



The Centre for International & Public Law
ANU College of Law

presents

The Sixteenth Annual Public Law Week-end

10 Years on from September 11: The Impact on Public Law

9 & 10 September 2011

The Australian National University | Canberra | Australia

Proceedings

Friday 9 September 2011

2.00–3.30pm L'Estrange Paper	SESSION 1: Security and Its Impact on Public law CHAIR: Professor Kim Rubenstein , Director, CIPL <i>The Changing Nature of 'National Security' and the Implications for Public Law</i> Professor Michael L'Estrange AO , Director, National Security College, Australian National University <i>Taking Stock of Australia's Anti-Terror Laws</i> Professor George Williams AO , University of New South Wales <i>A Decade of Making Counter-Terrorism Laws</i> Dr Dominique Dalla-Pozza , ANU College of Law
3.30–4.00pm	Afternoon tea in foyer
4.00–5.30pm McGarrity Presentation	SESSION 2: Public Law and Separation of Powers CHAIR: Professor Peter Bailey , ANU College of Law <i>Implications of Tampa and 9/11 for Executive Power"</i> Professor Simon Evans , University of Melbourne <i>Independence under Interrogation: Chapter III and ASIO</i> Ms Rebecca Welsh , University of New South Wales <i>Challenges for the Judiciary in Applying Australia's Anti-Terror Laws</i> Ms Nicola McGarrity , University of New South Wales
5.45pm	Reception for Sawyer Public Lecture at the Finkel Theatre foyer
6.15–7.30pm	2011 ANNUAL GEOFFREY SAWER LECTURE The Right Hon Madam Chief Justice Beverley McLachlin PC Canadian Chief Justice, Supreme Court of Canada <i>Anti-Terrorism, the Judiciary and the Rule of Law</i>

Saturday 10 September 2011	
9.30–11.00am Debeljak Presentation Debeljak Paper	SESSION 3: Updates: Momcilovic v The Queen and Ors CHAIR: Professor Fiona Wheeler , ANU College of Law Ms Carla Mazur , Former Associate to Chief Justice Higgins, ACT Supreme Court Associate Professor James Stellios , ANU College of Law Dr Julie Debeljak , Monash University
11.00–11.30am	Morning tea in foyer
11.30am–1.00pm Nekvapil Presentation Kennett Presentation	SESSION 4: Updates: Beyond Momcilovic CHAIR: Matthew Zagor , ANU College of Law <i>Plaintiffs M61, M54 and M70 v Minister for Immigration</i> Emrys Nekvapil , Victorian Bar <i>Hogan v Hinch [2011] HCA 4</i> Dr Brendan Gogarty and Anja Hilkemeijer , University of Tasmania <i>Jemena Asset Management (3) Pty Ltd & Ors v Coinvest Limited [2011] HCATrans 45 (2 March 2011)</i> Geoffrey Kennett SC , NSW Bar
1.00pm	Lunch in foyer
2.00–3.30pm Lynch Paper Back Paper	SESSION 5: The States Post 9/11 and Federation CHAIR: Ernst Willheim , ANU College of Law <i>Scope Creep: Antil-terror Legislation in the State Paradigm</i> Professor John Williams and Ms Gabrielle Appleby , University of Adelaide <i>National Priorities and State Referrals: The Age of Section 51 (xxxvii)</i> Associate Professor Andrew Lynch , UNSW <i>Reform of the Australian Federation</i> Senator Chris Back MP , Member of the Select Committee on the Reform of the Australia Federation
3.30pm	Close of Conference

Gabrielle Appleby, Adelaide University

Gabrielle Appleby is a PhD candidate at the University of Adelaide researching the constitutional role of the Solicitor-General in Australia. She graduated with a bachelor of laws (first class honours) from the University of Queensland and holds a Master of Laws by research from the University of Melbourne. She has published in the fields of constitutional and public law and federalism in peer-reviewed journals and edited volumes. Her most recent works are *Australian Public Law* (Oxford, forthcoming in 2011, with Alexander Reilly, Wendy Lacey and Laura Grenfell) and *The Future of Australian Federalism: Comparative and Interdisciplinary Perspectives* (Cambridge University Press, forthcoming in 2011, with Nicholas Aroney and Thomas John).

Chris Back, Member of Parliament

Chris Back was first appointed to represent Western Australia in the Senate in 2009. He is a graduate from the University of Queensland. Prior to entering parliament Chris was a managing director for the fuel industry in retail and distribution. Later he was a business executive, for the oil and gas industry. Chris was also the CEO for the Bush Fires Board of Western Australia 1995-97.

Dominique Dalla-Pozza, The Australian National University

Dr Dominique Dalla-Pozza joined the ANU College of Law as an Associate Lecturer in June 2009 where she teaches Australian Public Law and Commonwealth Constitutional Law. From 2006-2010 she was a PhD candidate with the Gilbert & Tobin Centre of Public Law at the Faculty of Law at the University of New South Wales. In 2010 she completed her PhD titled 'The Australian Approach to Enacting Counter-Terrorism Laws'.

Julie Debeljak, Monash University

Dr Julie Debeljak is a foundational Deputy Director of the Castan Centre for Human Rights law, and a Senior Lecturer in Law at Monash University. She teaches and researches in domestic, comparative and international human rights law. Her doctoral thesis, entitled *Human Rights and Institutional Dialogue: Lessons for Australia from Canada and the United Kingdom*, analysed the domestic implementation of human rights in Australia, Britain and Canada, and recommended an inter-institutional dialogue model for human rights enforcement. Dr Debeljak completed her LLM (Class I) at the University of Cambridge (UK) on scholarship, and was an intern with the Indigenous Peoples Team at the United Nations Office of the High Commissioner for Human Rights. In 2001, she completed a Fulbright American Studies Institute which focussed on constitutional rights in America. Dr Debeljak has published widely in the human rights area, including publications on human rights and democracy, the domestic implementation of human rights obligations (including articles on the *Victorian Charter of Human Rights and Responsibilities*), the rights of indigenous peoples, and access to civil justice and human rights. Dr Debeljak completed numerous consultancies preparing various governmental and non-governmental bodies for the commencement of the *Victorian Charter*, including training for the Judicial College of Victoria, the Victorian Equal Opportunity and Human Rights Commission, the Department of Justice, and the Victorian Bar Association. She has

also been engaged as a consultant human rights trainer by the Commonwealth, and has trained Indonesian and Iraqi civil servants in Australia, and civil servants in Burma. Dr Debeljak is a lead investigator on two major research grants funded by the Australian Research Council: (a) the first research grant concerns Australia's Legal Response to Trafficking in Persons in the Asia-Pacific region; and (b) the second research grant relates to Human Rights in Closed Environments.

Simon Evans, *University of Melbourne*

Simon Evans is a Professor in the Melbourne Law School and Pro Vice-Chancellor (International) of the University of Melbourne. His scholarly work is as a comparative public lawyer, with broad interests in constitutional and administrative law, particularly in common law and Commonwealth countries. He holds an ARC funded Discovery Project grant to analyse the powers and accountabilities of the executive branch of government. Other interests include constitutional property rights, the new commonwealth models of constitutionalism and constitutional theory. He is a member of the Executive of the Australian Association of Constitutional Law.

Brendan Gogarty, *University of Tasmania*

Brendan coordinates and lectures in the undergraduate federal constitutional law course at the University of Tasmania. He also teaches Parliamentary Law & Practice (undergrad/postgrad), Private International Law, media & IT Law. Brendan is Chief Editor of the Journal of Law, Information & Science and is a research fellow at the Tasmanian Law Reform Institute. He presents this paper on behalf of Anja Hilkemeijer who also lectures in constitutional law at UTAS, and has previously worked as a legal officer at the Department of Foreign Affairs & Trade.

Michael L'Estrange, *The Australian National University*

Professor L'Estrange, AO is Director of the National Security College at the ANU. He is a graduate of Sydney University (1974) and Oxford University (1979); NSW Rhodes Scholar 1975; Harkness Fellow (Georgetown University and the University of California Berkeley) 1987-89; He was Secretary to Cabinet and Head of the Cabinet Policy Unit 1996-2000; Australia's High Commissioner to the UK 2000-05; Secretary of the Department of Foreign Affairs and Trade 2005-09

Geoffrey Kennett SC, NSW Bar

Geoffrey Kennett practises as a barrister in Sydney and was appointed Senior Counsel in 2010. He is a graduate of the ANU Law School and worked for several years in the Commonwealth Attorney-General's Department before commencing practice at the bar. He has appeared as counsel in a number of significant constitutional and administrative law cases over the last two decades and is the author of several journal articles on public law topics.

Andrew Lynch, University of New South Wales

Dr Andrew Lynch is the Director of the Gilbert + Tobin Centre of Public Law, Faculty of Law, UNSW and an Associate Professor in the Faculty of Law. His research in recent years has concentrated on the topics of judicial dissent in the constitutional law decisions of the High Court of Australia, legal responses to terrorism and federalism. He is an author of *Equity and Trusts* (2001 and 2005), *What Price Security? Taking Stock of Australia's Anti-Terror Laws* (2006) and a co-editor of *Law and Liberty in the War on Terror* (2007), as well as journal articles, conference and seminar papers in these and other areas. Additionally Andrew has given evidence to a number of parliamentary and non-government inquiries into Australia's counter-terrorism legislative scheme and written on public law issues in the media. He teaches Public Law, Federal Constitutional Law and National Security Law and Human Rights.

Nicola McGarrity, University of New South Wales

Nicola McGarrity is a lecturer (research) with the Gilbert+Tobin Centre of Public Law at the University of New South Wales. She graduated from Macquarie University with a BA / LLB (1st Class Honours and University Medal in Law). Since then, she has been Associate to the Honourable Justice Tamberlin (formerly of the Federal Court), and has lectured in constitutional and administrative law and foundations of law at a number of Sydney universities. She has published extensively on Australia's anti-terrorism legal regime and terrorism trials, and is a co-editor of the 2010 book, *Beyond Counter-Terrorism: The Culture of Law and Justice after 9/11* (with Andrew Lynch and George Williams). She is also a PhD candidate at the University of New South Wales.

Carla Mazur, ANU College of Law

Carla Mazur was admitted as a lawyer of the Australian Capital Territory in 2010 and is currently studying a Masters of International Law at the ANU. She has spent the last two years working at the ACT Supreme Court, initially as Research Assistant and then as Associate to Chief Justice Higgins. Prior to that, Carla undertook an internship with the Office of the United Nations High Commission for Refugees in Canberra. Carla graduated from a Bachelor of Laws with first class honors and a Bachelor of International Studies from the University of Canberra in 2010. Throughout her degree Carla spent one year studying in Spanish at a University in Chile. Carla's honors thesis in law was titled *Delay and 'Special and Exceptional circumstances': A pre and post Human Rights Act 2004 (ACT) analysis* and explored the effect of the ACT Human Rights Act on the right to bail in the ACT.

Emrys Nekvapil, Victorian Bar

Emrys Nekvapil is a Victorian barrister practising in public law and commercial law. Emrys practises in human rights law, and has a special interest in refugee law. In the last year, he appeared in the High Court for the Victorian Equal Opportunity and Human Rights Commission in *Momcilovic v The Queen* and for the refugee applicants in *Plaintiffs M54 v Minister for Immigration*.

James Stellios, ANU College of Law

James Stellios is an Associate Professor at the ANU College of Law where he teaches public law. His primary research interest is constitutional law and, in particular, Chapter III of the Constitution. In 2010 he published *The Federal Judicature: Chapter III of the Constitution*. Prior to joining the ANU College of Law in July 2001, he spent a number of years in legal practice, including as Counsel Assisting the Solicitor-General of the Commonwealth. James is also a Consultant to Sparke Helmore.

George Williams AO, University of New South Wales

George Williams AO is the Anthony Mason Professor, a Scientia Professor and the Foundation Director of the Gilbert + Tobin Centre of Public Law at the Faculty of Law, University of New South Wales. As an Australian Research Council Laureate Fellow, he is engaged in a five year international project on anti-terror laws and democracy. George has written and edited 26 books, including *Australian Constitutional Law and Theory*. As a barrister, he has appeared in a number of High Court cases. In 2005 he chaired the Victorian Human Rights Consultation Committee that led to the enactment of the Victorian Charter of Human Rights and Responsibilities. In 2007 he chaired a NSW Government inquiry into Options for a New National Industrial Relations System, and was also a member of the High Level Advisory Group on Federal-State Relations to Kevin Rudd. He is currently a member of the Northern Territory Constitutional Convention Committee and the Panel to Examine Recall Elections for New South Wales. George is a well-known media commentator and writes a fortnightly column for the *Sydney Morning Herald*.

John Williams, Adelaide Law School

Professor John Williams is the Dean of the Adelaide Law School. His research interests are in public law and Australian legal history.

Rebecca Welsh, University of New South Wales

Rebecca is a PhD candidate at UNSW where she is supported by the Australian Research Council Laureate Fellowship Project 'Anti-terror Laws and the Democratic Challenge'. Prior to commencing her PhD studies, Rebecca held positions with the Australian Government Attorney-General's Department Canberra and DLA Philips Fox Sydney. Rebecca teaches Public Law at UNSW and holds a number of positions within NSW Young Lawyers.

