VISITORS’ COMMITTEE
YEAR IN REVIEW
2018
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The Visitors’ Committee is a critical piece of research infrastructure in the College. Our activities help ensure and develop our research reputation, and protect our ERA 5 ranking. Our programs are part of what makes us a global law school. We are not located in a large city. It is therefore especially important that we make sure that major academics are regularly brought in to this College, and that members of our faculty stay in touch with current trends in legal research scholarship, across Australia and around the world. The committee’s programs forge, build, and maintain links between ANU and the rest of the world. Our programs also help generate a vibrant intellectual culture indispensable to our research mission and to the well-being of our colleagues.

The Committee designs and funds the seminar program of the College. This has been a breakthrough year for us. Improved communication and publicity, coupled with efforts to attract significant scholars from interstate and overseas, have been widely noted. The proof of the pudding is in the eating. Average attendance has almost doubled, and in some cases, there has been standing room only. Our seminars now commonly attract attendees from other parts of the University. Seminars by Ros Dixon and Jeremy Webber, both major international figures in their own right, were widely considered to be important intellectual events. Indeed, for many colleague, our events are fast becoming highlights of their working week.

Seminars have on several occasions kick-started new collaborations that would not otherwise have taken place. I mention here, for example, the visits of Rachel Cahill-O’Callaghan, Adil Khan, and Lorana Bartels, each of which has led to new research ideas and discussions. It is worth noting that the dinners we fund for visitors and faculty guests are a gesture of hospitality that is valuable for colleagues and visitors alike. In addition, they are enormously important exercises in building collegiality within the law faculty and in consolidating networks within and beyond the faculty.

This year the DVM program supported two sustained visits from major international scholars. In addition, the Dean provided additional funds to be used, again, to support longer-term visits with potential to nurture an enduring relationship. These programs saw the visit of Sally Engle Merry and Rosemary Auchmuty as DVMs, and Linda Mulcahy and Julen Etxabe. All these visits played to packed houses and all these academics also engaged in a large number of research meetings with other members of faculty—typically in double digits. Again the caliber and generosity of our guests this year generated a palpable sense of excitement and energy. The papers presented under these programs were absolutely first class and both reflected our standing as a global university and inspired many of our colleagues in their own work.

Many of these visits were consciously designed to allow visitors to participate in other events while they were at ANU; I note for example that Rosemary keynoted the Gender Institute’s major symposium for this year, and that Julen keynoted an interdisciplinary conference on law, culture and interpretation. Our ability to make our funding go a long way, enabling other events within the College and across the University, is not only smart budgeting; it helps enhance our standing within the University.

Overall the Visitors Committee this year has showed energy and commitment, and we have pushed ourselves to make visible the value of our work to our whole community. The impressive range and quality of the visitors and speakers we have looked after in 2018 is amply manifested in the pages that follow. We believe our program is at the heart of the ANU College of Law, and we look forward to an exciting slate of activities and visitors during 2019.

Professor Desmond Manderson
Visitors Committee, ANU College of Law
December 2018
Distinguished Visiting Mentor Program

The flagship program of the Visitors Committee, world class academics are invited to the College for a sustained engagement. The DVM is encouraged to contribute actively to the life of the College by offering staff seminars, mentoring sessions or masterclasses, to inspire the College community, and open the door to future collaborations between ANU and the DVM’s home institution.

This year the College was fortunate to welcome two DVM’s.

Professor Sally Engle Merry
New York University

Sally Engle Merry is Silver Professor of Anthropology at New York University. She is also a Faculty Director of the Center for Human Rights and Global Justice at the New York University School of Law, and past president of the American Ethnological Society. Her books include Colonizing Hawai‘i (Princeton, 2000), Human Rights and Gender Violence (Chicago, 2006), Gender Violence: A Cultural Perspective (Blackwell, 2009) and The Practice of Human Rights, (co-edited with Mark Goodale; Cambridge, 2007).

Her most recent book, The Seductions of Quantification: Measuring Human Rights, Gender Violence, and Sex Trafficking (Chicago: University of Chicago Press, 2016) examines indicators as a technology of knowledge used for human rights monitoring and global governance. She has co-edited two books on quantification, The Quiet Power of Indicators, with Kevin Davis and Benedict Kingsbury (Cambridge University Press, 2015) and A World of Indicators, with Richard Rotenburger, Song-Joon Park, and Johanna Mugler (Cambridge University Press 2015), 2015. She is the author or editor of sixteen books and special journal issues. She received the Hurst Prize for Colonizing Hawai‘i in 2002, the Kalven Prize for scholarly contributions to sociological scholarship in 2007, and the J.I. Staley Prize for Human Rights and Gender Violence in 2010. In 2013 she received an honorary degree from McGill School of Law and was the focus of an Author Colloquium at the Center for Interdisciplinary Research (ZfF) at the University of Bielefeld, Germany. She was an Honorary Professor at Australian National University.

Engagements

The Seductions of Quantification: Challenges of the Global Indicator Culture for University Education

NTEU seminar series

The increasing reliance on metrics for governance in general and for academia in particular, raises critical questions about the production of knowledge and the basis for judgement. Important ways that this trend has affected academia are systems of scoring universities, as occurs in the UK, and the growing use of Google Scholar numbers for tenure and promotion decisions. The use of metrics for assessing academic scholarship poses a serious challenge to universities. These systems of scoring, like all forms of quantification, highlight some traits but bury others. All depend on simplification and decontextualization. Beginning with a discussion of university-based merit review processes and tenure evaluations in the US, Sally analysed the effects of translating the complexity of social life into numbers for scholarly assessment and decision-making and the overall management of the university.

How big is the problem of violence against women?
The challenge of intersectional measurement at the global level

The Gender Institute

Until the 1970s, there was very little research on violence against women and scant information on its frequency and distribution by race, class, age, and other social characteristics. This talk explored these challenges and the efforts of the United Nations to come up with a set of indicators to measure violence against women globally. While the UN effort is fraught with difficulty and ultimately misses a great deal, it also is essential in order to support the global social movement against violence against women.

Tackling violence against women

Policy Forum Podcast, Crawford School of Public Policy

Speaking with Crawford School’s Sharon Bessell and Martyn Pearce, Sally looked at where the Sustainable Development Goals, the #MeToo movement, and men fit into the important global discussions on gender-based violence.

Staff Mentoring

ANU College of Law

Sally met with over a dozen ANU College of Law staff and HDR students for one on one discussions on issues such as how to frame a social science research question and what kind of questions to ask, research design and how to gather data for ethical and reform focussed questions, and general professional advice.

Sally submitted a report on her mentoring interactions, identifying a strong interest among staff for research and publication, but uncertainty about how to pursue questions and develop a research plan, suggesting that there is a need for a faculty member with a background in sociological studies.
Rosemary Auchmuty obtained a BA and PhD in history from the Australian National University before moving to London where she acquired an LLB and LLM. She is now Professor of Law at the University of Reading, teaching Property Law and Gender and Law, and researching legal and historical aspects of gender, sexuality, marriage, and women's legal history generally. Most recently she edited Great Debates in Gender and Law (Palgrave Macmillan, 2018), intended to introduce students to debates in each of the main subjects of the LLB curriculum; and coordinated, with Erika Rackley, the Women's Legal Landmarks project, with a 300,000-word book (Hart Publishing) due out in November 2018 and an associated open-access website.

Engagements

In addition to a busy schedule of mentoring colleagues and HDR students, and a seminar to the College detailed separately below, Rosemary keynoted the following University wide event:

Happy anniversary? Reflecting on marriage equality

Keynote address, Gender Institute conference on marriage equality

November 2018 marked the one-year anniversary of Australia’s yes ‘vote’ in the Marriage Equality Postal Survey. This vote represented a significant moment in the fight for LGBTIQ rights in Australia, as well as in global campaigns for marriage equality. Over the past decade there has been an increasing trend for countries to legislate for marriage equality, either through the passage of laws through Parliament, judicial decisions based on the principles of equality and non-discrimination, or through national votes. Despite this momentum, marriage equality remains a site of contention. Struggles over same sex marriage pose a distinct set of dilemmas, especially when governments determine the question using direct democracy. What are the implications of such processes for LGBTIQ people, their families and communities? What sorts of proxy debates erupt in relation to these ballots? What kinds of precedents do such ballots create? Rosemary was invited to participate as an international keynote speaker.
EXTENDED VISITOR PROGRAM

New in 2018, this program allows the opportunity to bring a visitor of international standing to the College for a longer period of time. An expansion of the DVM program, an extended visitor differs in that the College may only fund a portion of expenses, rather than the entire visit. The purpose of this program is to create collaborative links that will build a sustained connection with the College over several years.

Professor Linda Mulcahy

The London School of Economics and Political Science

Linda Mulcahy is a Professor at the LSE and Director of the PhD Academy. From January 2019 she will be taking up the post of Professor of Socio-Legal Studies, University of Oxford where she will also be the director of the Centre for Socio-Legal Studies. Having gained qualifications in law, sociology and the history of art and architecture, Linda’s work has a strong interdisciplinary flavour.

Her research focuses on disputes and their resolution and she has studied the socio-legal dynamics of disputes in a number of contexts including the car distribution industry, NHS, divorce, public sector complaints systems and judicial review. Her work often has an empirical focus and she has received a number of grants from the ESRC, AHRC, Leverhulme Foundation, Department of Health, Nuffield Foundation and Lotteries Fund in support of her work. In recent years she has been working on the relationship between due process and the design of law courts. She is also interested in visual representations of justice.

Linda maintained a busy schedule, delivering a seminar to the College (see below) as well as providing valuable mentoring to HDR students and colleagues alike.

Dr Julen Etxabe

University of Helsinki

Julen Etxabe is docent in legal theory from the University of Helsinki and writes in the areas of legal and political theory, law and humanities, and human rights. As a Fulbright scholar, he completed his SJD at the University of Michigan Law School with James Boyd White. He has taught at the University of Michigan (2008-10) and at the Faculty of Law of the University of Helsinki since 2010. He was a research fellow at the Helsinki Collegium for Advanced Studies (2014-17) and co-editor in chief of No-Foundations: An Interdisciplinary Journal of Law and Justice from 2012-17.

He is the author of The Experience of Tragic Judgment (Routledge 2013) and the editor of three other books, most recently Rancière and Law (Routledge 2018) and Cultural History of Law in Antiquity (Bloomsbury, forthcoming). His current book project entitled Judicial Dialogues and the Conversation of Democracy seeks to unearth a distinct ‘dialogical’ form of judgment that is emerging in the context of International Human Rights and transforming inherited notions of legal reasoning, legal authority, human rights, and the rule of law more generally.

Engagements

Whilst undertaking a busy schedule of mentoring colleagues and HDR students, Julen also participated in the following University wide event and teaching.

After the rule: Interpretation in comparative and cross-cultural perspective
Presented by The Centre for Law, Arts & Humanities, The Centre for Arab & Islamic Studies (The Middle East & Central Asia) ANU College of Arts & Social Sciences

Julen provided the closing plenary at this symposium on alternative traditions of law, norms and rules.

LAW5428 Critical Legal Theory
ANU Law School undergraduate course

Julen was invited as a guest lecturer for this course, which introduces major concepts, questions and perspectives that are important for a critical engagement with the problem of law in contemporary life. It questions the importance and meaning of being ‘critical’ and interrogates the relationship between law and justice. By following a set of topics fundamental for critical theory the course effects on the problems of sovereignty, subjectivity, violence, judgment or the nature of government.
The College has a long history of hosting visiting legal scholars from around the world. As well as providing collegial service to academics from other universities - a service which our own faculty often relies on in their travels around the world. These visitors lend their experience and expertise to support our research and teaching and collaborate with our academics. This year the Visitors Committee has been privileged to host both international and domestic scholars across a broad range of legal interests.

Steven Mulroy
Professor, Humphreys School of Law, University of Memphis
22 January - 30 April 2018
Research areas:
> Election law
> Constitutional law
Research project:
The great unrigging: structural electoral reform

Charles Yablon
Professor, Benjamin N. Cardozo School of Law, Yeshiva University
4 February - 15 March 2018
Research areas:
> Corporate and business law
> Civil procedure
> Law and humanities
Research project:
Ethical and legal issues regarding lawyers for companies like Uber, Air B&B and cannabis growers, whose business models and risk assessments include intentional violations of law.

Minkoo Kim
Public Prosecutor, Ministry of Justice of Republic of Korea
12 February - 1 August 2018
Research interests:
> Corruption
Research project:
Corruption cases and the corruption prevention system between Australia and South Korea.

Zhu Ciyun
Professor, Tsinghua Law School, Tsinghua University
20 February - 20 March 2018
Research areas:
> Corporate governance
> Merger and acquisition
> Obligations of controlling shareholders
Research project:
Hostile takeovers and the improvement of corporate governance in listed companies in China.

Nicky Jones
Lecturer, School of Law and Justice, University of Southern Queensland
26 March - 6 April 2018
Research areas:
> Public international law
> Human rights law
> Politics
Research project:
Citizens, their rights and their States in Australian and international jurisdictions
Yun Ju (Kelly) Lang

SJD Candidate, Indiana University Maurer School of Law

1 - 31 May 2018

Research areas:
- Transitional justice
- International human rights law
- Refugee law

Research project:
To develop a victim focused transitional justice design for future Korea to deal with victims of human rights violations in North Korea.

Dr Annemarie Devereux

International/human rights lawyer

30 May - 11 July 2018

Research areas:
- International human rights law
- International law
- Constitutional law

Research project:
- Australia’s ratification of international human rights instruments
- Accountability for human rights violations including proposals for an International Court of Human Rights

Dr Marie Aronsson-Storrier

Lecturer, University of Reading

18 - 22 June 2018

Research areas:
- Disaster law
- International law making
- International law regulating the resort to force

Research project:
Contributions to the Cambridge Handbook of Disaster Risk Reduction and International Law

Dr Susan Priest

Assistant Professor, University of Canberra

2 July - 31 December 2018

Research areas:
- Australian legal history
- Australian judicial biography
- Australian constitutional history

Research project:
A biographical narrative of former High Court Justice Richard Edward O’Connor 1851-1912.

Dr Rachel Cahill-O’Callaghan

Senior Lecturer, Cardiff University

23 - 30 July 2018

Research areas:
- Judicial personality on decision making
- Gender and judging
- Legal education

Research project:
Values and agreements in the High Court of Australia

Dr Julian Wyatt

International Litigation and Arbitration

1 September 2018 - 31 August 2019

Research interests:
- Treaty interpretation
- International dispute settlement (public and private, including international arbitration)
- International economic law
Research project:

> Conversion of recently defended 500,000 word PhD thesis on treaty interpretation into 2 or 3 monographs
> 3 articles on international arbitration and private international law

**Paolo Moro**

**Professor, University of Padua**

1 - 8 September 2018

Research interests:

> Legal education
> Rhetoric and humanities
> Legal informatics

Research project:

Investigate collaboration opportunities between University of Padua and ANU.

**Kishwar Naheed**

**PhD candidate, International Islamic University Islamabad**

29 November 2018 - 18 May 2019

Research project:

The role of judiciary in the democratic process in Pakistan during Military & Civil Governments 1999-2013
College Seminars

Curated for broad appeal, the Committee aims to provide a mix of visiting international academics (who are already in Australia), domestic academics working on contemporary issues, younger scholars and potential collaborators. Speakers are here short term, with the Committee funding domestic travel and one night’s accommodation. The program is central to the mission of the faculty. It ensures that we are exposed to major research trends around the world and around the country, stimulates and inspires our researchers, and assists all our colleagues in developing their networks and research projects. The seminar program reflects the intellectual spirit of the College - inquiring, imaginative and diverse. This year, some of the leading scholars in their field inspired us with their energy, their ideas and their insight.

22 February

Forms

Professor Charles Yablon, Cardozo School of Law, Yeshiva University

Attendees: 15

‘Forms’ was written for a conference at Cardozo Law School on Derrida and the Law, which Derrida himself attended and at which he gave a keynote address. Intended as an ‘hommage’, it is part essay and part performance piece, seeking to deconstruct the language of the Summons used to commence civil actions in the federal courts of the United States.

8 March

International cartels and the geographic limits to the application of the national competition law in Australia and Japan

Professor Nobufumi, Nishimura, Chuo University

Attendees: 12

The more trade or commerce is increasingly global and competitive in world-wide, the more the application of the national law is problematic. The same applies to the international cartel cases, which often have competitive harm beyond one country and may cause a multi-jurisdictional tension for the application of the national laws. In competition law cases that require proof of competitive harm the agency or court generally identifies market in which the competitive harm can be inferred.

In 2017, the highest courts both in Australia and Japan concluded in each case that the national competition law could reach the conduct taken place geographically outside Australia or Japan on the basis of defining a market as a domestic market where the customers of the cartelized goods or services were located without utilizing the extraterritorial application of the national law. Geographical limits based on the customers location ruled by both highest courts will clarify whose interest the national competition law is ought to protect but raises the tension between States because the international reach of the national competition law highly depends on the case-by-case analysis of the customers identification under each national competition law.

15 March

Infrastructural regulation and the infrastructure of measurement

Professor Sally Engle Merry, New York University

Attendees: 20

How does infrastructure shape global governance? Sally addressed this large question through a focus on the infrastructure of measurement at the global level. The work being part of a project in collaboration with Benedict Kingsbury, Paul Mertenskoepter, Thomas Streinz and Nahunel Maisley in which they hope to establish a network of scholars working on the role of infrastructure in global governance. In this talk, Sally took the lens of infrastructure as a way of understanding global practices of measurement and their political implications.

27 March

The great unskewing: Proportional representation and preference voting in US elections

Professor Steven Mulroy, University of Memphis

Attendees: 15

Researching and writing a book on US election reform which, among other things, seeks to find lessons from the Australian electoral experience, Professor Mulroy examined the potential of replacing the plurality, winner-take-all system of electing members to the US House of Representatives with a more proportionate system. He also discussed the gerrymandering problem in the US, along with attempts to address it with (i) judicial scrutiny of gerrymandering and (ii) nonpartisan redistricting commissions (as exist in Australia). As currently contemplated, it will concluded that while those reforms are salutary, geographic-based representation inherently lends itself to ‘natural gerrymanders’, and that Australian-style proportional representation and preferential voting should be considered.
Facts, alternative facts and international law

Dr Shiri Krebs, Deakin Law School

Attendees: 30

January 4, 2009: the 17th day of Israeli military offensive in Gaza begins: Palestinians report that Israeli forces fire several projectiles at the Al-Samouni family house, were dozens of unarmed civilians took shelter, killing 21 family members and injuring 19. Israeli military authorities reject this description, arguing they were targeting a group of terrorists holding RPG rockets. To resolve the controversy, the UN Human Rights Council established an international fact-finding mission, headed by South-African judge Richard Goldstone. In its final report, the Mission determined that the attack on the Al-Samouni home was intentional and constituted a crime against humanity. However, the release of the Report did not resolve the controversy: Israel rejected the report as biased and unfounded, Goldstone himself published an Op-Ed retracting some of his original conclusions, the international debate about “what really happened” that day intensified, and the Report became, in itself, a part of the conflict.

The talk argued that the unnecessary adoption of legal standards and legal blame triggers cognitive and emotional biases that may unintentionally intensify distortion (rather than assertion) of facts. This unintended consequence of legal analysis is particularly detrimental for international fact-finding bodies, because, in contrast to international tribunals, they suffer from an enforcement deficit and are therefore designed to influence their intended audiences through soft power, dialogue, and persuasion. To provide systematic evidence of the consequences of legal fact-finding on people’s attitudes and beliefs, this article reports data from a large-scale experiment fielded in Israel in January 2017 with a representative sample of 2,000 Israeli nationals. The findings suggest that the Goldstone Mission’s decision to center its fact-finding efforts around the legal interpretation of the facts was counter-productive, at least with regard to the goals of ameliorating processes of denial and rejection of information.

Is sovereignty necessary? The role of sovereignty in Indigenous child protection

Professor Marcia Zug, University of South Carolina

This research seminar examined whether a national law, similar to the Indian Child Welfare Act (ICWA), could be enacted in Australia. The ICWA was passed in response to the long history of government removals of Indian children from their families and tribes. Australia’s Indigenous people have experienced many of the same problems the ICWA was designed to address and Indigenous advocates have long argued for the passage of an “Australian ICWA.” However, Australia’s Indigenous people lack the recognised sovereignty enjoyed by American Indian tribes and it is unclear whether the protections of ICWA can work in its absence.

Can the legislature effectively supersede judicial interpretations with which it disagrees?

Professor Deborah Widiss, Indiana University Maurer School of Law

Attendees: 15

In the United States, as in Australia, the ability of the legislative branch to supersede judicial interpretations of statutes is central to the separation of powers. Although the Constitution formally gives all law-making authority to the legislative branch, judicial decisions informally shape legislation by filling in gaps and resolving ambiguity in statutory law. Legislative supremacy thus depends on the assumption that if the legislative branch disagrees with a judicial interpretation of a law, it may “override” that interpretation by passing a new statute or amending an existing statute. In the United States, such overrides occur relatively regularly, and they are typically assumed to be functionally equivalent to a court’s overruling of a prior decision. However, in a series of papers, Professor Widiss has shown that this assumption is not warranted. When a high court overrules a lower court decision or its own prior decision, citations to the prior decision decline quickly. But when the legislature enacts an override, courts often continue to cite to and follow the (ostensibly superseded) judicial decision. Professor Widiss has called this “shadow precedent” showing that this may be due to information failure or ambiguity as to the scope of the override, as well as to ideological disagreements between the branches of government. This seminar presented Professor Widiss’ research looking at the efficacy of overrides in the United States, and explored possibilities for similar tensions to arise under the Australian system.
7 June

The authority and interpretation of regulations

Professor Kevin Stack, Vanderbilt University Law School

This article defends a theory of regulatory authority and situates their interpretation within contemporary jurisprudence. Over the past 50 years, modern legal systems have increasingly turned to regulations—secondary legislation issued by departments and administrative bodies—to impose obligations on private parties, multiplying the occasions and significance of regulatory interpretation. But regulatory interpretation has received little jurisprudential consideration based on the assumption that statutory interpretation subsumes or identifies all that might be of interest in regulatory interpretation. Regulations, however, require their own interpretive approach.

24 July

Values and decisions: division in the Supreme Court

Dr Rachel Cahill-O’Callaghan, Cardiff University

Attendees: 25

Many facets of the judicial personality have been associated with decision making, including political ideology, activism, attitudes and demographics. Psychologists have demonstrated that personal values underpin each of these characteristics. This study translates psychological theory into legal practice, applying the theories and techniques developed in psychology to identify the role of personal values on judicial decision making in cases which divide the UK Supreme Court.

14 August

Re-(en)activating Aimé Césaire’s tragedies: Writing ‘theatrical histories’ of postcolonial sovereignty

Dr Adil Hasan Khan, Melbourne Law School

Attendees: 25

Through an engagement with the Haitian Revolution plays and historical biographies penned by the Martinique anticolonial playwright, poet, activist and politician, Aimé Césaire (1913-2008), the talk will attempt to make a case for (and draw out lessons in) the writing/staging of ‘theatrical histories’ by international lawyers. It will argue that such histories best allow us to reanimate, in the postcolonial present, decolonizations past, which might help us to both inherit their vital legacies but also to disrupt their more poisonous bequests, in particular by illuminating the (catastrophic) paradox of postcolonial sovereignty.

21 August

Abusive judicial review

Professor Rosalind Dixon, University of New South Wales

Attendees: 35

Much recent work has focused on the ways in which liberal democratic constitutionalism can be eroded from within, including by manipulating law and the tools of constitutional change. Courts are often seen as an indispensable protection for a democratic constitutional order, and there are indeed examples of courts guarding against abusive forms of constitutional and legal change. However, in other recent cases courts themselves have affirmatively aided would-be authoritarian actors in undermining the liberal democratic order.

This is a phenomenon that we call abusive judicial review. Professor Dixon sought to define the phenomenon and develop a typology of its different forms, also giving a number of examples of its use from across different regions and explained its recent importance in comparative constitutional law. Finally, Professor Dixon discussed possible political and legal solutions to the problem.

30 August

The well being of academics in neoliberal universities

Professor Rachael Field, Bond Law School

Attendees: 22

Research in Australia and America has shown that law students’ wellbeing may significantly decrease during their undergraduate degree. Implicit in such research is the assumption academic staff have a role to play in the maintenance of psychological wellbeing in their students. However, substantially less attention has been paid to the wellbeing of those staff. Indeed, few studies have explored the expectations of academic staff in dealing with stressed students or indeed, how academic staff perceive their own wellbeing.

Professor Field explored the issue of academic staff well-being in the context of the neoliberal university sharing the results of national surveys of UK and Australian legal academics.
18 September

The travelling and the troubled language of human rights

Dr Julen Etxabe

Attendees: 25

A growing body of scholarship suggests that judges all over the world – from Canada to South Africa, from India to Israel, from Western Europe to Australia – increasingly consult, and borrow from, the decisions of other courts as persuasive authority. The scholarship on ‘judicial dialogues’ and its cognates (ie. transjudicial communications, cross-fertilisations, uses of foreign and comparative law, etc) tells us who engages with whom and how often, suggesting underlying reasons and patterns for this relatively new phenomenon. Whether or not such dialogue of judges amounts to a new ‘global community of courts’ (Slaughter) that underscores the cosmopolitan and universalist ambitions of human rights discourse, the fact is that the traditional hierarchy of sources, as well as conventional forms of legal reasoning and legal authority, are being profoundly challenged.

While some welcome these developments as part of the new global order, others see them as endangering the autonomy and certainty of law. However, neither side of the debate tends to consider that the very act of ‘travelling’ has an effect on the language of human rights, and ‘troubles’ its universalist aspirations. This is because, as literary scholar and philosopher of language Mikhail Bakhtin suggested, ‘the speech of another, once enclosed in a context, is—no matter how accurately transmitted—always subject to certain semantic changes’ (‘Discourse in the Novel,’ 340).

In order to lay out the implications of his argument, Julen pursued one fertile example of borrowing, which served further to connect the jurisprudence of the European Court of Human Rights, the Supreme Court of Canada, the South African Constitutional Court, and the High Court of Australia.

11 October

Reproducing whiteness: feminist genres, legal subjectivity and the post-racial dystopia of ‘The Handmaid’s Tale’ (2017-)

Dr Karen Crawley, Griffith University

Attendees: 25

The Handmaid’s Tale (2017-), a US television series adapted from a widely popular novel by Canadian author Margaret Atwood (1985), is widely understood as a feminist intervention that speaks to ongoing and worldwide struggles over gender oppression and, in particular, reproductive rights.

In this talk, however, Karen considers the invitations that the show offers its viewers in treating race the way that it does, and what it means to refuse these invitations. The Handmaid’s Tale post-racial aesthetic means that its thematic engagement with gender, sexuality and resistance elides race, politics and history. The dystopic address of the show promises wakefulness, but actually invites viewers to keep their eyes shut to the ongoing reproduction of whiteness in contemporary liberal configurations of legal subjectivity and state authority. Its problematic feminism is thus uniquely instructive for critical feminist understandings of how rights, legal subjectivity, and violence operate in the context of historical and contemporary structures of racism and white supremacy.
18 October

We are still in the age of encounter: Indigenous rights, the nature of sovereignty, and agonistic constitutionalism

Professor Jeremy Webber, Canada Research Chair in Law and Society, University of Victoria

Attendees: 30

This seminar examined whether Canada’s recent grappling with Indigenous rights has begun to unsettle the longstanding assumption that Canadian institutions are sovereign in a manner that excludes Indigenous sovereignty. It identified five substantially different claims often associated with sovereignty, arguing that it is worth considering them in disaggregated fashion. It investigated the particular attributes of sovereignty that are placed in issue by the encounter between Indigenous peoples and settler states, in particular the legal and political institutions of Canada. And it explored the specific form that the recomposition of sovereignty should take.

30 October

Unicorns and urinals: an analysis of how technocrats and securocrats responsible for designing English courthouses visualise the legal system

Professor Linda Mulcahy, the London School of Economics and Political Science

Attendees: 40

Drawing on a detailed analysis of public and private government archives funded by the Leverhulme Trust, this paper charted how civil servants, judges, lawyers, architects, engineers and security experts have talked about English and Welsh courthouses in the corridors of Whitehall over the last 50 years. Paying particularly close attention to the centralized design guides they produced which prescribed how all courts across the country were to be designed.

In doing so, uncovering a changing history of ideas about how the competing goals of transparency, majesty, participation, security, fairness and authority have been achieved and the extent to which aspirations towards popular sovereignty, egalitarianism and participation have been realized in physical form. The paper examine the apparent paradox that despite the democratic ideals espoused by the modern state, the laity has become increasingly spatially marginalised in courthouses and legal proceedings in the last fifty years. It argues that this has been rendered possible by the absence of a jurisprudence of design in legal and government circles.

14 November

Sex, gender, and women’s legal history

Professor Rosemary Auchmuty, University of Reading

Attendees: 40

We live in an era when the meanings of the words ‘sex’, ‘gender’, and even ‘woman’ are increasingly contested. This presents problems not only for those trying to work with the categories of law but also for simple comprehension, let alone finding common ground. Part of the problem lies in the neo-liberal discourse of rights and choice (with gender identity being claimed as a right) and part, I would argue, from ignorance and rejection of women’s history.

Feminist and other radical histories have always suffered from prompt backlash and attempts at suppression, but it still comes as a shock to older scholars that the battles we thought women had won and the principles we imagined were now embedded and mainstreamed in our laws are in such danger of being dismantled. At the same time as feminist legal history is enjoying unprecedented popularity, how can we move away from, on the one hand, the romanticised notion of traditional women’s legal history – of past injustices overcome, and current equality won, by brave heroines and benevolent legal men – and, on the other, the linguistic shift that denies women’s separate experience, to tell the story of women’s legal history in terms that the next generation can understand, relate to, and learn from?