing-our-obligations-to-temporary-migrant-workers/12264876>

Tham, JC, 'COVID-19 ministerial powers need to be reined in', *Canberra Times*, 27 April 2020-04-27. <https://www.canberratimes.com.au/story/6732299/covid-19-ministerial-powers-need-to-be-reined-in/?cs=14264>

Tham, JC, 'Democracy remains essential in the COVID-19 pandemic', *Canberra Times*, 13 April 2020. <https://www.canberratimes.com.au/story/6719936/democracy-remains-essential-in-the-covid-19-pandemic/>

Tham, JC, 'Why temporary migrants need JobKeeper', *The Conversation*, 7 April 2020. <https://theconversation.com/why-temporary-migrants-need-jobkeeper-135688>

Jason Varuhas

Books

JNE Varuhas and Shona W Stark (eds), *The Frontiers of Public Law* (Hart 2020) 552pp.

Book Chapters

JNE Varuhas and Shona W Stark, 'The Frontiers of Public Law' in JNE Varuhas and Shona W Stark (eds), *The Frontiers of Public Law* (Hart 2020) pp. 1-18.

Articles

Jason N E Varuhas, 'Valuing Freedom: *Lewis v ACT*' (2020) 42 *Sydney Law Review* 123-140, cited in oral argument before the High Court: *Lewis v The Australian Capital Territory* [2020] HCATrans 67 (2 June 2020).

Jason N E Varuhas, 'The Socialisation of Private Law', full-length article accepted for publication in the *Law Quarterly Review*.

Blog

Jason N E Varuhas, 'Evidence, Facts and the Changing Nature of Judicial Review', UKCLA Blog (15 June 2020).

Prize

Jason N E Varuhas, *Damages and Human Rights* (Hart 2016) has been shortlisted for the prestigious [St Petersberg International Legal Forum Private Law Prize](#)

Presentations

Jason N E Varuhas, 'Convening and teaching a full-semester JD course online', MLS Teaching & Learning Seminar Series, June 2020.

Jason N E Varuhas, 'Injunctions and Basic Rights: *Smethurst v Commissioner of Police* [2020] HCA 14', CCCS Seminar, May 2020 (with Professor Cheryl Saunders as commentator).

Jason N E Varuhas, '*Nevsun Resources Ltd v Araya*: Do Legal Categories Still Matter?', CCCS Seminar, April 2020 (with Professor Cheryl Saunders as commentator).

Media

'Live export ban decision sets 'controversial' precedent and could win an appeal, legal expert says', ABC Online 5 June 2020 <https://www.abc.net.au/news/rural/2020-06-05/live-cattle-export-decision-controversial-professor-says/12319586>

Recorded interview regarding Live Exports Federal Court decision, aired on ABC Western Australia Country Radio Hour <https://www.abc.net.au/radio/programs/wa-country-hour/wa-country-hour/12303040>

Judicial Citations

Reid v Price [2020] EWHC 594 [50]

Marshall v IDEA [2020] NZHRRT 9 [104] [105] [112]

Visiting Positions

Robert S Campbell Visiting Fellow in Law, Magdalen College, Oxford (October 2019-January 2020)

Research Visitor, Bonavero Institute of Human Rights, Oxford (October 2019-January 2020)

Allan Myers Visitor in Law, University of Oxford Faculty of Law (October 2019-January 2020)

Teaching

Course Convenor, JD Remedies, Semester 1 2020.

Lael K. Weis

Publications

Legislative Constitutional Baselines' (2019) 41(4) *Sydney Law Review* 481. Available at SSRN: <https://ssrn.com/abstract=3533471>

Margaret Young

ARC Discovery Project and Presentations

Professor Margaret Young continued her ARC Discovery Project on 'International Adjudication', which she leads with Professor Hilary Charlesworth, in 2020. On 20 May 2020 they hosted a workshop on 'National Encounters with the International Court of Justice', via Zoom. The event featured international and national participants including Professor Karen Alter, Henry Burmester AO QC, Bill Campbell PSM, QC, Sir Kenneth Keith ONZ, KEB QC and Richard Rowe PSM. Margaret continues in her current role as DFAT Visiting Legal Fellow for 2019-2020. She addressed the annual 'Supreme and Federal Court Judges' Conference' in Canberra in January 2020, an ASEAN Regional Forum workshop on dispute resolution on 27-28 February and the 'KFG Symposium Berlin-Potsdam 'International rule of law: rise or decline?' (via Zoom) on 12 June. Members of the CCCS community who have been involved in Australia's cases at the International Court of Justice are invited to get in touch with Margaret as part of the ongoing ARC Discovery Project.

Publications

M. Young, 'International Adjudication and the Commons' (2019) 41:2 *University of Hawai'i Law Review* 353-383.

M. Young, E. Nyhan and H. Charlesworth, 'Studying Country-Specific Engagements with the International Court of Justice' (2019) 10 *Journal of International Dispute Settlement*, 582-598 [doi: 10.1093/jnlids/idz018](https://doi.org/10.1093/jnlids/idz018)

E. Jukic and M. Young, 'Country Report: Australia' (2019) 30 *Yearbook of International Environmental Law* (forthcoming) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3593939

CCCS SPECIAL ALUMNI FEATURE - INTERVIEW WITH KATY LE ROY

An interview with Katy Le Roy



Dr Katy Le Roy is Deputy Parliamentary Counsel at the Office of the Queensland Parliamentary Counsel. She has extensive experience in public law practice, having also previously worked as Parliamentary Counsel in the New Zealand Parliamentary Counsel Office, as Consultant Legal Counsel

and Parliamentary Counsel in Nauru, and as a Consultant for the United Nations Development Programme. Katy also has experience in private practice, having worked in plaintiff-side personal injury law at Holding Redlich in Melbourne and commercial law at Allianz Asset Management in Germany. Katy holds a Bachelor of Laws (Honours), a Bachelor of Arts (Honours), and a PhD in Law from the University of Melbourne. Her thesis focused on public participation in constitution-making in Fiji and the Solomon Islands. Katy generously agreed to be interviewed by CCCS Research Assistant, Priyanka Banerjee.

How has your experience with the CCCS influenced your work since?

As an undergraduate I worked for Cheryl Saunders at the CCCS when it was housed in a terrace house on Barry Street. Cheryl and I produced a newsletter called *Intergovernmental News*, and I also did some research and editorial assistance for the *Public Law Review*.

Working on *Intergovernmental News* sparked my abiding interest in Australian federalism and comparative federalism. We would analyse what was going on at ministerial councils, at the Commonwealth Grants Commission, and with trans-Tasman intergovernmental relations. The Trans-Tasman Mutual Recognition Act of 1997 was pretty exciting stuff at the time.

I stayed on at the Centre part-time while doing my articles of clerkship full-time. Not long after my admission I moved to Germany for a few years, and then returned to the CCCS as Assistant Director in 2003. I was also persuaded by Cheryl in 2003 to start a PhD, looking at constitution-making processes in the Pacific. It took me a long time to finish but I got there eventually.

One of the most enjoyable aspects of my time as a PhD candidate and Assistant Director was participating in conferences and roundtables on comparative federalism, comparative constitutional law and other public law themes, overseas and in Australia. The thrill of being part of that exchange of ideas and learning from others' experience and insights never gets old, and I have continued to be an avid conference planner and participant in each of my subsequent roles. For the last few years I've been getting my conference-fix through the Commonwealth Association of Legislative Counsel, at which members wax lyrical for days about legislation. It is a lot more fun than it may sound!

I think the greatest influence my time at CCCS has had on my

work since is that it cemented my passion for the Rule of Law and my interest in being a public lawyer. The greatest influence it has had on my life is that I have had the ongoing privilege of having Cheryl Saunders as a friend and mentor.

You worked for a few years in private practice both in Australia and in Germany. How has your experience in private practice compared to, and perhaps influenced, your experience in public law?

As a junior solicitor in Melbourne I worked in personal injury law representing plaintiffs. My experience in private practice reinforced what I had learned at Melbourne Law School and at the CCCS about the importance of communicating clearly. It was important to give clients a clear explanation of the steps in the litigation process and the strength of their case, and to draft legal documents clearly.

It also gave me some insight into how the justice system can be quite intimidating and overwhelming for some people.

In Germany I worked as in-house counsel for a large investment company, and played a role in simplifying the way we drafted contracts and investment fund prospectuses. That work taught me a lot about the cost of regulation and compliance, and the importance of plain language.

These experiences have contributed to my understanding of how the legal system operates as a whole, and also made me realise that public law is what most excites and interests me. I find it more rewarding to contribute to the drafting and guardianship of the statute book that applies to and affects everyone in the jurisdiction, rather than representing an individual client or advising a particular company.

Law students, lawyers and legal academics alike spend a lot of time reading, interpreting and critiquing legislation. What have you found to be particularly challenging when drafting legislation in your time as Parliamentary Counsel, and have those challenges varied in each of the jurisdictions in which you have worked?

The challenges have certainly varied, but in each jurisdiction my role has involved translating policy into clear and effective legislation that is fit for purpose and consistent with the rule of law.

The greatest challenges as Parliamentary Counsel in Nauru were limited resources and drafting with very limited instructions. It was also difficult to draft laws that would work practically in a jurisdiction that has very limited capacity for administering legislation and a very small and under-resourced legal profession.

As a Parliamentary Counsel in New Zealand, one challenge was trying to get on top of a new statute book and a set of drafting rules, but I adapted fairly quickly. It was interesting working in a jurisdiction without a written constitution and in a unitary system. Nauru is also a unitary system, and while legislative power is not circumscribed by federal distribution, it is fettered somewhat by a constitutionally entrenched bill of rights. In New Zealand legislative power is fettered only by politics and convention.

The greatest challenge in Queensland is coping with the volume of work and very challenging deadlines. Relative to my experience in Nauru and New Zealand, I have found that the legislative program and prioritisation of legislative projects is more fluid in Queensland, which can make things extra challenging.

You have experienced first-hand the challenges that sudden political decision making can have on legal rights. What do you think is needed for public law to be able to respond effectively to this kind of challenge?

I am married to a Nauruan who was a government Minister in Nauru from 2006 to 2013. When the government changed in 2013 a lot of expatriate heads of department and others were relieved of their duties. I lost my role as Parliamentary Counsel and a few months later, while in Melbourne having my third child, my Nauruan residence visa was purportedly cancelled. I was unable to return home and have not been able to go back since. The government had that year also completely dismantled the court system, so there was no opportunity to have the lawfulness of that decision reviewed. My husband and other opposition members were very vocal about the breakdown in the rule of law in Nauru, and were punished for that.

After my family and I moved to Wellington, my husband (who was then an opposition member in Nauru's Parliament) travelled to Nauru for what was supposed to be a 4-day visit. As he was about to depart his Nauruan passport was cancelled, leaving him stuck in Nauru for 13 months while we were all in Wellington. We were reunited in Wellington after New Zealand granted him citizenship on humanitarian and public interest grounds.

What really struck us was the far-reaching effects that arbitrary and unlawful administrative decisions can have on people's lives, and the importance of access to a swift and impartial hearing. When Nauru eventually restored its court system by making appointments to the District and Supreme Courts, it severely compromised the independence of the judiciary by making short fixed-term appointments that were open to the possibility of renewal.

Ultimately it was public law and public lawyers that saved the day for us personally. A network of public law academics wrote open letters to the governments of Australia and New Zealand urging them to intervene, and New Zealand suspended its aid to Nauru's justice system as a result. Two very eminent New Zealand public lawyers represented my husband in his application on public interest and humanitarian grounds for New Zealand citizenship. That application involved detailed submissions on administrative and international law, and resulted in the Minister for Internal Affairs exercising his discretion in favour of the application. It was the first occasion on which the relevant provisions of New Zealand's Citizenship Act had been applied in this sort of situation. Internal guidelines for administrative decision makers have been changed as a result.

What recent developments or trends inspire you in your work, going into the future?

The pace of change and innovation in the application of AI and other technologies present exciting opportunities, particularly opportunities to make legislation more accessible and more fairly and consistently administered, and to improve access to justice more generally. Technology has already changed the tools we use to draft and publish legislation and made the statute book more accessible. The rate and extent of that change will likely increase exponentially in the coming decade.

The trend towards the greater domestication of international human rights in Australia is an encouraging development. Queensland enacted the Human Rights Act 2019 (Qld) last year, following Victoria and the ACT, and it has been interesting playing a small role in the development and implementation of that legislation.

Lastly, though more of a consistent theme than a recent development, I have always found inspiration in the people I work with. Since my time at the CCCS in the late 1990s, I have consistently been surrounded by talented and dedicated colleagues who bring out the best in others.

CCCS ALUMNI FEATURE - INTERVIEW WITH STIJN SMET

An interview with Stijn Smet



Stijn Smet is Assistant Professor of Constitutional Law at Hasselt University, Belgium. Stijn was previously a Postdoctoral Fellow at CCCS, and at Ghent University, Belgium, from which he also holds a Doctor of Law. Stijn is a co-founder of Strasbourg Observers (<https://strasbourgobservers.com/>), an academic blog

discussing recent developments at the European Court of

Human Rights. Stijn kindly agreed to be interviewed by CCCS Research Assistant, Andrew Herrmann.

When did you first become associated with the CCCS? What were the highlights of your time with the Centre?

I first became associated with the Centre when I joined Adrienne Stone's fascinating Laureate Program in Comparative Constitutional Law, in March of 2017. I distinctly remember my first CCCS Brown Bag meeting inspiring excitement for the common law-oriented world of comparative constitutional law that was about to be unveiled, while simultaneously instilling a profound sense of doubt about my ability to ever grasp the complexity of the field. Both feelings remained with me during my time at the CCCS (and still do).

Without a doubt, the highlights of my time with the Centre were the ‘big events’, in particular the 2017 Melbourne Institute of Comparative Constitutional Law (MICCL). Thanks to Iddo Porat’s master class on Israeli constitutional law at that MICCL, I now teach my students about the Constitutional Revolution in Israel. I snuck it into a lecture on constitutional review, because I find that story so fascinating.

Much of your work engages with European Court of Human Rights (ECtHR) jurisprudence. What drew you to this area, and what do you regard as its most fascinating aspects?

I have Eva Brems (Professor of Human Rights Law at Ghent University, Belgium, and a leading human rights scholar) to thank for introducing me to the Court’s case law when I was a final year law student. She set me on a direct path towards pursuing a career in this area. I am particularly fascinated by instances in which human rights appear to collide, and how the Court attempts to resolve these complex cases. I am also quite captivated by how the Court applies (in a not terribly consistent or clear manner) proportionality analysis, and by how, for legitimacy reasons, it constantly walks a tightrope between activism and restraint. I often wonder how judges on a human rights court resolve the cognitive dissonance this must cause them – if only I had the methodological skills to go in search of answers!

You write extensively on the topic of religious freedom – a hot-button issue in Australia in recent years. In balancing religious freedom and freedom from discrimination, what insight can Australia gain from European experiences?

I’m actually not sure Europe has all that much to teach Australia in this field. A more instructive example might be the carefully yet powerfully reasoned way in which the Colombian Constitutional Court has tackled conscientious objections to abortion. But one insight from the overall debate in Europe is that it would be incredibly unproductive, and lead to manifest injustices, to categorically prioritise religious freedom over freedom from discrimination. In that sense, I would hope that *Bull v Hall* at the UK Supreme Court can provide more inspiration for an Australian solution to the problem than *Lee v Ashers* at the same court (although there are of course salient differences between both cases). Even better, I would hope that the Australian debate simply peters out.

As you have already noted, the European Court of Human Rights has often had to address questions arising from clashes between different human rights. But recent developments in Europe stemming from the emergence of illiberal democracies, involving widespread disregard for basic human rights, place a different kind of pressure on the authority and effectiveness of the Court. How well do you think it is equipped to handle such challenges?

I’m rather sceptical. As I tell my students when we study rule of law backsliding in the EU, the Court of Justice of the EU (CJEU) has thus far proven more effective at tackling the vagaries of illiberal democracies than the ECtHR. And it’s not as if the CJEU has been that effective. Still, by contrast, and apart from the *Baka v Hungary* judgment, the ECtHR’s case law has for years been scarred by inadmissibility decisions in relation to both Hungary and Turkey. For instance, at the end of 2018 the

Court dismissed a case brought by dozens of Hungarian judges, who had (temporarily) lost their job when the retirement age for judges was lowered in a move motivated by (ruling political party) Fidesz’s intentions to capture the judiciary. In *JB and others v Hungary*, the ECtHR held that the judges’ dismissal did not result in infringement of any of the Convention’s human rights, because, amongst other reasons, the case did not disclose ‘legislative interference with the outcome of a [specific] court case’, and there was ‘no evidence of any individualised negative remarks made by the domestic authorities as regards the applicants’ professional performance’.

This, of course, entirely misses the point of systemic undermining of the rule of law. The Court has seemed incapable, or unwilling, to face the rule of law challenge head-on. As far as I can tell, this might be changing in light of more recent judgments against Turkey. However, my overall impression remains one of massive failure on the part of the ECtHR, at a time when it was and is needed most.

What’s next on your research agenda?

That’s a good question! I have some tough decisions to make. First and foremost: to define an actual research agenda, instead of getting carried away and finding myself knee (or neck) deep in a sea of intriguing new materials that I never seem to get a firm grip on. At the moment, I’m working on an edited volume with a colleague from Lund University in Sweden on the interlinkages between populism, constitutional backsliding and (far-reaching) restrictions of migrants’ rights in Europe. I also urgently need to find time to revise the comparative paper on religious neutrality I presented at last year’s MICCL. And I’m trying to finalize a proposal for a multidisciplinary research project, with colleagues at three other Belgian universities, on future-proofing human rights (not terribly ambitious...). Whatever research lines I commit to in the long run, I hope to situate them at the intersection of human rights law and comparative constitutional law.

CCCS MEMBER FEATURE

An interview with Erika Arban, CCCS Member



Dr Erika Arban is a Postdoctoral Fellow in the ARC Laureate Program in Comparative Constitutional Law. She specialises in comparative federalism, comparative constitutional law and legal research methodology. Erika has studied and worked in Belgium, Canada, Italy and the USA, and being exposed

to different legal systems has enriched her comparative perspective. She recently convened a workshop on “Cities in Federal Theory”, which investigated how metropolitan areas could take a strategic role in federal systems. In addition to her research on federalism, Erika is also interested in interdisciplinary approaches to the study of constitutional law. She is currently the co-editor of the Blog of the International Association of Constitutional Law. Erika received her PhD at the University of Ottawa, and her thesis “Italian Regionalism and the Federal Challenge” was awarded the Governor-General’s Gold Medal for the best thesis in the Humanities. Erika generously offered to be interviewed by CCCS Research Assistant, Jacob Kairouz.

How did you come to specialise in research on federalism, and how has being part of the CCCS community influenced your work?

I have always been intrigued by federalism, at least since my country, Italy, first started looking at it as a constitutional prospect. What fascinated me was the unorthodox and conflicting way Italians understood federalism. The constitutional structure currently in place in Italy, and the political and institutional debates leading to it naturally became the main topic of my doctoral studies. Because the Italian constitutional model sits at the intersection of a variety of approaches including federalism, regionalism and sub-state nationalism, I use it to interrogate how federal theory (as part of constitutional law) deals with contemporary pressures.

Being part of the CCCS community has influenced and benefitted my research enormously. First, it has allowed me to make connections that have been conducive to new and innovative research. For example, in 2019, as part of my fellowship with the Laureate Program in Comparative Constitutional Law I convened a workshop on “Cities in Federal Theory”. This workshop was made possible by helpful discussions with colleagues within the Centre, and several colleagues also enthusiastically participated. Second, because of the extensive comparative work done at the Centre, I have managed to expand the geographical scope of my inquiries. Finally, the in-depth discussions on constitutional law and theory at the numerous CCCS (and Laureate) events have allowed me to situate my work on federalism within constitutional theory in new and different ways.

In your work you write about *Bundestreue* and cooperative federalism. What do these concepts mean and what are your reflections on how they have played out in Australia in recent months?

Bundestreue is a German doctrine that translates, literally, as “loyalty, trust or faith” (*Treue*) towards the “federal system” (*Bund*). It implies that interactions, among the various levels of government in a federation, should be premised on reciprocal trust and collaboration and restraint against infringing on each other’s fields of power. Cooperative federalism can be seen as one expression of *Bundestreue*. During a global emergency, like the one caused by the current pandemic, collaboration and cooperation among levels of government is of fundamental importance. Likewise, reciprocal trust – from the centre to the states and localities and vice versa – is imperative to ensure a harmonised and integrated response. Without this confidence and loyalty, distrust develops – with dreadful consequences.

From my perspective, *Bundestreue* has played out quite well in Australia recently. In a federal system like the Australian one, historically considered quite centralised because of the significant amount of powers concentrated in the hands of the Commonwealth, the Covid-19 pandemic has offered an opportunity to rethink how Australian federalism might work in practice through coordination, trust and loyalty, in spite of the inevitable tensions that have transpired in some areas, such as schools.

I hear that you are a musician! It is clear that your musical pursuits have influenced your research, for example, in the idea that ‘solidarity cannot be understood as univocal: rather, it needs to be reciprocal and polyvocal...’ (‘Exploring the Principle of (Federal) Solidarity’). How can creative approaches to legal thinking like your own help us to conceptualise cooperative federalism?

I started thinking about the intersection between law and music when I wrote an article some years ago, called “Seeing Law in Terms of Music”. As soon as I started thinking about it, I realised that these two disciplines are less distant than one might think at first. The theorisation of many concepts, found in constitutional law or federalism theory, could benefit from such creative approaches. For example, the constitutional theorist Gary Jacobsohn uses the idea of constitutional “disharmony” – clearly borrowing from music – to explain some inconsistencies found in constitutional texts.

We can also approach the concept of cooperative federalism creatively. Like *Bundestreue*, cooperative federalism refers to the idea of cooperation over competition, of harmonisation among different roles. This idea is not unlike what happens in an orchestra. In an orchestra, each sector plays its part without competing with or trying to prevail over the other sectors – the harmonious and collaborative effort of each section and instrument contributes to the final choral result. Similarly, cooperative federalism, at least in its ideal understanding, is about joint decision-making, collaborative action and integration as well as conflict reduction, requiring every level of government play their part to ensure an efficient federation.

You are an avid traveller, you have published in (at least) three languages, and you have worked in cities and universities all over the world. How has this comparative experience influenced your perspective?

My experiences have enormously influenced my academic perspective. Studying and working in different countries, and adapting to very different academic cultures and languages, of course, has many challenges. But, the skills honed in this process become are incredibly useful when engaging in comparative work. The appetite for learning about and comparing other legal systems grows just naturally as a result.

Indulging this appetite for comparison does entail some risks and drawbacks, especially from a methodological perspective. Writing about a jurisdiction without knowing the specific political, socio-economic and cultural context risks presenting only a partial picture. To some extent this is unavoidable, yet, there are also enormous benefits. Engaging with less familiar jurisdictions has allowed me to gain a broader perspective of constitutional law and federalism. Bridging all of my varied experiences has only enriched my work.

What research ideas are currently exciting you, and where might they take you?

My current research explores the reconciliation of diversity and social cohesion within the theoretical framework of comparative constitutional and federal theory. In this regard, I am developing three distinct, but intersecting, lines of research. Within the first line of investigation I am theorising about socio-economic

asymmetries from a constitutional law standpoint. In this research, I am trying to identify how federalism-based mechanisms can provide answers to socio-economic pressures. The second strand of research focuses on aspirational constitutional principles. In this work, I am trying to understand how principles reflective of specific values (such as the principle of solidarity) support reconciliation and social cohesion within divided societies. Finally, I am doing research exploring the constitutional nature and status of cities, where I consider what legal tools are required by local governments, to equip them to balance diversity and socio-economic cohesion.

There are various ways in which these three lines of investigations overlap. Both the research on cities and socio-economic asymmetries deal with the concept of “spatial” asymmetries (a concept that builds on the idea of “spatial statism” articulated by Hirschl and Shachar). Aspirational values, such as solidarity, play a substantive role in balancing diversity and creating social cohesion, particularly when socio-economic asymmetries exist, not only within the state as a whole but also in cities.

In parallel with these specific enquiries, I am reflecting on the scope of comparative constitutional law and how to pursue meaningful comparative research. The theoretical underpinnings of this field are still largely under-theorised and under-discussed. In this regard, I am particularly grateful to the many other CCCS members who share similar interests and concerns – my interactions with these colleagues are always helpful and insightful.



Participants of the Reading Group in Professor Adrienne Stone's ARC Laureate Program in Comparative Constitutional Law
The discussion centred on 'The Principles of Constitutionalism' by N.W. Barber (OUP 2018)
Held from 16 April - 17 May 2020

MELBOURNE LAW MASTERS 2020

The new **Government Law program** for the **Melbourne Law Masters 2020** is now available for enrolment. A full list of Government Law subjects is here:

<https://law.unimelb.edu.au/study/masters/courses/178aa#subjects>.

In 2020, 28 of the 180 subjects offered in the MLM are specifically designated for Government Law. Some of these are established favourites and are offered annually or biannually. These include, for example, Regulatory Policy and Practice (Yeung), Statutes in the 21st Century (Gordon and Hayne), Freedom of Speech (Stone) and Royal Commissions and Public Inquiries (Richards and Nichols). Others are offered for the first time in 2020, including Bringing in the People (Daly and Saunders); and Multi-level Government (Saunders and Crommelin).

Most subjects are taken intensively over a five-day period. Subjects may be taken singly or towards a Diploma, a Specialist Masters degree, or the LLM. Any one potentially interested in the program is welcome and encouraged to discuss subject selection with the Directors of Studies, Cheryl Saunders or Jason Varuhas.

Subjects may be packaged in various ways, depending on interest. The following are only two examples.

Students seeking an advanced grounding in Australian public law might choose from (amongst others):

- Federal Jurisdiction (French, Gordon)
- Government Liability (Varuhas)
- Royal Commissions and Public Inquiries (Richards, Nichols)
- Statutes in the 21st Century (Gordon, Hayne)
- Human Rights in Australia (Evans, Pound)
- Administrative Law in Tax Matters (O'Loughlin, Chan, Meng)

Students with an interest in public law with comparative dimensions might choose from (amongst others):

- Bringing in the People (Daly, Saunders)
- Comparative Human Rights Law (Porat)
- Comparative Indigenous Rights (Borrows)
- Freedom of Speech (Stone)
- Judicial Reasoning (Davis)
- Law of Public Administration (Varuhas, Rawlings)
- Law of Democracy (Tham)
- Multi-level Government (Saunders, Crommelin)

Join us if you can and be part of the vibrant public law life centred around the CCCS!



2019 MLM Farewell Function - MLM International Graduates

THE CONSTITUTION TRANSFORMATION NETWORK

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

Our Recent Activities

In November 2019, ConTransNet was pleased to host the [2019 Australia-ASEAN Women in Constitution-Building Capacity Development Program](#), which was supported by the Australian Government through the Australia-ASEAN Council of the Department of Foreign Affairs and Trade. The Course brought together [8 women from four ASEAN countries](#), namely Indonesia, Myanmar, Philippines and Thailand. We produced a short [video](#) which we launched in December 2020, which captures the reflections of our participants on what they learned and its relevance for their own home contexts. In February 2020, CTN published a [Policy Brief on Women and Constitutions in Action](#). The Policy Brief reflects the experiences and insights shared by participants during their time with our team. It discusses key issues related to gender and constitutional issues, with specific reference to Indonesia, Myanmar, Thailand and Philippines.

In April 2020, the DEM-DEC online database, which tracks and shares information about the regression and renewal of democracy around the world, was reconfigured as "[COVID-DEC](#)" track, compile, and share information on how State responses to the novel coronavirus (COVID-19) are impacting on democratic governance. The DEM-DEC team is led by CTN Convenor Dr Tom Daly. The team are working closely with partners such as International IDEA and Freedom House to collect data across a number of themes including: Alternative governance (e.g. online parliaments); Democratic rights and freedoms; Democracy v authoritarianism in the fight against COVID-19; Elections; Emergency powers and Power grabs.

Our recent publications

Cheryl Saunders, CTN Convenor, was published on the IACL Blog, writing on "[Irish Re-Unification: Perspectives from Elsewhere](#)". Her blog post was part of an [IACL-AIDC Blog Symposium](#) on unification of the island of Ireland. Cheryl's blog reflects on experiences with unification and secession from across the world, including reunification of the two Germany's at the end of the Cold War, the division of Sudan and the break up of Czechoslovakia, and the possible options for the two Koreas, to draw out lessons learned and good practice of relevance to the two Irelands.

Will Partlett, CTN Convenor, published an IACL Blog Post on "[Russia's Unconstitutional Zeroing Amendment](#)" in response to the last-minute amendment of Article 81 of the Russian Constitution on 10 March 2020. The amendment "zeroes out" the number of terms any prior or current president has served and allows the current President (Vladimir Putin) to run for two additional terms. Will argues that the amendment contradicts three key constitutional principles enshrined in the Russian Constitution, namely, popular sovereignty, separation of powers and a republican form of government.

Cheryl Saunders published an article on ConstitutionNet, reflecting on "[The Impact of Climate Change on the Australian Federation](#)". Her article explores the dynamics of federalism in the particular context of climate change, showing the role that effective intergovernmental relations can play and how bottom up initiatives can assist in building nationwide consensus on solutions to climate change. This article comes after a 2019 [CTN blog](#) which reflected on innovative climate change strategies which are being implemented at sub-national levels across the world.

In February 2020, **Anna Dziejczak**, CTN Convenor, published an article on "[Popular Protest: Constitutional Democracy In Crisis Or Constitutional Democracy In Action](#)". Anna's article is part of a collection reflecting on "[Constitutional Democracy In Retreat: Comparative Asian Perspectives And Experiences](#)", in the most recent issue of Public Jurist. Anna's article reflects on popular protest movements in support of constitutional change in Asia, and the opportunities and risks that come with civic constitutionalism.

Will Partlett published an article reflecting on early proposals by Russian president Vladimir Putin mooted in January 2020, which suggested the President was developing an "[Exit Plan](#)", for his life as an ex-president - with some caveats. These proposals have now been superseded (see Will's articles below), but this analysis provides interesting insights into Putin's early thinking.

Teaching

Michael Crommelin and **Cheryl Saunders** will teach an intensive Masters subject [Multi-level Government \(LAWS90180\)](#) from 5 August to 11 August 2020. The course will canvass issues such as democratic representation, distribution of fiscal resources, structure/operation of the public sector, judicial interpretation, management of natural resources and constitutional change.

Bruce Oswald and **Cheryl Saunders** will teach an intensive Masters subject [Post-Conflict Statebuilding \(LAWS70313\)](#) from 21-27 October 2020. This subject deals with the body of law and practice that applies to states as they emerge from conflict and try to build strong, prosperous and responsive communities.



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

Twitter: @ConTransNet

To join the ConTransNet mailing list

Email: law-CTNetwork@unimelb.edu.au

LAUREATE PROGRAM IN COMPARATIVE CONSTITUTIONAL LAW

About the Laureate Program

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

Our Team

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

Our Students

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

Keep in Touch

Twitter: twitter.com/LPCCL1

Web: law.unimelb.edu.au/laureate-programs/lpccl

Email: Laureate-Constitutions@unimelb.edu.au



Professor Adrienne Stone
Australian Laureate Fellow



Dr Erika Arban
Post-doctoral Fellow



Dr Dinesha Samararatne
Post-doctoral Fellow
(from 22 February 2019)



Dr Stijn Smet
Senior Research Associate
(from 1 November 2018)



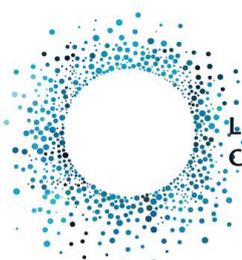
Toerien Van Wyk
PhD Candidate



Darshan Datar
PhD Candidate



Gabrielle Dalsasso
Program Manager



Laureate Program in
Comparative Constitutional Law

CCCS BROWN BAG SEMINAR SERIES

3 March 2020, Tuesday

‘Climate Change and the (German) Constitution – Status quo and possible future developments’, **Professor Ann-Katrin Kaufhold** (Ludwig-Maximilians-Universität Munich, Germany)

10 March 2020, Tuesday

Panel Discussion: ‘Looking Ahead - Key Constitutional Developments Worldwide in 2020’

Panelists:

Professor Cheryl Saunders, Professor Adrienne Stone, Dr Tom Daly, Dr Shireen Morris, Dr Dinesha Samararatne, Professor Jeff Redding, Joshua Snukal, Dr David Kenny, Associate Professor Will Partlett and chaired by **Professor Farrah Ahmed**.

17 March 2020, Tuesday

‘Beyond Borders and Brexit: Constitutionalising a United Ireland’, **Dr David Kenny** (Trinity College Dublin, Ireland)

24 March 2020, Tuesday

‘*Spence v State of Queensland*’, **Professor Michael Crommelin** and **Professor Cheryl Saunders** (Melbourne Law School).

31 March 2020, Tuesday

‘Constitutionalising the Administrative State: A Methodological Inquiry’, **Professor Kristen Rundle** (Melbourne Law School)

7 April 2020, Tuesday

‘*Nesun Resources Ltd v Araya*: Do Legal Categories Still Matter?’, **Professor Cheryl Saunders** and **Professor Jason Varuhas** (Melbourne Law School)

21 April 2020, Tuesday

‘Who qualifies and who decides?: Implications of Love and Thoms for Membership Governance’, **Professor Michelle Foster** and **Professor Kirsty Gover** (Melbourne Law School)

28 April 2020, Tuesday

‘Constitutionalism as National Discourse’, **Dr Dinesha Samararatne** (Melbourne Law School)

5 May 2020, Tuesday

‘Injunctions and Basic Rights: *Smethurst v Commissioner of Police* [2020] HCA 14’, **Professor Cheryl Saunders** and **Professor Jason Varuhas** (Melbourne Law School)

12 May 2020, Tuesday

‘Freedom of Political Communication and Public Sector Employment: *Banerji v Comcare* [2019] HCA 23; (2019) 98 ALJR 900’, **Professor Adrienne Stone** (Melbourne Law School)

19 May 2020, Tuesday

‘Supreme Court Politicization and Polarization in the US and in Israel – Processes and Possible Solutions’, **Associate Professor Iddo Porat** (College of Law and Business, Israel)

2 June 2020, Tuesday

‘What Emergencies Can Teach Us about Non-Emergencies: The Constitution and COVID-19’, **Dr Scott Stephenson** (Melbourne Law School)

16 June 2020, Tuesday

‘Post-Juristocracy, Democratic Decay, and the Limits of Gardbaum’s New Theory of Judicial Review’, **Associate Professor Tom Daly** (Melbourne School of Government)



CCCS members
attending the Brown
Bag Seminar, 10
March 2020

FORTHCOMING EVENTS

The Centre for Comparative Constitutional Studies will host a series of conferences, seminars and events in 2020. Due to COVID-19, all 2020 events have moved online. For more information on these and other events see <https://law.unimelb.edu.au/centres/cccs/events>

Conferences

2020

Democratic Decay and Constitutional Breakdown: 2020 as a Pivotal Year for Stock-Taking

Co-hosted by Centre for Comparative Constitutional Studies,
International Association of Constitutional Law and Melbourne School of Government

Co-sponsored by the Laureate Program in Comparative Constitutional Law

10-12 December 2020

at Melbourne Law School

Further details TBC

CENTRE PEOPLE

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

Co-Directors

Professor Adrienne Stone
Professor Kristen Rundle

Research Centre Members

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

Post-doctoral Research Fellows

Dr Erika Arban (Laureate Program in Comparative Constitutional Law)
Dr Shireen Morris (McKenzie Post-doctoral Fellow)
Dr Dinesha Samararatne

PhD Students in Residence

Darshan Datar
Phoebe Galbally
Elizabeth Hicks
Julian Murphy
Charmaine Rodrigues
Anjalee De Silva
Joshua Snukal
Toerien Van Wyk

JD Research Associates

Priyanka Banerjee
Sophie Clapin
Nicholas Felstead
James Gunn
Jake Herd
Andrew Herrmann
Annie Jiang
Jacob Kairouz
Reetika Khanna
Alice Maxwell
Joe Micallef
Mairead O'Connor
Cassie O'Regan
Emily Peck
Bodhi Shribman-Dellmann
Lucas Volfneuk

Administrator

Mr Aftab Hussain

Constitution Transformation Network Coordinator

Charmaine Rodrigues

Program Manager (Laureate Program in Comparative Constitutional Law)

Gabrielle Dalsasso

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Professor Brian Opeskin
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To join our mailing list to receive notification about CCCS events and publications send an email to law-cccs@unimelb.edu.au

To learn more about us go to www.law.unimelb.edu.au/cccs

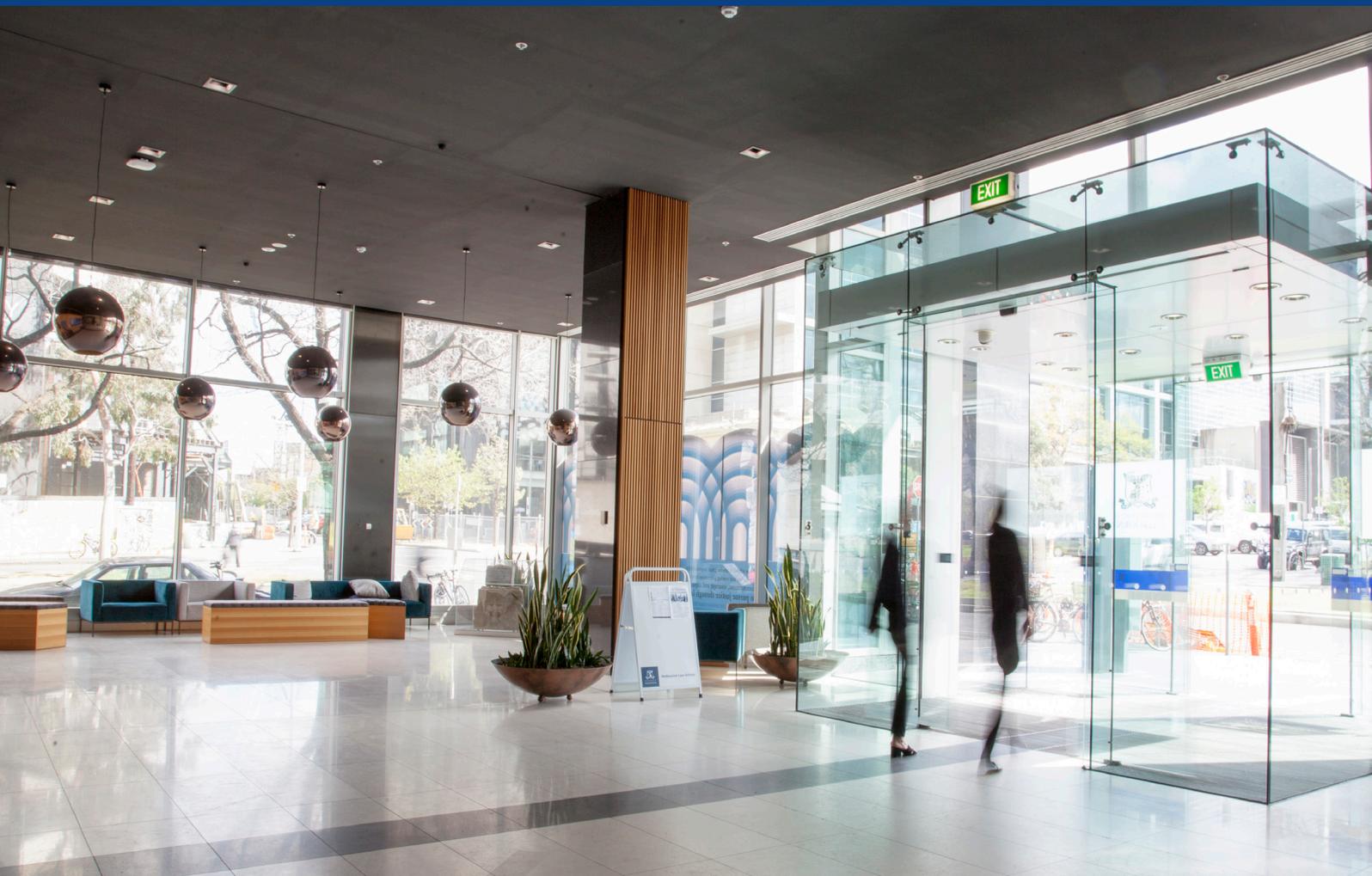
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