



CCCS NEWSLETTER #41

DECEMBER 2019

Welcome to the 41<sup>st</sup> edition of the Centre for Comparative Constitutional Studies newsletter, a guide to news and events at the Centre.

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



Centre for  
Comparative  
Constitutional  
Studies

Melbourne Law School

## DIRECTORS' REPORT

We publish this 41st CCCS Newsletter just days after another major public law event at Melbourne Law School: the **Melbourne Institute of Comparative Constitutional Law (MICCL)** conference convened under the auspices of **Professor Adrienne Stone's Laureate Program in Comparative Constitutional Law (funded by Australian Research Council)**. Dedicated to building capacity in comparative constitutional law research, this year the two-day MICCL event saw 46 scholars from more than 15 countries assemble to participate in masterclasses, panel discussions on forthcoming manuscripts, and sessions with a special focus on the works of junior scholars.

The MICCL event (see full report p 17) concluded a busy and rewarding half year of events led by the CCCS and its scholars. In July our biannual **2019 Constitutional Law Conference** proved to be an outstanding success. The conference officially commenced on the evening of **Thursday 25 July** with the **Hon. Justice Stephen Gageler AC** (High Court of Australia) presenting the 2019 Allen Hope Southey Memorial Public Lecture on *'Engineers: The drama of its day in the climate of its era'*. Justice Gageler's theme provided a fitting and fascinating frame for the conference on Friday 26 July, which commenced with a special panel on **'Engineers: The Next 100 Years'** (Dr Stephen Donaghue QC (Commonwealth Solicitor General), Laureate Professor Emeritus Cheryl Saunders AO (Melbourne), and Emeritus Professor Jeff Goldsworthy (Melbourne)), followed by panels on **'The Constitution and National Security: Internal and External'** (Mr Bret Walker SC (Fifth Floor St James Hall Chambers) and Dr Cameron Moore (UNE/ANU/UOW)), **'Constitutional Dimensions of Property'** (Mr Graeme Hill (Owen Dixon Chambers West), Professor Michael Crommelin AO (Melbourne), and Dr Lulu Weis (Melbourne)), and **'Recent Developments in Freedom of Political Communication'** (Mr Craig Lenehan (Fifth Floor St James Hall Chambers) and Professor Adrienne Stone (Melbourne)). We also celebrated the publication of **Dr Dylan Lino's** award winning *Constitutional Recognition: First Peoples and the Australian Settler State* (Federation Press, 2018) with remarks by **Professor Marcia Langton AM**, and learned much from **The Hon. Kenneth M Hayne AC QC** in his after-dinner address on the subject of **'On Royal Commissions'**.

In this 41st edition of the CCCS Newsletter we continue our practice of featuring profiles of our alumni and members. For our **member feature**, CCCS Research Assistant **Lucas Volfneuk** profiled our colleague **Dr Tom Daly**, Assistant Director of the Melbourne School of Government, who shared his experience founding the online resource on democratic decay and renewal, **'DEM-DEC'** (see feature on p 10). For the first of our two alumni feature, CCCS Research Assistant **Mairead O'Connor** interviewed **Professor Carolyn Evans**, former Deputy Director of the CCCS and Dean of MLS, and now Vice-Chancellor of Griffith University. CCCS Research Assistants **Zoe Brown**

and **Bodhi Shribman-Dellmann** enjoyed the opportunity to interview CCCS alumni and barrister **Chris Tran** for the second feature. Chris had coached Zoe and Bodhi as members of the MLS team who won the **2019 Gibbs Constitutional Law Moot**. Congratulations Zoe, Bodhi and all of their teammates for a fantastic effort! Credit is also due to CCCS research assistants **Mairead O'Connor** and **Cassie O'Regan** for their superb work in preparing the judges' bench book, overseen by Research Assistant **Shawn Rajanayagam** and Gibbs moot organiser, **Dr Scott Stephenson**.

As always, the **local and global engagement** of CCCS members has been energetic and valued. **Locally**, CCCS participated in two inquiries of the Commonwealth Parliament. **Laureate Emeritus Professor Cheryl Saunders** and **Associate Professor Kristen Rundle** made a [written submission](#) to the **Senate Legal and Constitutional Affairs References Committee inquiry into the impact of changes to models of service delivery on the administration and running of Government programs**. The submission featured in a news article in the [Canberra Times](#), and Kristen Rundle travelled to Canberra to give evidence before the Committee on 1 November. Cheryl Saunders also travelled to Canberra on 7 November to participate in a **Constitutional Roundtable on fixed four-year parliamentary terms** convened by the House of Representatives Standing Committee on Social Policy and Legal Affairs. In between her multiple international engagements and media contributions (see Member Updates p 1) **Professor Adrienne Stone** delivered two **lectures** addressing "The Two University Freedoms" under the auspices of Academy of Social Sciences in Australia Fay Gale Lecture (presented on 30 August in Adelaide and 10 September in Melbourne). Globally, Professor Adrienne Stone addressed "Freedom of Speech in the Digital Age" in lectures delivered in Seoul and Buenos Aires.

The global engagement of CCCS members was also enriched by the conference on 'Constitutional Resilience in South Asia' convened by **Associate Professor Tarun Khaitan** on 5-7 December as part of his Australian Research Council Future Fellowship on the same theme. This three-day workshop saw senior and junior scholars from India, Afghanistan, Pakistan, Nepal, Bangladesh and Sri Lanka join with members of the CCCS, the Asian Law Centre, National University of Singapore and University of Oxford to discuss concerns about the stability of democracies, even long-established democracies, that have been rising globally and especially all these jurisdictions raise questions about resilience in constitutional structures and institutions.

Among recent accomplishments in our community, we are thrilled to report that four of our members – **Kristen Rundle**, **Farrah Ahmed**, **Tarun Khaitan**, and **Margaret Young** – have all been promoted to the rank of full **Professor** commencing 2020. Congratulations one and all. **Professor Kirsty Gover** was also awarded an Australian Research Council Future Fellowship

## DIRECTORS' REPORT

to pursue a four-year project on indigenous constitutional orders: good luck Kirsty for this important work. Applause is also due to our PhD students, **Osayd Awada** and **Carlos Arturo Villagran Sandoval** who both successfully defended their doctorates this past half year. We were equally delighted to see our former CCCS colleague **Dr Anne Carter** (Deakin) join forces with **Dr Joe Tomlinson** (York) in August to hold a cutting-edge workshop on 'Facts in Public Law Adjudication', with the support of funding from the **Academy of the Social Sciences in Australia (ASSA)**.

Our **international and national visitors** over the course of the last six months have again enriched the life of the Centre. We have thoroughly enjoyed a long visit from **Angel Aday Jimenez Aleman** (University of Vigo, Spain) who remains with us until the end of January and has been working on use of foreign judgments in constitutional cases. We also enjoyed visits from federalism scholar **Professor Johanne Poirier** (McGill University, Canada), government contracting expert **Professor Kris Wauters** (Université Catholique de Louvain, Belgium), **Professor Esther Villandangos** (University of León, Spain), and **Aziz Ismatov** (Nagoya University, Japan). Professor Adrienne Stone's **Laureate Program in Comparative Constitutional Law** (see page 16) hosted four further **Kathleen Fitzpatrick Visiting Fellows**, all of whom made wonderful contributions as presenters and participants in our signature Tuesday **Brown Bag seminars**. Indeed, a special mention is

due about our 2019 Brown Bag season: our largest yet with 30 events in total, all expertly and graciously convened by Laureate Postdoctoral Fellow, **Dr Erika Arban** (see page 22).

Plans are already in place for more exciting events in 2020. Among them are a design forum on a First Nations 'Voice' for the Australian Constitution (23-24 July 2020), and a joint CCCS, Melbourne School of Government, and International Association of Constitutional Law conference titled '**Democratic Decay and Constitutional Breakdown: 2020 as a Pivotal Year for Stock-Taking**' scheduled for 10-12 December 2020. The conference will be funded by the Australian Research Council under the auspices of the Laureate Program in Comparative Constitutional Law. We look forward to updating you in our June 2020 Newsletter. Until then, our warmest thanks to the whole CCCS community for making 2019 such a rewarding year.



Professor Adrienne Stone



Associate Professor Kristen Rundle



The Hon. Justice Stephen Gageler AC (High Court of Australia) presenting the 2019 Allen Hope Southey Memorial Lecture, 25 July 2019, Melbourne Law School.

The lecture formally commenced the 2019 CCCS Constitutional Law Conference

## Adrienne Stone, Director

### Forthcoming Publications

Proportionality and its Alternatives, forthcoming 2019  
Federal Law Review [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3473516](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3473516).

Freedom of Expression in Asia. Forthcoming, Lau, Law and Schwartz (eds), *Oxford Handbook of Constitutional Law in Asia*, Oxford University Press; U of Melbourne Legal Studies Research Paper No. 820 (2019). Available at SSRN: <https://ssrn.com/abstract=3355029>.

Constitutional Change in Australia: The Paradox of the Frozen Continent in *Routledge Handbook of Comparative Constitutional Change* (Xenophon Contiades & Alkmene Fotiadou, eds., forthcoming). [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3346179](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3346179) (with Elisa Arcioni).

### Public Lectures

“Freedom of Expression in the Digital Age” 2019  
Distinguished Lecture, Korea University Law School, 5 December.

“The Two University Freedoms” Academy of Social Sciences in Australia, Fay Gale Lecture 30 August (Adelaide) 10 September (Melbourne).

### Academic Conferences and Workshops

Freedom of Speech in the New Speech Economy, Ibero American Association of Constitutional Law, Buenos Aires, 27 May.

Commentary on Anne Carter ‘Proportionality and the Common Law’, CCCS Legal Theory Workshop Scholar’s Day, 25 July 2019.

Political Communication, Politics and Personal Moral Choices. CCCS Conference 2019, Melbourne Law School, 26 July 2019.

Proportionality and its Alternatives, Zines Symposium on Constitutional Law, Australian National University, Canberra, 7-8 September 2019.

Chair: Constitutional Challenges of the Migration Process, 24 October, Cusco, Peru.

Freedom of Speech: Comparative Perspectives, Constitution Research Institute, Constitutional Court of Korea, 6 December.

Freedom of Speech: Principles and Prospects, The Inaugural Australian McWhirter Conference, Melbourne, 11 July 2019.

### Appointments

International Advisory Board, Centre of Comparative and Public Law, Hong Kong University.

### Media

Interview, The Wire, Anti-Social Media: Extremism in the Online World, 25 July, 1 August. <http://thewire.org.au/story/anti-social-media-extremism-in-the-online-world-part-3/>; <http://thewire.org.au/story/anti-social-media-extremism-in-the-online-world-part-4/>.

Aleks and Liam Talk: Freedom of Speech, Academic Freedom and Deplatforming (and Assange): <https://podcasts.apple.com/au/podcast/aleks-listens/id1470583844?i=1000445476337>; <https://alekslistens.podbean.com>; <https://open.spotify.com/show/6kgeb3CLVF9JRIZMUBB1Uw?si=FslasjnRB6cdAFMdRGsLg>.

Interview, Sydney Morning Herald, ‘Smethurst’s High Court challenge a ‘high stakes’ test for press freedom’: <https://www.smh.com.au/politics/federal/smethurst-s-high-court-challenge-a-high-stakes-test-for-press-freedom-20191111-p539gz.html>.

## Kristen Rundle, Co-Director

### Publications

Kristen Rundle, ‘Non-compellable powers: A relational analysis’, (2019) 30(4) *Public Law Review*.

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

### Events

Co-convenor, CCCS 2019 Constitutional Law Conference, Melbourne Law School, 26 July 2019.

Chair, ‘Federal Judicial Appointments and Federal Judicial Power: A US-Australia Comparison’, Melbourne Law School – Federal Court of Australia ‘Judges in Conversation’ event (Judge Alison Nathan and Justice David O’Callaghan), 29 August 2019.

Chair, ‘Limitations on Judicial Review: Where To From Here?’, Melbourne Law School – Federal Court of Australia ‘Judges in Conversation’ event (Professor David Feldman and Justice Debbie Mortimer), 8 October 2019.

### Presentations

‘Administrative discretion and governing relationships: situating procedural fairness’, Julius Stone Institute of Jurisprudence Seminar, Sydney Law School, 12 September 2019.

Commentator (to papers by Emily Hammond and Jason Varuhas), ‘Facts in Public Law Adjudication’ workshop, Melbourne Law School, 16 August 2019.

Commentator (to Ann Genovese), Faculty Research Seminar

Series, Melbourne Law School, 7 October 2019.

Commentator (to Ed Rubin), 'Democracy and the Administrative State', Work in Progress Seminar, Melbourne Institute of Comparative Constitutional Law, Melbourne Law School, 10 December 2019.

#### Parliamentary inquiries

Written submission: Kristen Rundle and Cheryl Saunders (on behalf of the Centre for Comparative Constitutional Studies), Submission to Parliament of the Commonwealth of Australia, Senate Legal and Constitutional Affairs References Committee, Inquiry into the impact of changes to service delivery models on the administration and running of Government programs, 23 August 2019: [https://law.unimelb.edu.au/\\_data/assets/pdf\\_file/0007/3170698/CCCS-Senate-submission-Government-service-delivery-23-August-2019.pdf](https://law.unimelb.edu.au/_data/assets/pdf_file/0007/3170698/CCCS-Senate-submission-Government-service-delivery-23-August-2019.pdf).

Appearance before the Committee: 1 November 2019: [http://parlview.aph.gov.au/mediaPlayer.php?videoID=478447&operation\\_mode=parlvie w#/4](http://parlview.aph.gov.au/mediaPlayer.php?videoID=478447&operation_mode=parlvie w#/4).

#### Media

Featured in *Canberra Times* article, 'Contracts distance Ministers from the public, inquiry told', 13 September 2019: <https://www.canberratimes.com.au/story/6383153/contracts-distance-ministers-from-the-public-inquiry-told/>.

## Cheryl Saunders AO, Foundation Director

#### Publications

Cheryl Saunders, 'International Involvement in Constitution-Making in David Landau and Hanna Lerner (eds), *Comparative Constitution Making* (Edward Elgar, 2019), 69-89.

Cheryl Saunders, 'Courts with Constitutional Jurisdiction' in Roger Masterman and (eds) *The Cambridge Companion to Comparative Constitutional Law*, 416-442 (Cambridge, CUP, 2019).

Anna Dziedzic and Cheryl Saunders, 'Constitutional Implementation for Sustainable Peace', FBA Research Report, June 2019.

Anna Dziedzic and Cheryl Saunders, 'Greater Autonomy and Independence for Bougainville', Report to the National Research Foundation of PNG.

Cheryl Saunders, 'Constitution Making in Asia', (2019) *The Chinese Journal of Comparative Law*, <https://doi.org/10.1093/cjcl/cxz014>.

#### Presentations

Member of panel to present on The Future of Law Reform: Constitutional and Immigration Issues, ALRC, 18 June 2019.

Cheryl Saunders 'Would you recommend this case to others?

*Engineers and Constitution-building*', a paper presented to CCCS conference, 26 July 2019.

Commentator, Cities in Federal Theory Workshop, 20 June 2019.

Cheryl Saunders, 'The Strange (continuing) Story of Commonwealth Authority to Spend', Samuel Griffith Society Conference, 10 August 2019.

Invited participant in a Constitutional Roundtable on Fixed Four Year Parliamentary Terms, House of Representatives Standing Committee on Social Policy and Legal Affairs, 7 November 2019.

Cheryl Saunders 'Treaty-making in Australia; the Non-Indigenous Party', Conference on Indigenous-State Treaty Making in Australia – Law, History and Politics, 20 November 2019.

Cheryl Saunders, 'The Significance of Non-Indigenous Recognition for Non-Indigenous Australians', Federal Court of Australia Conference, 27 November 2019.

Cheryl Saunders, presentation on sub-national governance during periods of interim governance, Sixth Workshop on Edinburgh Dialogues in Post-Conflict Constitution Building, Edinburgh, 9-10 November 2019.

#### MLM Teaching

MLM subject Current Issues in Administrative Law (with Kenneth Hayne), September 2019.

#### International constitutional assistance

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

#### PhD completions

Carlos Arturo Villagran Sandoval, 'Using comparative regional law to identify future directions for the Central American integration system'.

Osayd Awawda, 'The Palestinian Constitutional Court: A Critical Assessment of its Independence under the Emergency Regime of the West Bank'.

Brian Opeskin, 'The Judicial System and Demographic Change: Preparing for Australia's Population Futures'.

#### Engagement

Cheryl Saunders and Michael Crommelin, 'Matters within Victorian Authority Potentially Negotiable within the Victorian Treaty Process', a paper prepared for VTAC on behalf of ConTransNet.

Presentations to officials in Manila and Davao, the Philippines, on aspects of intergovernmental relations, federalism and the operation of Parliamentary systems, July

2019 (for International IDEA).

Presentations to members of the Myanmar Hluttaw, on Emergency Provisions and on International Law, September 2019 (for International IDEA).

Participation in Fourth Melbourne Forum, Yangon, Myanmar, October 2019.

Convened and presented at the 2019 Australia-ASEAN Women in Constitution-Building Capacity Development Program, Melbourne Law School, 25-29 November 2019.

## Centre Members

### Farrah Ahmed

#### Publications

'Judging Constitutional Conventions' *International Journal of Constitutional Law* (2019) (with Richard Albert and Adam Perry).

'Enforcing Constitutional Conventions' *International Journal of Constitutional Law* (forthcoming, 2019) (with Richard Albert and Adam Perry).

#### Presentations

'The Delegation Theory of Judicial Review' Oxford Administrative Law Theory Workshop, University of Oxford, July 2019.

'Comment on Secularism' Constitutional Theory Workshop, University College London, July 2019.

'The Delegation Theory of Judicial Review' Administrative Law Workshop, University of Toronto, September 2019.

'Unlawfulness in Miller 2', Faculty Seminar Series, University of Toronto, October 2019.

'Social Rights in India', Queen's University, Kingston, Ontario, November 2019.

'Expressive Theories of Law' Faculty Workshop, University of Toronto, November 2019.

'What does Symbolic Establishment Express' Western University, November 2019.

'What does Symbolic Establishment Express' National University of Singapore, December 2019.

### Erika Arban

#### Publications

Erika Arban, "Metropolitan cities, federalism and socio-economic challenges" *Rivista di Diritti Comparati* special issue no. 1 (2019) *Economic Inequality as a Global Constitutional Challenge*.

Erika Arban, "Droit constitutionnel et sciences politiques: une méthodologie" in S. Bernatchez & L. Lalonde, eds., *Approches et fondements du droit*, Cowansville, QC : Yvon Blais, 2019.

#### Conference Presentations

*Unpacking the Concept of Divided Sovereignty in Federal and Decentralized Systems: some Comparative Insights* - Second European Constitutional Law "Schmooze" on The Future of Federalism in Comparative Perspective – Università degli Studi di Milano – Milan (Italy), October 2019.

*Constitutional asymmetries in Italian regionalism* – ICON-S 2019 Conference on "Public Law in Times of Change?" – Santiago (Chile), July 2019.

*Federalism and socio-economic asymmetries* – ICON-S 2019 Conference on "Public Law in Times of Change?" – Santiago (Chile), July 2019.

#### Blog Posts

Erika Arban & Antonia Baraggia, "Guest Editors' Introduction: IACL's New Research Group on New Frontiers of Federalism" IACL-AIDC Blog (22 October 2019) <https://blog-iacl-aidc.org/new-frontiers-of-federalism/2019/10/22/guest-editors-introduction-iacls-new-research-group-on-new-frontiers-of-federalism>.

Erika Arban & Antonia Baraggia, "Presentation of the new IACL research group 'New Frontiers of Federalism'" IACL-AIDC Blog (29 July 2019) <https://blog-iacl-aidc.org/2019-posts/2019/7/29/presentation-of-the-new-iacl-research-group-new-frontiers-of-federalism>.

Erika Arban, "2019 Workshop 'Cities in Federal Theory' 20-21 Jun 2019" IACL-AIDC Blog (17 July 2019) <https://blog-iacl-aidc.org/2019-posts/2019/7/17/conference-report-workshop-cities-in-federal-theory>.

### Tom Daly

#### Appointments

Member, International Coalition for Democratic Renewal (ICDR). ICDR is a global initiative of a group of intellectuals, activists, and politicians, concerned with the expansion of power and influence of authoritarian regimes and the weakening of democratic systems from within. Members include Nobel laureate Svetlana Alexievich, Francis Fukuyama, Russian chess grandmaster and political activist Garry Kasparov, and French philosopher Bernard-Henri Lévy.

Advisory Board, *Zeitschrift für öffentliches Recht* (Journal of Public Law, ZöR – founded by Hans Kelsen in 1914).

#### Article

'Kindred Strangers: Why has the South African Constitutional Court Never Cited the African Court on Human and Peoples' Rights?' (2019) 14(2) *Constitutional Court*

Review.

### Book Review

'Between Fear and Hope: Poland's Democratic Lessons for Europe (and Beyond)' *European Constitutional Law Review* (published online 3 December 2019; not yet assigned to an issue). Review of Wojciech Sadurski, *Poland's Constitutional Breakdown* (Oxford University Press, 2019). Available [here](#).

### Report

'United Kingdom of Great Britain and Northern Ireland' 2018 *Global Review of Constitutional Law* (I-CONnect & Clough Center, October 2019). Co-authors: Jack Simson Caird, Joelle Grogan, Dimitrios Kagiros.

### Policy Discussion

A Highly Important, if Incomplete, Corrective' in Richard Youngs (ed), 'Post-Cold War Democratic Declines: The Third Wave of Autocratization' (Carnegie Europe, 27 June 2019).

### Government Submission

'Toward Democratic Renewal'. Invited submission to the Australian Senate inquiry into national identity, nationalism, and democracy. Published as Submission No. 95, 18 November 2019.

### Blog Post

'Electoral Democracy in Australia: Crisis, Resilience and Renewal' Election Watch, 20 August 2019. Republished in Pursuit magazine and The Mandarin.

### Democratic Decay & Renewal (DEM-DEC)

International Day of Democracy video series 'Why is it important to be a defender of democracy today?'. Featuring MPs and experts, produced in collaboration with Parliamentarians for Global Action (PGA) 15-23 September. Link [here](#).

Global Research Updates for July, August-September, October. Available [here](#).

DEM-DEC Anniversary Research Compilation (August 2018-June 2019). Available [here](#).

### Presentations

Invited panellist, 'Brexit, Europe, and Democracy'. Livestreamed roundtable, 17 December 2019. Organised by Pursuit, University of Melbourne.

Invited discussant, 'Constitutional Resilience in South Asia', Melbourne Law School, 5 December 2019.

Seminar Leader for 2 sessions of the Australia-ASEAN Women in Constitution-Building Capacity Development Program, Melbourne Law School, 25-29 November 2019: Session 9: 'Design, function and operation of court' (with Anna Dziedzic)

Session 19: 'Emergence of new forms of people power' (with Jayani Nadarajalingam).

'Parties versus Democracy: Addressing Today's Political-Party threats to Democratic Rule', conference on 'After Liberalism? Populism and the Future of Democracy', Deakin University, 21 October 2019.

Invited speaker, 'Insiders, Outsiders, and Enemies'. Main Address, Annual General Meeting, Liberty Victoria, 19 November 2019.

Invited speaker, 'From Global Democratic Decay to Democratic Renewal?'. Parliament of Victoria, 14 November 2019. \* speech available online [here](#).

Invited panellist, 'How to Restore Public Trust in the Media'. Forum 2000 annual conference 'Recovering the Promise of 1989', Goethe Institut, Prague, 14 October 2019.

Invited speaker, 'Calls for an Election Commission in Ireland'. Electoral Research Regulation Network Workshop on 'Developing a legislative framework for a complex and dynamic electoral environment', Melbourne Law School, 1 October 2019.

Invited speaker, 'India's 2019 Elections from the Perspective of Global Democratic Decay' Roundtable, Jindal Law School, New Delhi, 21 August 2019.

Invited speaker or chair at 4 panels, International Society of Public Law (ICON-S) Annual Conference, Santiago, Chile, 1-3 July:

Panel 24: Chair/speaker – 'Corruption's Corrupting of Liberal Democracy' 1 July: 'Corruption and Democratic Decay Worldwide'.

Panel 84: Speaker – Courts Against or in Favour of Democratic Decay? 2 July: 'The Mutation of Juristocracy in the Context of Global Democratic Decay'.

Panel 126: Chair – 'The State of Constitutional Democracy: Directions' 2 July.

Panel 183: Speaker – 'Book Panel: Poland's Constitutional Breakdown' 3 July.

## Penny Gleeson

### Publications

Penny Gleeson, '[The Challenge of Medicinal Cannabis to the Political Legitimacy of Therapeutic Goods Regulation in Australia](#)' 43 (2) *Melbourne University Law Review* (forthcoming).

### Conferences

'Unpacking the Complexity of Regulatory Governance in a Globalising World: An International Conference to inaugurate a Global Regulatory Governance Research Network', Chinese University of Hong Kong (in partnership with the European Consortium for Political Research Standing Group on

Regulatory Governance), July 2019.

*Digital Citizens Conference on New Technologies: Rights, Responsibilities and Regulation*, Melbourne Law School, July 2019.

*European Association of Centres of Medical Ethics Annual Conference 2019: Rethinking Ethics in 21st Century Europe*, University of Oxford (organised by the Ethox Centre and Wellcome Centre for Ethics and Humanities), September 2019.

#### Academic Visitor

*Centre for Health, Law and Emerging Technologies (HeLEX)*, Faculty of Law, University of Oxford, August - September 2019.

#### Shireen Morris

##### Publications

Shireen Morris, 'Parliamentary Scrutiny and Indigenous Rights: Lessons for a First Nations Voice to Parliament', in Laura Grenfell and Julie Debjnak (eds), *Law Making and Human Rights* (Thomson Reuters, forthcoming, 2019).

##### Engagements

Speaker at the 'Inclusion and Participation in Constitution Building' forum in Myanmar run by International IDEA and the Constitutional Transformation Network, October 2019 – presentation on the First Nations dialogues and the Uluru Statement - Research engagement, contributing to international academic discussion and also international political/practical engagement, informing discussion about constitutional reform and design.

Speaker at 'Public Law in Four Jurisdictions' Conference, Wits University, South Africa, July 2019 – paper on the case for a First Nations voice in the Australian Constitution - Research engagement, contributing to international academic discussion.

Invited speaker for Allens Linklater on Indigenous constitutional recognition, 2019 - Law industry engagement, encouraging practical engagement with the Uluru Statement in this law firm.

Invited speaker at McWhirter Conference (Oxford) at Melbourne University for year 11 students, discussing free speech, July 2019 - School student engagement.

Invited speaker at Melbourne University Law Students Society, International Women's Day 2019 - University student engagement.

Invited speaker at ACU, St Patrick's Law Students Society, legal professionals panel 2019 - University student engagement.

Invited speaker at numerous #HerVote panels on women in

politics, 2019 - Wider community, public engagement.

Invited speaker at Pathways to Politics, women in politics course - Melbourne School of Government, speaking to aspiring politicians.

Invited speaker at Melbourne Law School 'brown bag' lunchtime talks, September 2019 - Internal CCCS/MLS academic engagement, sharing research with colleagues.

Invited speaker at the Victorian Local Governments Association on Treaty, 2019 - Public and local government engagement – informing discussions about constitutional reform and treaty locally.

#### Media

Panellist and expert on the Drum and Friday Fix (ABC TV).

Expert appearance on The Project, Channel 10.

#### Pip Nicholson

##### Presentations

Presented a Keynote "Vietnam: Constitutions as Signaling Instruments" at the 8th ASIAN CONSTITUTIONAL LAW FORUM (ACLF), 6th - 7th December 2019, Hanoi, Vietnam.

Presented a Masterclass at Vietnam National University School of Law on Contemporary Comparative Analysis of Law.

#### William Partlett

##### Publications

William Partlett and Mikhail Krasnov "Russia's Non-Transformative Constitutional Founding" in the *European Constitutional Law Review*. Vol. 15, No. 4 (2019), pp. 644–667.

"Post-Soviet Constitution-Making", Chapter in *Comparative Constitution-Making* (Hanna Lerner and David Landau, eds) (Elgar 2019). . <https://www.elgaronline.com/view/edcoll/9781785365256/9781785365256.00034.xml>.

##### Blog Post

ICONnect: The Post-Soviet Constitutional Rights Community. <http://www.iconnectblog.com/2019/12/the-post-soviet-constitutional-rights-community/>.

##### Presentations

'Post-Soviet Transformative Constitutionalism', King's College London: <https://www.kcl.ac.uk/events/post-soviet-transformative-constitutionalism-nov19>.

## Dinesha Samararatne

### Publications

*The Use of Confessionary Evidence under the Counter-Terrorism Laws of Sri Lanka: An Interdisciplinary Study* by Visakesa Chandrasekaram (Amsterdam: Amsterdam University Press, 2017. 227 pp. ISBN: 9789462981577) 78(3) (August 2019) the *Journal of Asian Studies* 699 (book review).

Proposals for a New Bill of Rights in Sri Lanka: Narrow Debates, Unmarked Challenges 108(6) (2019) The Roundtable: *The Commonwealth Journal of International Affairs* 667.

### Conferences, presentations

Presentation of paper titled **‘The Sri Lankan Legal Complex and its impact on Constitutional Resilience’** at the Constitutional Resilience in South Asia workshop convened by the Centre for Comparative Constitutional Studies and the Asian Law Centre of the Melbourne Law School and Centre for Asian Legal Studies of the National University of Singapore and Bonavero Institute of Human Rights of University of Oxford (4-7 December 2019).

Facilitator at the 2019 Australia-ASEAN Women in Constitution-Building Capacity Development Program conducted by the Constitution Transformation Network at the Melbourne Law School (25-29 November 2019).

Presentation of paper titled **The Hybridisation of Sri Lanka’s Writ Jurisdiction** at ‘Protecting Rights, Addressing Inequality: Writs as Constitutional Transfer’ convened by the Law School of the University of New South Wales (UNSW), Sydney, Australia and Konrad Adenauer Stiftung (15-16 November 2019).

Panellist at the launch of ‘The Constitution of Myanmar: A Contextual Analysis’ by Melissa Crouch, at University of New South Wales (UNSW), Sydney, Australia (14 November 2019).

Co-facilitator of the following session on **‘Aims and Opportunities of Inclusion and Participation’** of the Fourth Melbourne Forum on Constitution Building in Asia and the Pacific co-hosted by the Constitution Transformation Network and International IDEA (21-22 October 2019).

Presentation of paper titled ‘Accounting for International Law in Comparative Constitutional Law: The View from Below?’ at the weekly Brown Bag seminar of the Centre for Comparative Constitutional Studies at the Melbourne Law School (15 October 2019).

Invited participant at the **Workshop on Cultivating Constitutional Literacy in Asia** convened by the Rule of Law Programme Asia, Konrad-Adenauer-Stiftung and the School of Law, Singapore Management University in Singapore (10-11 October 2019).

Panellist at the weekly Brown Bag seminar of the Centre

for Comparative Constitutional Studies **‘Practice of and prospects for constitutional asymmetries in federal/regional systems’** at the Melbourne Law School (24 September 2019).

## Stijn Smet

### Publications

Stijn Smet, ‘The Pragmatic Case for Legal Tolerance’, 39 *Oxford Journal of Legal Studies* (2019), 344-373.

Stijn Smet, ‘Conscientious Objection through the Contrasting Lenses of Tolerance and Respect’, 8 *Oxford Journal of Law and Religion* (2019), 93-120.

Stijn Smet, ‘Conscientious Objection under the European Convention on Human Rights: The Ugly Duckling of a Flightless Jurisprudence’, in Jeroen Temperman et al. (eds), *The European Court of Human Rights and the Freedom of Religion or Belief: The 25 Years since Kokkinakis* (Brill, 2019), 282-306.

Stijn Smet, ‘Free Speech versus Religious Feelings, the Sequel: Defamation of the Prophet Muhammad in E.S. v Austria’, 15 *European Constitutional Law Review* (2019), 158-170.

## Scott Stephenson

### Publications

‘Against Interpretation as an Alternative to Invalidation’ (2020) *Federal Law Review* (in press).

‘Designing an Australian Bill of Rights: The Normative Trade-Offs’ in Matthew Groves, Janina Boughey & Dan Meagher (eds), *The Legal Protection of Rights in Australia* (Hart, 2019) 411–29.

‘Is the Commonwealth’s Approach to Rights Constitutionalism Exportable?’ (2019) 17 *International Journal of Constitutional Law* 884–903.

## Margaret Young

### Publications

Associate Professor Margaret Young maintains close links with CCCS although her work continues to focus on public international law. In the course of her current [ARC Discovery Project](#) on ‘The Potential and Limits of International Adjudication’ with Professor Hilary Charlesworth, she has published an article on ‘Studying Country-Specific Engagement with the International Court of Justice’ in the *Journal of International Dispute Settlement*. Associate Professor Margaret Young is also the Visiting Legal Fellow at the Department of Foreign Affairs and Trade for 2019-2020. <https://academic.oup.com/jids/advance-article/doi/10.1093/jnlids/idz018/5572154>.

## An interview with Carolyn Evans



**Professor Carolyn Evans was appointed as Vice Chancellor and President of Griffith University in February 2019. Prior to this, Professor Evans was Deputy Vice-Chancellor (Graduate and International) and Deputy Provost (2017-2018) at the University of Melbourne, and Dean and Harrison Moore Professor**

**of Law at Melbourne Law School (2011-2017). Professor Evans has degrees in Arts and Law from the University of Melbourne and a doctorate from Oxford University, where she studied as a Rhodes Scholar. She is an internationally recognised expert on religious freedom and the relationship between law and religion, and in 2010 was awarded a Fulbright Senior Scholarship to examine questions of comparative religious freedom.**

Over the course of her career, Carolyn has been involved with the CCCS as a Research Assistant, an Academic Member and served as Deputy Director of the Centre from 2004 – 2010. She kindly agreed to be interviewed by CCCS Research Assistant, Mairead O'Connor.

**What has been your experience with the CCCS and how has it impacted your later work?**

I had a very long involvement with the CCCS, first as an RA working mainly on the Public Law Review for Cheryl Saunders and then later as an Academic member and Deputy Director under Simon Evans and then Adrienne Stone. The CCCS gave me my first real insight into academic life.

When I was an RA, the CCCS was based in a terrace house in Barry St with a small crew of permanent staff but an endless stream of visitors from around the world. Cheryl had recently been made the first female professor in the Law School and was a formidable operator and role model for a young woman. The CCCS was both scholarly and engaged; working with governments at all levels, making submissions on the issues of the day, and supporting the Constitutional Centenary Foundation. That certainly influenced my view about the role of universities, and about the importance of scholars who were prepared to be public intellectuals and to engage with decision-makers to help improve the quality of outcomes for the community. After I finished as an RA, I recommended my then boyfriend (now husband) Stephen Donaghue for the role, so I kept in contact with the CCCS through him even once I graduated and was working as a lawyer.

My role as Deputy Director for the CCCS was my first substantial leadership role as an academic. Both Simon and Adrienne were generous in sharing responsibilities and credit which allowed me to develop experience and begin to build a track record that would facilitate me taking further steps towards my current role.

The CCCS has always been truly international in its orientation with particularly strong networks in the Asia-Pacific region and a history of identifying talented young scholars early in their careers. The exposure I had to people from a wide variety of countries at the CCCS helped me to understand the higher education landscape better and to recognise that the way that things are done in Australia was not the only way that they could be done.

The CCCS was also always prepared to push boundaries and think about doing things differently. Our focus on Asia made us stand out given that most comparative constitutionalism at the time was oriented towards Europe and North America. We were also one of the very few constitutional research centres with strong female leadership. It has been interesting over the years to watch as the rest of the world has caught up, and it provides a useful illustration of how determined leadership can help inspire broader change.

**As the first woman appointed Dean of Melbourne Law School and also Vice-Chancellor of Griffith University, what advice can you offer for women aspiring towards leadership positions in academic institutions, and more broadly?**

Women who are interested in leadership should work to create structured opportunities for themselves to develop their leadership skills and experiences, and plan strategically for the sort of roles that they wish to take on. Women often attribute their success to 'luck' or deny having any ambitions. It is true that luck plays a role in most successful people's lives, but it is rarely enough on its own. Most people who have succeeded have worked hard, been effective in their roles, and been prepared to stretch themselves for new opportunities which allow them to build their leadership abilities—so don't feel that you have to buy into the 'accidental leader' story. Many men do not hesitate to plan their careers, put themselves forward for challenging roles, and aim high; there's no reason why women should be embarrassed about doing the same.

Women should try to find mentors or supporters who will be supportive but also willing to offer frank feedback on their strengths and weaknesses. Sometimes this can be achieved through more formal leadership courses and tools, but having a



Professor Cheryl Saunders, Sir Anthony Mason and Professor Carolyn Evans at Melbourne Law School event

person or two that you trust and who can speak truth to power is incredibly valuable. Find people who challenge your worldview (but not those who are just difficult for the sake of being difficult) to test some of your ideas against. One useful quality of lawyers is that we are used to the notion that the clash of ideas can be healthy and lead to better decisions.

One of the great joys of academic leadership is that you get to work with very bright, talented and dedicated staff and students. The leaders I admire were always prepared to let others shine and give credit and opportunities generously. As you start taking on leadership roles, try to be the sort of person you would want to have as your supervisor. Bring others along with you and create opportunities for their success.

**What similarities and/or differences have you observed between your position as Dean, leader of one faculty within a university, and as Vice-Chancellor, leader of the entire organisation?**

I have found being Dean of the Law School a very strong preparation for being Vice-Chancellor. Deans at Melbourne are given a fair degree of autonomy and have to cover a wide range of areas. That meant that I was involved in almost all of the areas of university life including teaching and learning, research, budgeting, alumni and fundraising, administrative structures, developing strategy and engaging with senior external partners, and policy development. I learnt a lot about how to deal with different types of people. I still draw regularly on my experiences as Dean in my role as Vice-Chancellor and it has been invaluable to me.

Being Vice-Chancellor requires a stretch over a much wider range of areas and dealing with people from a variety of disciplinary backgrounds who will have different needs, ways of communicating and priorities. I had been fortunate as Dean to be on the University Executive which meant that I had been working on issues with colleagues from areas such as health, sciences and creative arts. This, combined with my time as Deputy Vice-Chancellor, gave me the opportunity to appreciate the importance of understanding each discipline in its own right, rather than trying to squeeze everyone into a one-size-fits-all approach. I find it fascinating to learn about other areas which are quite different to my own and I appreciate that the wider scope of being VC allows me to do this.

At Griffith, I am also based across five campuses with nearly 100kms between them. Trying to be visible and engaged with so many colleagues over such a wide geography has certainly shown me the challenges of scale which I didn't experience in the Dean role.

Both roles are challenging but very rewarding. The opportunity to work with talented people and try to support them to be able to reach their full capabilities is a real honour and I have been fortunate to have that chance at both Melbourne and Griffith.



CCCS member Dr Anna Dziedzic at her Graduation Ceremony with her supervisors, Professor Cheryl Saunders and Professor Adrienne Stone



CCCS team celebrating the End of Year social event at the University House, Woodward - 3 December 2019

## CCCS ALUMNI FEATURE - INTERVIEW WITH CHRISTOPHER TRAN

### An interview with Christopher Tran



**Christopher Tran is a barrister at the Victorian Bar in the chambers of List A Barristers. Chris has recently worked on a number of constitutional cases before the High Court including *Comcare v Banerji* [2019] HCA 23, *Spence v Queensland* [2019] HCA 15 and *Brown v Tasmania* (2017) 261 CLR 328. He**

**has also published on a diverse range of topics including constitutional citizenship, the WTO and administrative law. Chris completed an LLB at the University of Melbourne where he was a member of the CCCS and received the Supreme Court Prize, and also holds an LLM from Harvard University where he studied as a Menzies Scholar. Prior to joining the bar, he was a solicitor at King & Wood Mallesons and an Associate to Justice K M Hayne of the High Court of Australia. Chris kindly agreed to be interviewed by CCCS Research Assistants Bodhi Shribman and Zoe Brown, who he coached for the 2019 Sir Harry Gibbs Constitutional law Moot.**

**You were involved with the CCCS from 2008 to 2010. In what ways did your time at the CCCS influence the career you have had since?**

CCCS members have had a direct and substantial impact on my career. I wouldn't have gotten an associateship if it weren't for Cheryl Saunders, who was one of my referees. And I couldn't have gotten a scholarship to do a masters overseas if it weren't for Cheryl and Adrienne Stone, who were my referees during that process. Time and again I called on their generosity and they were always available to help – even when I only gave them excruciatingly short notice. Definitely my bad.

But working as a research assistant for CCCS members and simply getting the opportunity to hang around them influenced me in so many other ways. Probably, having such busy and important people show any interest in me at all helped give me the confidence to develop. And certainly, meeting them contributed to my interest in public law. What comes to mind when I try to think of what I learned? Cheryl, Adrienne and others showed me, by their example, the importance of being thoughtful about what it is you are doing.

**How did studying constitutional law in the US influence your approach to Australian Constitutional law?**

The most tangible influence I suppose is when working in areas or on cases where courts have previously looked to US law for some assistance (even if only to be rejected). The obvious example is implied freedom cases: I'll always look at whatever has been done in the equivalent area of first amendment jurisprudence. Studying in the US certainly helped me to understand what I'm reading – or at least, where to look and who best to read or to contact.

If I get time to stop and actually think about whatever issue it is I am working on (rather than just trying to get through the next task at hand), I'll sometimes think about how Professor A or Professor B would think about a problem. That often helps me to find new angles for presenting arguments. One of the most striking things about the US law school I attended was that each professor would unashamedly teach the course from their own perspective. This exposed students to their particular way of thinking so powerfully that I now just associate certain frameworks of analysis with particular people.

One of my fondest memories of US influence on my "approach" to Australian constitutional law is that the night before I had to stand up on my feet before the seven judges of the High Court, at shorter notice than I would have cared for (!), I knew there was something in Larry Tribe's book that was useful but I didn't have access to it in Canberra. So I emailed him and he replied in time to help me, and with kind words about butterflies as well.

**You have worked for plaintiffs and defendants in public law cases. Are there any differences in approach that you have noticed when challenging or defending legislation and administrative decisions?**

There are so many differences. But two in particular come to mind. First, when working for defendants/governments, usually you are better supported and have more resources. The solicitors who work in the constitutional law groups of the VGSO and the AGS are stunning. Second, when acting for defendants/governments you have to take into account wider interests than simply winning the case at hand, which can be challenging and rewarding.

**You have written on international, administrative and constitutional law. What's next for you in the academic sphere?**

No more writing! I don't agree with most of what I wrote in the past and it is embarrassing to read it now. But I also don't have the time really to commit to a full academic article. These days I do off-the-cuff presentations (maybe don't tell them they're off the cuff) to law firms about issues that I think are important (statutory interpretation, appeals, judicial review grounds, civil procedure). But really, that's probably just me shooting from the hip and getting something off my chest (lol!).

**Do you have any advice for those looking for a career at the bar or in public law?**

So much advice! My first bit of advice would be to contact me (or anyone really!) for advice. I couldn't have gotten anywhere without amazing mentors at different stages of my life. My second bit of advice would be to be the person who does their job, no matter what it is and however beneath you that you might think it is (okay I stole this advice from Preet Bharara but it is good advice). My third bit of advice is to repeat the first bit of advice, for emphasis.

## An interview with Dr Tom Daly, CCCS Member



**Dr Tom Gerald Daly is Assistant Director of the Melbourne School of Government, and founder and Director of the online resource on democratic decay and renewal, DEM-DEC. He kindly agreed to be interviewed by CCCS Research Assistant, Lucas Volfneuk.**

**You've been opening discussion spaces for constitutional law since at least 2012 (I'm thinking of the Constitutional Law Discussion Group at Edinburgh Law School), and you've been a CCCS member since 2017. What first inspired your interest in constitutional law, and its comparative aspects?**

I was actually studying human rights that first sparked my interest in public law, not so much taking constitutional law itself – which was not the most dramatic topic when I was a student in Ireland in the late 90s! My focus on the comparative side developed initially from studying French law in Lyon (during a joint French-Law degree), followed by a Master's research degree on hate speech at the European University Institute in Florence, comparing Ireland to Germany and Canada. But it was being at the coalface, working for the Chief Justice of Ireland from 2005-2011, that really pushed me in this direction: conducting research and drafting for judgments and speeches often involved a comparative focus given that Ireland is a small jurisdiction; we had judges continually visiting us from across the world; and I often represented the Court at conferences and meetings, especially across the EU.

**Outside of universities, you've previously held roles consulting a list of projects that range in geographic and democratic scope from Ireland to Turkey and the African Union, and working for the Chief Justice of the Irish Supreme Court. How did these experiences inspire the founding of DEM-DEC?**

That's a great question, because I think every single one of my experiences has informed the development of DEM-DEC in some way. My first inklings of 'democratic decay' in Europe were during my time representing the Supreme Court of Ireland on the Venice Commission's body for constitutional courts from 2008-2011, particularly seeing developments in Hungary after the Fidesz party came to government in 2010. My awareness of the issue also grew as I wrote a book on courts as 'democracy-builders', with Brazil as a central case-study. But nothing really compares to my experience managing a major Council of Europe project on strengthening judicial ethics in Turkey after the July 2016 coup attempt while Erdoğan was going into full-on dictator mode – I ended up recommending early closure of the project because I was acutely concerned it would be actively subverted by the government. Overall, working across government, international organisations, and academia made me realise that there was a pressing need for an information hub to connect

people from different sectors and places focused on the health of constitutional democracy.

**You've had what looks like a whirlwind year or so, founding DEM-DEC and becoming Assistant Director at the Melbourne School of Government earlier this year. What practical and/or theoretical nexus you see between the two roles?**

Yes! And travel all over, from Israel, to Hong Kong, to the USA, Lebanon, Europe, Chile, India – you name it! On the practical side there are many resonances between the two roles. The School of Government actually co-sponsored DEM-DEC's formal launch in October 2018. Since beginning as Assistant Director in May part of my role has been spearheading 'Renewing Democracy' as one of the School's three overarching research themes. Under that theme, and often wearing both hats, I've been engaging a lot with government and civil society, including recently giving speeches on democratic decay and renewal at the Victorian Parliament, at the Liberty Victoria AGM, and making a submission to the Senate Inquiry into Nationalism, National Identity and Democracy. My deeply comparative background is very useful in analysing and discussing the health of democracy here in Australia, whether it's constitutional safeguards for key democratic rights, or the resonances between trends here (e.g. polarisation) and elsewhere.

**Your book 'The Alchemists: Questioning Our Faith in Courts as Democracy-Builders' was published in 2017. Why did you become interested in more closely examining the relationship between constitutional courts and the strength of a country's democracy? How do your findings apply in the Australian context?**

This goes back to my work in the Venice Commission, which included co-editing the Commission's constitutional case-law publication for 7 years, until 2018. With case summaries from 61 courts worldwide you start to see just how integral courts are to building, and maintaining, a healthy democracy. But, as *The Alchemists* argues, we see too that there are also serious risks associated with placing too much emphasis on courts, and that it's unfair to pile too much responsibility on judges alone. To my mind, this issue has only become more relevant in the 2 years since the book was published, and it casts the debate on the judiciary here in Australia in a different light too. Do we want a more powerful or active judiciary, or just better governance? The second isn't necessarily predicated on the first.

**Where to from here for you?**

That's always the million-dollar question! On the research and engagement side, DEM-DEC is going from strength to strength, and I'm committed to continuing to help experts pool their knowledge, work across boundaries, foster the next generation of democracy defenders, and focus on prospects for democratic renewal – because anatomising 'decay' must be linked to figuring out potential solutions. In March 2020 I'm delighted to be co-teaching a Melbourne Law Masters intensive with the inimitable

Prof. Cheryl Saunders on new mechanisms for democratic participation, I'm designing and teaching a new elective on the centrality of the public service to healthy democracy on the School of Government's Master of Public Administration in April, and at the end of the year I'll be co-organising with Prof. Wojciech Sadurski an International Association of Constitutional Law (IACL) Roundtable on democratic decay and constitutional

breakdown here in Melbourne – which will include tie-ins with the IACL Blog, which I co-edit and which also had a stellar year this year. So 2020's shaping up to be another busy one!

## MY YEAR AT CCCS: FISH OUT OF WATER

Special Feature by  
Hayley Pitcher, CCCS MLM Associate



I decided to take a year off from my position as crown counsel for the Constitutional Law Branch in the Attorney General of Ontario's office in Canada and travel to a country to which I had never been, to pursue my LLM at the University of Melbourne. The highlight of my master's has been my involvement with the CCCS community which shares my love of constitutional law.

When I first arrived, I wondered how different could constitutional law in Australia really be from Canada? Both countries gained independence from England in a slow and rather anti-climactic fashion. Both countries have federal structures and inherited the common law, and both countries have yet to come to terms with its history of colonialization and reconciliation with its indigenous peoples.

The one difference I was aware of and felt very smug about it, as if I had something to do with its existence, is that Canada had a *Charter of Rights* and Australia had no such Bill of Rights. I recall expressing my dismay that Australia didn't have a Bill of Rights to the Co-Director of the CCCS, Professor Kristen Rundle, and her cautioning against jumping to such a stark contrast too quickly. And at that moment, I realised I was not in the waters I was used to swimming in and that I needed to embrace my new surroundings.

I was fortunate to be here for the Honourable Justice Gageler AC lecture on the *Engineers* case ((1920) 28 CLR 129) in recognition of its upcoming 100th year anniversary on the eve of the CCCS 2019 Constitutional Law Conference. In his lecture, entitled '*Engineers*: Drama of its Day in the Climate of the Era', Gageler J considered the heroes of the decision and the context in which the decision was decided. His lecture reminded me that you don't get the full story just by reading a case. Gageler J described the opposing viewpoints of Justice Griffiths and Justice Isaacs about the federal compact and impact of events, such as the first World War, on the evolution of a people who identified as Australian. While Justice Griffiths' view of the federal compact did not prevail in *Engineers*, Gageler J emphasized Griffiths' contribution to ensuring that issues of constitutional interpretation be decided by the High Court and not by the Privy Council. It is extra-judicial

factors like these that inform and give context to decisions.

Through this lecture, and throughout my year of study, I gained a glimpse into Australia's constitutional culture. I can now understand when the legal reasoning is 'so Justice Kirby' or a 'classic Gummow and Hayne' joint-reasoning. I've learned about the doctrines employed by the High Court that, in practice, protect individual rights, such as separation of powers and freedom of political communication and how these came to be. I've learned that a Bill of Rights is not the only way to protect rights.

I've also reflected on my own country's constitutional culture and a case that is celebrated in Canada. That case is the *Persons Case* ([1930] AC 124) where the Privy Council interpreted the word 'person' for senate appointments to include women. In contrast to the ordinary rules of construction espoused in the *Engineers* case by the High Court, the Privy Council held that Canada's Constitution should be interpreted as a 'living tree capable of growth and expansion within its natural limits'. Interestingly, the Supreme Court of Canada decision that was on appeal to the Privy Council had found that women were not included in the definition of persons. The Canadian Supreme Court adopted the 'living tree' doctrine and has applied it to the *Charter* since its enactment in 1982.

This approach has not been without its risks. With large and liberal interpretations of constitutional text, there lies a risk that the growth and expansion will not stop at its natural limit. There have been recent dissents in the Supreme Court of Canada that are critical of the majority for overstepping its appropriate role in *Charter* cases from determining constitutionality of laws to making decisions based on preferred policy outcomes. I have gained an appreciation of the High Court of Australia's strong sense of its constitutional role and its careful reasoning in its decisions to not step outside of the limits of its role.

During my time at the CCCS, I also had the opportunity to observe the current constitutional debates taking place in Australia. Of particular interest to me is the debate both within and outside the High Court about structured proportionality. Structured proportionality is so entwined with *Charter* rights analysis and is a routine part of my practice, I've never really stepped back to consider the advantages and disadvantages of this approach. While I must admit that I am still a fan of structured proportionality, I can now articulate why I support this approach beyond the 'this is how it's done' thinking. I think structured proportionality provides a framework for making difficult assessments, particularly when there are conflicting rights at issue, that increases transparency in decision making while still

allowing for context and flexibility. In addition, the government’s ability to successfully show that a limit on a right is proportionate often depends on the strength of the evidence it provides. Because of that, my view is that structured proportionality also acts as an accountability measure for governments when limiting rights.

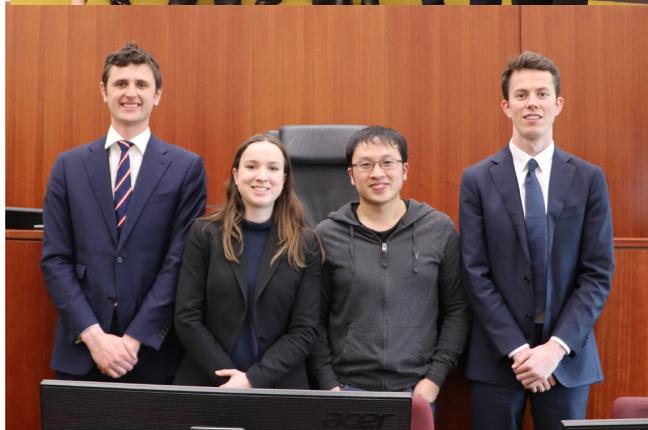
Another highlight of the CCCS Constitutional Law Conference was the panelist mix of academics and lawyers. In my experience, I find that the views of practitioners and academics are often siloed and that they don’t engage with each other. However, the interaction between the academy, the bar, and the judiciary at the CCCS conference and other events provided valuable insight into the topics being discussed. The discussions were enriched by the complexity, depth, and nuance the different perspectives brought to the Australian constitutional issues being considered.

I am undoubtedly going to miss the CCCS Brown Bag seminars, where I was welcomed into a community of smart and passionate, but also incredibly generous, academics. Nearly every week, I got to attend the Brown Bag seminar and learn about a different constitutional topic, which varied widely in jurisdictions and issues and was led by academics from around the globe. I am still amazed about how much you can learn in an hour. Every week, I got to take part in a lively discussion with diverse and often competing viewpoints to really grapple with the issues at hand. Throughout the Brown Bags, my knowledge and perspective broadened. I had become accustomed to thinking about constitutional issues through the lens of representing the Attorney General of Ontario and advocating on behalf of the province. At the Brown Bags, I was traversing new waters every week.

[I must add that during the Brown Bags, I also got to observe another cultural difference between Canada and Australia. At home, we drink mostly filtered coffee, and here, we drink espresso-based drinks. This is a custom I would like to bring back to Canada!]

When I go back to my familiar waters to practice constitutional law, I will have a whole new perspective on my surroundings. I look forward to challenging the assumptions that I make in my legal reasoning and engaging with the breadth and depth of knowledge I have gained over the last year. For that, I am very grateful for my brief but stimulating time with the CCCS community.

*The views expressed herein are my own, and do not reflect the views of the Ministry of the Attorney General or the Government of Ontario.*



CCCS Research Assistants Zoe Brown and Bodhi Shribman-Dellman with MLS student Tyrone Connell won the Sir Harry Gibbs Constitutional Law Moot competition held from 3-5 October.

Tyrone received the award for Best Speaker. MLS also won the award for best Defendant Written Memorial. The team was coached by CCCS Alumni Christopher Tran.

A record 22 teams from around Australia took part. The competition was held at MLS, with the Grand Final at the Federal Court. The Grand Final was presided over by the Hon Justice Patrick Keane AC, QC, the Hon Marilyn Warren AC, QC and the Hon Justice Richard Niall QC.

This year’s problem concerned the scope of the aliens power under s 51 (xix) and the intergovernmental immunities doctrine in relation to state laws binding the Commonwealth. The problem was written by Dr Stephen Donoghue QC.

## 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

CTN team hosted and participated in a range of seminars and workshops over the period from July to December 2019.

In September, the team hosted a special Brown Bag seminar presented by the CTN and CCCS visitor Dr Aziz Ismatov on “Central Asian Constitutionalism?” followed by a public seminar on “[The Socialist Constitutional Legacy in Central Asia](#)”.

From 21-22 October, the CTN and International IDEA co-hosted the 2019 Melbourne Forum on Constitution-Building in Asia and the Pacific on the theme of “[Inclusion and Participation in Constitution Building Processes](#)”. The Forum was held in Nai Py Taw in Myanmar. This year’s Forum brought together participants from more than ten countries in Asia and the Pacific, to discuss the theme of “Inclusion and Participation in Constitution Building Processes”. The online Report of the fourth Melbourne Forum can be accessed [here](#). The report summarises issues raised in each session. It also includes links to the papers presented during each session.

From 25-29 November 2019, CTN hosted 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](#). These eight women advocates and activists came Indonesia, Myanmar, Philippines and Thailand and have been engaged in democracy building and/or constitution-building in their home countries. The Course aimed to facilitate sharing of experiences across jurisdictions, as well as sharing the expertise of our own CTN team. The [Programme](#) was a mix of workshops held at MLS run by our academics as well as practitioners from key institutions in our state, and included field visits to some of these institutions as well. To watch a short video see the link: <https://youtu.be/gbLUjqmVNRE>

## Our recent publications

In November, CTN prepared a paper for Victorian Treaty Advancement Commission (VACT) on “Matters within Victorian authority potentially negotiable within the Victorian Treaty Process”. This paper will be discussed at the First Peoples’ Assembly of Victoria which was inaugurated on 10 December in the Victorian Parliament House. The Assembly was elected by first peoples from across the State of Victoria and will work with the Victorian Government to prepare for treaty negotiations, including by establishing a negotiation framework, an independent umpire (Treaty Authority), and a fund to support Aboriginal communities during the eventual treaty negotiations.

Dinesha Samaratane, CTN Co-Convenor, published a paper on “[Proposals for a New Bill of Rights in Sri Lanka: Narrow Debates, Unmarked Challenges](#)”. Her article makes two claims about the current proposals for reforming Sri Lanka’s fundamental rights

chapter. One is that the complex challenges in seeking judicial enforcement of fundamental rights remain largely unremarked upon to date. The second is that the transformational reach of the proposals is yet to be evaluated against Sri Lanka’s actual experiences in the enforcement of a Bill of Rights in its republican era.

Will Partlett, CTN Co-Convenor, published a chapter on “[Post-Soviet constitution-making](#)” in a recently published book on Comparative Constitution-Making by Hanna Lerner and David Landau (eds) (Elgar 2019). The chapter takes the first comprehensive look at constitution making in the 15 post-Soviet countries that span from Western Ukraine to the Russian Far East. Will also published two I-CONnect blogs. In October 2019, he reflected on “[Late Soviet Constitutional Supervision: A Model for Central Asian Constitutional Review?](#)”, using Uzbekistan as a case study. In November 2019, he wrote about “[The Post-Soviet Constitutional Rights Community](#)”. The blog reflects on a key factor in the success of post-Soviet constitutionalism, namely, bottom-up pressure from non-governmental, human rights organizations and lawyers. Will also published a paper with Mikhail Krasnov on “[Russia’s Non-Transformative Constitutional Founding](#)”.

Tom Daly, CTN Co-Convenor, with co-authors Jack Simson Caird, Joelle Grogan, Dimitrios Kagiros, produced a review of constitutional developments in the United Kingdom of Great Britain and Northern Ireland for the [2018 Global Review of Constitutional Law](#), which was published online by I-CONnect and the Clough Center on 21 October 2019. Tom also published a new article on ‘Kindred Strangers: Why has the South African Constitutional Court Never Cited the African Court on Human and Peoples’ Rights?’

## Further updates

Jayani Nadarajalingam, CTN Co-Convenor, and member of Melbourne School of Government has won seed funding to work with Cheryl Saunders at CTN, among others to work on a project which combines legal analysis with philosophical theorising to investigate the complexities of citizenship in hybrid societies, including its relevance for Australian constitutional law.

For more updates please visit CTN website <https://law.unimelb.edu.au/constitutional-transformations#news-and-events>



2019 Melbourne Forum participants - Nai Py Taw, Myanmar

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

Twitter: [@ConTransNet](#)

## LAUREATE PROGRAM IN COMPARATIVE CONSTITUTIONAL LAW

### About the Laureate Program

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

### Our Team

Under the auspices of the Laureate Program, a diverse group of researchers have been assembled to pursue these questions. The program is led by **Professor Adrienne Stone** who, as Kathleen Fitzpatrick Australian Laureate Fellow, directs the program. Professor Stone's work on freedom of speech, judicial reasoning, constitutional institutions and comparative method provide a framework for the project. Post-doctoral Fellows **Dr Erika Arban** and **Dr Dinesha Samararatne** round out the senior research team, 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.

### Our Visitors

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



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)*



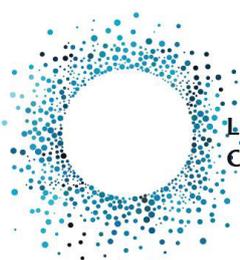
Toerien Van Wyk  
PhD Candidate



Darshan Datar  
PhD Candidate



Gabrielle Dalsasso  
Program Manager



Laureate Program in  
Comparative Constitutional Law

## LAUREATE PROGRAM IN COMPARATIVE CONSTITUTIONAL LAW

This year we had the pleasure of hosting six visitors from across the globe; Dr Sanaa Alsarghali from Palestine, Dr. Jeong-In Yun from South Korea, Dr. Eleonora Bottini from France, Dr Maria Cahill from Ireland, Dr. Peta Stephenson from Australia, and Dr. Vanessa MacDonnell from Canada. Each visitor has participated in a variety of seminars and workshops and received thought-provoking, insightful feedback from colleagues of the CCCS after presenting their work. In short, the Visiting Fellowships provide nurturing valuable connections to help progress their research and their career.

### Our Events

In February, we had the good fortune to hear from **Assistant Professor Yoon Jin Shin** presenting *Cosmopolitanising Rights Practice: The Case of South Korea*.

In May and June, a reading group focused on critical reading and discussion of Dieter Grimm 'Constitutionalism: Past, Present, and Future' (OUP 2016).

In June, Dr Erika Arban chaired a workshop on *Cities in Federal Theory*. See page 18 for more detail.

In August, a reading group focused on critical reading and discussion of Bruce Ackerman's 'Revolutionary Constitutions: Charismatic Leadership and the Rule of Law' (Harvard University Press 2019).

In December, the 3rd Melbourne Institute of Comparative Constitutional Law was held. See page 17 for more detail



Associate Professor Vanessa MacDonnell  
University of Ottawa  
Kathleen Fitzpatrick Visiting Fellow



Dr Maria Cahill  
University of Oxford  
Kathleen Fitzpatrick Visiting Fellow



Dr Sanaa Alsarghali  
An-Najah University, Palestine  
Kathleen Fitzpatrick Visiting Fellow



Professor Jeong-In Yun  
Legal Research Institute,  
Korea University  
Kathleen Fitzpatrick Visiting Fellow



Dr Peta Stephenson  
Queensland University of Technology  
Kathleen Fitzpatrick Visiting Fellow



Professor Eleonora Bottini  
University of Caen Normandy  
Kathleen Fitzpatrick Visiting Fellow

### Keep in Touch

Twitter: [twitter.com/LPCCL1](https://twitter.com/LPCCL1)

Web: [law.unimelb.edu.au/laureate-programs/lpccl](http://law.unimelb.edu.au/laureate-programs/lpccl)

## MELBOURNE INSTITUTE OF COMPARATIVE CONSTITUTIONAL LAW

December 9 - 11 saw the third meeting of the **Melbourne Institute of Comparative Constitutional Law**, an initiative of the [Laureate Program in Comparative Constitutional Law](#) funded by the [Australian Research Council](#) and led by Professor Adrienne Stone, as an Australian Laureate Fellow. The Institute convenes annually as a gathering of approximately 20-40 scholars, including junior faculty, post-doctoral fellows, PhD students and internationally leading senior scholars. Its aim is to develop the study of comparative constitutional law through exchange between leaders and emerging scholars in the field; to provide the participants with a chance to engage in a systematic study of a jurisdiction which will in enhance their comparative scholarship. A feature of the three-day program are the expert seminars by leading scholars of constitutional law.

This year's distinguished guests included **Professor Stephen**

**Gardbaum**, MacArthur Foundation Professor of International Justice and Human Rights, University of California who delivered a seminar on the populist challenge to democracy, Former Justice **Manuel Cepeda**, Former President Constitutional Court of Colombo on the jurisprudence of the constitutional court of Colombia. Day 2 of the program featured work in progress from senior scholars including **Professor Edward L. Rubin**, University Professor of Law and Political Science, Vanderbilt Law School and a book panel on manuscript in progress by **Professor Rosalind Dixon** (UNSW) and **Professor Aileen Kavanagh** (Professor, Constitutional Governance, Trinity College, Dublin). The final day of the Institute was devoted to the work of junior scholars and featured participants from India, Australia, Germany, Belgium and Ethiopia.



2019 MICCL Conference, 9 - 11 December 2019, Melbourne Law School



## CITIES IN FEDERAL THEORY WORKSHOP, 20-21 JUNE 2019

On 20-21 June 2019, [Dr. Erika Arban](#) convened the workshop 'Cities in Federal Theory'. The workshop was an initiative of the Laureate Program in Comparative Constitutional Law, a program funded by the Australian Research Council for 2017-2022 and based at Melbourne Law School, which is also home to a large group of comparative constitutional law scholars working at the Centre for Comparative Constitutional Studies at the University of Melbourne.

Cities, especially metropolitan cities and megacities, are unique socio-economic spaces where there is constant need to reconcile diversity and social cohesion through legal tools. Academic scholarship has extensively studied cities from different perspectives (anthropology, sociology, etc), while in federalism studies a voluminous literature exists on local governance. Yet, the city remains an understudied subject from a strictly legal/constitutional perspective.

The purpose of the workshop was to initiate a global discussion among junior and senior legal scholars on the role and place of cities in federal constitutional theory. The point of departure of the workshop was that cities (and, in particular, metropolitan cities and megacities) could be conceived of as unique socio-economic

spaces where a constant need exists to reconcile diversity and social cohesion through legal tools, yet most (federal) constitutions are silent on the role and powers of cities. Furthermore, while social sciences scholarship has extensively studied cities from different perspectives, cities remain an understudied subject from a legal and constitutional perspective. The workshop thus represented a unique opportunity for constitutional scholars to discuss this emerging topic.

The workshop rotated around three major themes. First, exploring the city as a legal concept, and thus offering a theorization of why cities in federal systems should be equipped with more powerful legal tools. Second, the workshop looked at specific case-studies from several jurisdictions, both in the Western world and in the Global South, to better establish which problems cities are facing and which legal tools exist (or not) to help them better perform their roles. Third, what could be the way forward.

Full report can be accessed [here](#).



Cities in Federal Theory Workshop participants, 20-21 June 2019, Melbourne Law School



## RECENT EVENTS

### The Future of Law Reform: Constitutional and Immigration Issues - Public Seminar 18 June 2019

The Australian Law Reform Commission and CCCS organised a panel discussion on the future of legal and constitutional reform in Australia. The discussion progressed the ALRC's new project seeking public input to assist in identifying areas of Australian law which may benefit from reform. The project is broad-ranging and considers suggestions relating to any area of law. This panel event focused on issues relating to the Australian Constitution, and also Immigration. Panel members included Professor Cheryl Saunders, Professor Adrienne Stone, Professor Susan Kneebone, and Human Rights Law Centre Legal Director Katie Robertson. Discussions and suggestions made at the event are considered by the ALRC in developing a proposed multi-year programme of law reform inquiries for the consideration of the Commonwealth Attorney General.

For further details and seminar recording see the link:

<http://go.unimelb.edu.au/z6xr>

### 2019 Allen Hope Southey Memorial Lecture Engineers: The Drama of its Day in the Climate of its Era 25 July 2019

In this public lecture, the Hon. Justice Gageler (High Court of Australia) reflected on the people behind the landmark decision. *"Who were the heroes of the Engineers' Case?"*. Justice Gageler mentioned that there was the young Robert Menzies, counsel for the successful party, who was permitted by the High Court to challenge its earlier decisions and there was Frank Leverrier KC, who appeared for the Commonwealth and ably supported Menzies's argument. Most prominently, there was Samuel Griffith and Isaac Isaacs, who stood on either side of a debate about the federal compact that culminated in the Court's decision.

The public lecture officially commenced the Centre for Comparative Constitutional Studies (CCCS) 2019 Constitutional Law Conference. For further details and lecture recording see the link: <http://go.unimelb.edu.au/b5ax>

### CCCS Constitutional Law Conference 2019 26 July 2019

On Friday 26 July CCCS held its biennial 2019 CCCS Constitutional Law Conference. The conference commenced with a special panel on 'Engineers: The Next 100 Years', followed by panels on 'The Constitution and National Security: Internal and External', 'Constitutional Dimensions of Property', and 'Recent Developments in Freedom of Political Communication'.

For further details about the programme and the speech text of after dinner speaker The Hon. Kenneth M Hayne AC QC, see the link:

<http://go.unimelb.edu.au/2mpr>



Professor Adrienne Stone presenting the ASSA Fay Gale Lecture at the University of Adelaide - 30 August 2019



Professor Adrienne Stone presenting at the 8th International Symposium of the Constitutional Research Institute, Korea - 6 December 2019



Professor Adrienne Stone with President Jong-Bo Park of the Constitutional Research Institute of the Constitutional Court of Korea - 6 December 2019

# CONSTITUTIONAL



2019 CCCS Constitutional Law Conference in Pictures



2019 CCCS Constitutional Law Conference Book Launch and Dinner in Pictures

## CCCS BROWN BAG SERIES

25 June 2019, Tuesday

'Deliberative Constitutional Legitimacy: Normative and Institutional Issues', **Professor Hoi Kong** (University of British Columbia)

30 July 2019, Tuesday

Panel Discussion: 'Conference Roundup - important research themes in constitutional law'

Panelists:

**Professor Cheryl Saunders, Professor Adrienne Stone, Associate Professor Kristen Rundle, Dr Tom Daly, Dr Erika Arban, Dr Shireen Morris and Associate Professor Will Partlett**

6 August 2019, Tuesday

'The Indian Supreme Court's Identity Crisis: A Constitutional Court or a Court of Appeals?', **Associate Professor Tarun Khaitan** (Melbourne Law School)

13 August 2019, Tuesday

'R (*Privacy International*) v *Investigatory Powers Tribunal* [2019] UKSC 22; [2019] 2 WLR 1219', **Professor Jason N E Varuhas** (Melbourne Law School)

20 August 2019, Tuesday

'Constitutional Historiography', **Associate Professor Will Partlett** (Melbourne Law School)

27 August 2019, Tuesday

'Modernizing Constitutions. A comparative analysis of justifications for constitutional reforms', **Professor Eleonora Bottini** (University of Caen Normandy, France)

3 September 2019, Tuesday

'Indigenous Constitutional Recognition and a First Nations Voice for Australia? Lessons from New Zealand, Canada and Scandinavia', **Dr Shireen Morris** (Melbourne Law School)

10 September 2019, Tuesday

'Failure to Attach: Australians and Their Federation', **Dr Carolyn Holbrook** (Deakin University)

17 September 2019, Tuesday

'Tocqueville in Spain: The Judicialization of Megapolitics and the Catalan Secessionist Challenge', **Dr Angel Aday Jimenez Aleman** (University of Vigo)

24 September 2019, Tuesday

Panel Discussion: 'Practice of and prospects for constitutional asymmetries in federal/regional systems'

Panelists:

**Associate Professor Tarun Khaitan, Dr Dinesha Samararatne, Dr Erika Arban and Associate Professor Will Partlett**

8 October 2019, Tuesday

'The 2018 Pan-Canadian Securities Regulation Reference: Dualist Federalism to the Rescue of Cooperative Federalism', **Professor Johanne Poirier** (McGill Faculty of Law)

15 October 2019, Tuesday

'Accounting for International Law in Comparative Constitutional Law: The View from 'Below'?', **Dr Dinesha Samararatne** (Melbourne Law School)

29 October 2019, Tuesday

'Government contracting in Belgium and France - a comparative and European view', **Professor Kris Wauters** (Université Catholique de Louvain)

5 November 2019, Tuesday

'Statutory Anti-Constitutionalism', **Dr Maciej Bernatt** (University of Warsaw)

12 November 2019, Tuesday

'Jesting Pilate', **Professor Michael Crommelin** (Melbourne Law School)

19 November 2019, Tuesday

'India's statist transformative constitutionalism', **Dr Anuj Bhuwania** (Ambedkar University Delhi)

26 November 2019, Tuesday

'Theorising Quasi-Constitutional Statutes', **Associate Professor Vanessa MacDonnell** (University of Ottawa)



CCCS members expressing solidarity with Professor Wojciech Sadurski after Brown Bag Seminar - 26 November 2019

## LEGAL THEORY WORKSHOP

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

Guest presenters for Semester Two 2019 (9 August to 18 October 2019):

9 August 2019

**Dr Matt Watson (University of Queensland)**, 'Balancing Equality and Religious Freedom'.

Commentator: Associate Professor Luke Beck (Monash University).

\* Workshop co-sponsored by Laureate Program in Comparative Constitutional Law and the Centre for Comparative Constitutional Studies

23 August 2019

**Prof Kimberley Brownlee (University of Warwick)**, 'Punishment and Precious Emotions: A Hope Theory of Punishment'.

Commentator: Dr Holly Lawford-Smith (Melbourne).

6 September 2019

**Associate Professor Jaclyn Neo (University of Singapore)**, 'More than Weak Legal Pluralism? State Legal Pluralism and Jurisdictional Allocations in Pluri-Legal Arrangements'.

Commentator: Associate Professor Jeff Redding (Melbourne).

\* Workshop co-sponsored by Laureate Program in Comparative Constitutional Law and the Centre for Comparative Constitutional Studies

20 September 2019

**Professor David Owen (University of Southampton)**, 'The Right to Leave and the Dominion of States: Contemporary arguments in historical perspective'.

Commentator: Ms Timnah Baker (Melbourne).

\* Workshop co-sponsored by Peter McMullin Centre on Statelessness

18 October 2019

**Dr Susan Bartie (University of Tasmania)**, 'Functionalism, Legal Process and the Transformation of Australian Law Schools'.

Commentator: Professor Julian Webb (Melbourne).



Session 1 - 2019 Australia-ASEAN Women in Constitution Building Capacity Development Programme - 25 November



Associate Professor Kristen Rundle in her capacity as Chair of the MLS-Federal Court of Australia 'Judges in Conversation' series with Professor David Feldman (Cambridge) and Justice Debbie Mortimer



CCCS Brown Bag Seminar - 26 November 2019



CCCS Research Assistants and Administrator preparing conference packs for the CCCS Conference - 17 July 2019

## FORTHCOMING EVENTS

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

### Conferences

#### 2020

##### **Co-Designing a First Nations Voice: International Insights**

23 - 24 July 2020

at Melbourne Law School

Further details TBC

##### **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

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  
Associate Professor Kristen Rundle

### Research Centre Members

Laureate Professor Emeritus Cheryl Saunders AO, Foundation Director  
Professor Michael Crommelin AO  
Professor Alison Duxbury  
Professor Michelle Foster  
Professor Jeremy Gans  
Professor Beth Gaze  
Professor Kirsty Gover  
Professor Pip Nicholson  
Professor Joo-Cheong Tham  
Professor Jason Varuhas  
Associate Professor Farrah Ahmed  
Associate Professor William Partlett  
Associate Professor Glenn Patmore  
Associate Professor Dale Smith  
Associate Professor Margaret Young  
Dr Tom Daly  
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  
Elizabeth Hicks  
Julian Murphy  
Charmaine Rodrigues  
Anjalee De Silva  
Joshua Snukal  
Toerien Van Wyk

### Research Fellow (Laureate Program in Comparative Constitutional Law)

Shawn Rajanayagam

### MLM Research Associates

Hayley Pitcher

### JD Research Associates

Priyanka Banerjee  
Zoe Brown  
Sophie Clapin  
Jake Herd  
Jacob Kairouz  
Reetika Khanna  
Samuel Lindsay  
Alice Maxwell  
Mairead O'Connor  
Cassie O'Regan  
Emily Peck  
Bodhi Shribman-Dellmann  
Lucas Volfneuk  
Sophie Ward  
Eliza Waters

### Administrator

Mr Aftab Hussain

### Constitution Transformation Network Coordinator

Charmaine Rodrigues

### Program Manager (Laureate Program in Comparative Constitutional Law)

Gabrielle Dalsasso

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To learn more about us go to [www.law.unimelb.edu.au/cccs](http://www.law.unimelb.edu.au/cccs)

If you do not wish to receive future issues of the newsletter, email [law-cccs@unimelb.edu.au](mailto:law-cccs@unimelb.edu.au)

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Centre for  
Comparative  
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Studies

Melbourne Law School

To join our mailing list and receive notice of CCCS events and publications, please send an email to [law-cccs@unimelb.edu.au](mailto:law-cccs@unimelb.edu.au)

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