



EXCLUSION, CONFINEMENT, DISPOSSESSION: UNEVEN CITIZENSHIP AND SPACES OF SOVEREIGNTY

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ABSTRACT BOOKLET

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KEYNOTE SPEAKERS

Savage States: Settler Governance in an Age of Sorrow

Professor Audra Simpson, Columbia University

In what world do we imagine the past to be settled in light of its refusal to perish and allow things to start over anew? What are the conditions that make for this imagining, this fantasy or rather, demand of a new start point? In this piece I consider the world of settler colonialism, which demands this newness, and a world in which Native people and their claims to territory are whittled to the status of claimant or subject in time with the fantasy of their disappearance and containment away from a modern and critical present. This fantasy of a world without Indigenous people, or Indigenous peoples whittled into claimants extends itself to a mode of governance that is beyond institutional and ideological but is in this study, deeply affective. In this piece I examine how the Canadian practice of settler governance has adjusted itself in line with global trends and rights paradigms away from overt violence to what are seen as softer and kinder, caring modes of governing but governing, violently still and yet, with a language of care, upon on still stolen land. This piece asks not only in what world we imagine time to stop, but takes up the ways in which those that survived the time stoppage stand in critical relationship to dispossession and settler governance apprehend, analyze and act upon this project of affective governance. Here an oral and textual history of the notion of “reconciliation” is constructed and analyzed with recourse to Indigenous criticism of this affective project of repair.



Bio

Audra Simpson is Professor of Anthropology at Columbia University. She is the author of *Mohawk Interruptus: Political Life Across the Borders of Settler States* (Duke University Press, 2014) Her research is energized by the problem of recognition, by its passage beyond (and below) the aegis of the state into the grounded field of political self-designation, self-description and subjectivity. This work is motivated by the struggle of Kahnawake Mohawks to find the proper way to afford political recognition to each other, their struggle to do this in different places and spaces and the challenges of formulating membership against a history of colonial impositions. Her current research project examines the borders of time, history and bodies across and within what is now understood to be the United States and Canada.

Intimate Histories of Dispossession

Associate Professor Angela Wanhalla, University of Otago

2018 marks five years since marriage equality was enacted in New Zealand. During public debate, and in submissions to the select committee on the Marriage (Definition of Marriage) Amendment Bill, arguments in support of legal reform were made on the basis of a proud record of tolerance, equality and concern for human rights. Of particular note, was how a history of interracial marriage was used to register the diversity of marital histories and forms in New Zealand's past and regularly deployed as evidence of a socially progressive nation. This presentation reviews these claims, focusing on the particular kinds of marital histories that were evoked in public debate, and what they suggest about the politics of race and sexuality in New Zealand's marital past. As I will discuss, using interracial marriage as a measure for tolerance elides the contestation over marital sovereignties in nineteenth and twentieth century New Zealand, and the vital role of interracial marriage in advancing settler colonialism. In this talk I will explore some of these intimate histories of dispossession.



Bio

Angela Wanhalla is an associate professor and Royal Society Te Apārangi Rutherford Discovery Fellow in the Department of History and Art History at the University of Otago. Her research focuses on the complex histories and politics of cross-cultural intimacy in colonial societies, particularly for Indigenous communities in New Zealand and the Pacific. Her most recent publications include the award-winning *Matters of the Heart: A History of Interracial Marriage in New Zealand* (2013), *Mothers' Darlings of the South Pacific: The children of US servicemen and Indigenous women, World War II* (2016) co-edited with Judith A. Bennett; and *He Reo Wāhine: Māori Women's Voices from the Nineteenth Century* (2017) with Lachy Paterson. She is also a judge and panel convenor of the General Non-Fiction Prize for the Ockham New Zealand Book Awards 2019.

Rebalancing Rights: Religion and Sexuality after Marriage Equality

Dr Timothy Jones, LaTrobe University



In Australia, the marriage equality campaign, and the political aftermath of the enactment of marriage equality legislation, have exposed widespread confusion regarding the relationship of religion to marriage, and to sexuality more generally. The Ruddock Review of religious freedom has brought into focus the exceptional legal position religious organisations and individuals enjoy in Australian law. This paper provides a survey of the relationship between religious and sexual rights in Australian history. It then draws on recent research on the LGBT conversion therapy movement, conducted in partnership Gay and Lesbian Health Victoria and the Human

Rights Law Centre, to discuss ways in which the balance of competing religious and sexual rights is being reset.

Bio

Timothy W. Jones is senior lecturer in history and chair of the gender, sexuality and human rights research group at La Trobe University. His research focuses on intersections of the histories of sexuality and religion, particularly in Australia and the UK. His publications include *Sexual Politics in the Church of England, 1857-1957* (2013); *Love and Romance in Britain, 1918-1970* (2015) co-edited with Alana Harris; and *Preventing Harm, Promoting Justice: Responding to LGBT Conversion Therapy in Australia* (2018) with Anna Brown, Lee

Carnie, Gillian Fletcher and Liam Leonard. He also serves as vice president of the Australian Gay and Lesbian Archives

Constitutional change and Aboriginal recognition from the heart of Lutruwita (Tasmania): Indigenous led performances and legal refoundings in (post) reconciliation Australia.

Associate Professor Penny Edmonds, University of Tasmania

On December 2016 Tasmanian Aboriginal leader Patsy Cameron and the Tasmanian Governor, the Honourable Kate Warner signed an historic and new preamble to the Tasmanian constitution instating Aboriginal recognition as an act of reconciliation and part of 'resetting the relationship'. This paper traces a range of performances from the heart of Lutruwita including the momentous signing of the preamble. These political performances of diplomacy and peace-building must be viewed as part of a global paradigm of reconciliation, redress, and calls for transitional justice in the aftermath of war or trauma – and, crucially, they are Indigenous led. In Australia such events must also be understood as fraught legal and moral refoundings in a climate where formal reconciliation at the national level has been devoid of any form substantial redress. Indeed, the 'Uluru Statement from the Heart' delivered to the peoples of the Australian nation in May 2017, which placed matters of history and truth telling, Aboriginal sovereignty and Makarrata (treaty) at the forefront of constitutional change, did not invoke the term 'reconciliation'; regardless, it was utterly rejected by the federal government. This paper suggests that in this (post) reconciliation moment legal redress, treaty deliberations and peace building continues on at the state and local level through locally brokered compacts, where federal and top-down social programs have too often been repressive and reinforced colonial hegemonies.



Bio

Penny Edmonds is Associate Professor of History and a recent ARC Future Fellow (2012-2017) in the School of Humanities at the University of Tasmania. Penny's research interests include colonial/ postcolonial histories, humanitarianism and human rights, Australian and Pacific-region transnational histories, performance, and museums and visual culture. Her books include *Urbanising Frontiers: Indigenous Peoples and Settlers in 19th-Century Pacific Rim Cities* (UBC Press 2010) and *Settler Colonialism and (Re)conciliation: Frontier Violence, Affective Performances, and Imaginative Refoundings* (Palgrave 2016), which was shortlisted for the 2017 Ernest Scott Prize.

Overturing aqua nullius: Securing Aboriginal Water Rights

Dr Virginia Marshall, Wiradjiri Nyemba, Australian National University



This paper will address issues arising from my recent, award-winning book. From 1788 the British colonisation of Australia marginalised Aboriginal communities from land and water resources and their traditional rights and interests. More recently, the national water reforms further disenfranchised Aboriginal communities from their property rights in water, continuing to embed severe disadvantage. Overturing aqua nullius aims to cultivate a new understanding of Aboriginal water rights and interests in the context of Aboriginal water concepts and water policy development in Australia. Drawing on the United Nations Declaration on the Rights of Indigenous Peoples, I argue that the reservation of Aboriginal water rights needs to be prioritised above the water rights and interests of other groups. It is only then that we can sweep away the injustice of aqua nullius and provide the first

Australians with full recognition and status of their water rights and interests.

Bio

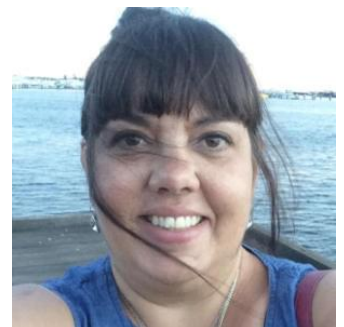
Virginia Marshall is the leading legal scholar on Aboriginal water rights and interests in Australia. She is currently the Inaugural Indigenous Postdoctoral Fellow with the Australian National University's School of Regulation and Global Governance (RegNet) and the Fenner School of Environment and Society. She is a practising lawyer and duty solicitor, a former associate researcher with the Federal Court of Australia in Sydney and professional member of the NSW Law Society and Women Lawyers Association of NSW. Former Senior Legal Officer of the Australian Law Reform Commission and inquiry into 'Family Violence & Commonwealth Laws: Improving Legal Frameworks' (ALRC 117), Executive Officer of the NSW Government's 'Aboriginal Water Trust' and criminal defence lawyer with NSW Legal Aid. Virginia won the WEH Stanner Award for the best thesis by an Indigenous author, which became the book *Overturning aqua nullius: Securing Aboriginal water rights in Australia* (Aboriginal Studies Press, 2017).

Her postdoctoral research focuses on drawing on an international comparative analysis of Indigenous water rights regimes in Canada, New Zealand and Hawaii to help secure an Indigenous water rights framework for Australia which is informed by traditional knowledge and furthers economic and cultural water rights.

Expressing Indigenous Sovereignty: The Production of Embodied Texts in Social Protest and the Arts

Crystal McKinnon, Yamatji, RMIT

This paper explores sovereignty as embodied in the expressions, relations and actions of Indigenous sovereign people. Indigenous people have expressed resistance to colonisation since invasion, and by understanding this as the actions of sovereign people we can divorce resistance from relying on structures of colonial oppression. This paper will relook at moments of political protest to show how sovereignty resists colonisation, even as sovereignty does not rely on colonisation to exist.



Bio

Crystal McKinnon is a Yamatji woman and is currently working at RMIT as a Vice Chancellor's Indigenous Research Fellow, where she sits within the Social Change Enabling Capability Platform (ECP) and an Australian Research Council Discovery Indigenous Project, Indigenous Leaders: Lawful Relations from Encounter to Treaty. The Discovery Indigenous project looks at lawful encounters between the State and Aboriginal communities of Victoria as historic sovereign practices that may inform current Treaty practices. Her work has looked at concepts of Indigenous sovereignty, and Indigenous resistance through the use of the creative arts, including music and literature. Crystal is the co-editor of *History, Power and Text: Cultural Studies and Indigenous Studies* (UTS ePress, 2014), and her work has been published in several books and journals, including *Making Settler Colonial Space: Perspectives on Race, Place and Identity* (Palgrave, 2010), the *Alternative Law Journal*, and *Biography*.

Across Oceans of Law

Professor Renisa Mawani, University of British Columbia



In 1914 the *S.S. Komagata Maru* left Hong Kong for Vancouver carrying 376 Punjabi migrants. Chartered by railway contractor Gurdit Singh, the ship and its passengers were denied entry into Canada and eventually deported to Calcutta. In *Across Oceans of Law* Renisa Mawani retells this well-known story of the *Komagata Maru*. Drawing on what she terms “oceans as method”—a mode of thinking and writing that repositions land and sea—Mawani argues that the *Komagata Maru*'s landing raised urgent questions

regarding the jurisdictional tensions between the common law and admiralty law, and ultimately, the legal status of the sea.

Bio

Renisa Mawani is a Professor in the Department of Sociology at the University of British Columbia and recurring Chair of the Law and Society Program. Other affiliations at UBC include: Faculty Associate, Peter Wall Institute for Advanced Studies, the Institute for Race, Gender, Sexuality, and Social Justice, Green College, and the Science and Technology Studies Program. She has a PhD from the Centre for Criminology and Sociolegal Studies at the University of Toronto. Her research interests include Colonial Legal History; Critical Theory, Race and Racism; Affect; Time and Temporality; Oceans and Maritime Worlds; Indigeneity; Colonial India and the Diaspora; Posthumanism.

To date, her work has aimed to write histories of indigenous dispossession and “Asiatic” migration (from China and India, in particular) as conjoined and entangled colonial legal processes that are central to the politics of settler colonialism, historically and in the contemporary moment. Her first book, *Colonial Proximities* (2009), details legal encounters between Indigenous peoples, Chinese migrants, Europeans, and those enumerated as “mixed race” along Canada’s west coast. Her second book, *Across Oceans of Law* (2018), traces the currents and counter-currents of British and colonial law and Indian radicalism through the 1914 journey of the *S.S. Komagata Maru*, a British-built and Japanese owned steamship. Professor Mawani’s current book project explores piracy and anticoloniality as intersecting and overlapping histories. Professor Mawani’s second set of interests, “legalities of nature,” coalesce at the juncture of science, law, and history.

INDIVIDUAL PAPER PRESENTERS

Paper presenters are listed in alphabetical order. See Brief Program for times and locations.

The legal life of maps: copyright, cartography, originality and authorship

Isabella Alexander, University of Technology Sydney

Scholarship in an array of disciplines (history, philosophy, sociology, geography, political science) has identified the emergence of geometrical mapping as correlating with the rise of the nation-state, and emphasised the crucial role played by maps in nation and empire building in the Western world. More recently, scholars have begun to pay more attention to the production of the map as material object and, further, how that production and its cultural, economic and social contexts, have worked to construct the relationship between the map itself and the ways people understood and used them. This paper seeks to draw out the role played by the law in that construction, in particular the law of copyright. While maps have assumed many different roles throughout history – sacred and religious, administrative, aesthetic, political and navigational – since the Enlightenment they have been increasingly valued for the scientific and mathematical accuracy, a concept itself conceived in Enlightenment terms. The role played by copyright law in buttressing such understandings has received little attention to date. This paper, however, also seeks to examine this role reflexively by going on to consider how the application of copyright law to maps in turn influenced the development of the law itself. It does this through a consideration of the High Court's in decision *Robinson v Sands & McDougall* (1917), a case which laid down central tenets of copyright law in relation to authorship and originality which continue to apply today.

Bio

Isabella Alexander is an Associate Professor in the Faculty of Law, University of Technology Sydney. She researches and teaches in Intellectual Property Law and her research focusses on the history of copyright law. She is the author of a monograph, *Copyright and the Public Interest in the Nineteenth Century* (2010, Hart), co-editor of *Research Handbook on the History of Copyright Law* (2017, Elgar) and a number of other articles and chapters in the field.

Refugees Turned Back to Sea in South East Asia: Collision between Human Rights and State Sovereignty

Hassan Al Imran, Western Sydney University

Rohingya ethnic group classified a stateless by Myanmar under the law. Persecution and violation of human rights becomes part of their life. As a result Rohingya people fled to the neighbouring States of the South East Asia by boats for escaping from persecution. But these prima facie refugees were pushed back by the States from maritime borders under state sovereignty. Under international law, in practice, States by-pass their international responsibility by the name of sovereignty at sea and national security. One side, international law ensures rights of refugees. On the other side, State has sovereign authority to control admission of aliens. It is a collision between human rights and sovereignty. The research claims that more consideration is needed to protect seaborne refugees.

Bio

I am a PhD Researcher of School of Law, Western Sydney University. My PhD research focuses on the Boat Refugee Issue of the South East Asia. Associate Professor Daud SM Hassan, and Director of International Centre for Ocean Governance (ICOG) is my Principal Supervisor.

Before that, I completed Bachelor of Law (LLB) from University of Wolverhampton (UK) and Master of Laws (LL.M in International Law) from University of the West of England, UK. I also completed Post Graduate

Diploma in Bar Vocational Studies (PGDL) from the same university and also qualified as a Barrister of Lincoln's Inn (UK). Also, I am an Advocate of Supreme Court of Bangladesh.

I have around 12 years teaching experiences as an Assistant Professor, Faculty of Law, in different Universities in Bangladesh. Acted as Charmin (Head) of Department of Law, Uttara University, Bangladesh. Several of my articles published in international Journals and Newspapers in refugee and other legal issues. I am a co-author of a book, 'Labour Law in Bangladesh (Doctrine, Practice & Theory): Issues & Commentary, published in 2018, Bangladesh.

English Legal History and Collective Social Memory in the Evolution of Women's Surnames in Australia

Deborah Anthony, University of Illinois Springfield

The names by which people have been known illustrate much about social norms and legal practices extant during various periods in English history. Surname use was at one time quite variable and individualized, bearing little resemblance to the typical practices seen in modern-day England and the nations that were once its colonies. This was particularly true for women, who at one time held individualized surnames reflecting specific traits, occupations, statuses, or family relations (e.g. Fairwife, Silkwoman, Widow, Robertdaughter). After surnames became regularly hereditary around the 15th century, women still sometimes retained their birth names at marriage, and even passed those names on to their husbands, children, and grandchildren. Women's surnames once bespoke of a surprisingly developed social and legal standing. But these diverse surname practices—along with other political and legal rights—eventually disappeared not only from practice, but from collective social memory.

In its place came a patriarchal regime which deceptively claimed the natural order, long history, and divine right supported the new male-oriented surname system. In the United States, the inherited English practice became so entrenched and political that not only social forces but also legal ones sprang up to enforce it, with justifications referencing a "tradition" so fundamental and absolute that it merited legal compulsion despite nearly a millennium of common law and empirical evidence to the contrary. This paper will investigate the ways in which the English legal development of coverture, and its attendant impact on the surnames of women, subsequently evolved in Australia. With the country in many ways a worldwide forerunner in the expansion of women's legal rights, the paper will analyze how the post-colonial nation engaged with English legal history and collective social memory in the development of the rights of women generally, and its impact on their surname autonomy specifically.

Bio

Deborah Anthony is an Associate Professor of Legal Studies at the University of Illinois Springfield. Her research interests include gender politics and law, constitutional law, and employment discrimination. Recent work has focused on the historical development of women's legal and political status in England. This includes analysis of the political, legal, and economic developments that jointly operated to rein in women's participation in public life, and the ways in which political memory manipulates public conceptions of historical events, thereby altering the collective sense of the past and present, national identity, and necessary directions in public policy.

Deprived of Citizenship: The Nationality of Married Women, 1920–1948

Emma Bellino, University of Wollongong

Between 1920 and 1948, when an Australian-born woman married an 'alien', that is a non-British subject, she was dispossessed of her nationality and was deemed to be an alien also. As a result of these marital denaturalisation laws, many women were excluded from the rights and obligations of citizenship that feminist and women's movements fought to attain. In this paper, I will briefly outline the shifts in marital denaturalisation laws in Australia before examining the lived experiences of women who were directly affected by them. I will draw on archival sources and newspaper articles to illuminate the difficulties that marital denaturalisation laws caused for Australian-born women married to aliens. Through their stories, I will discuss the emotional and physical hardships that the loss of citizenship entailed. In so doing, I will

explore the changing legal definition of citizenship in so far as it affected Australian-born women in the early-to mid-twentieth century.

Bio

Emma Bellino is a PhD candidate at the University of Wollongong. Her thesis explores a history of marriage, women's nationality, and Australia's Asian communities in the early 20th century. Her research interests include: women's, gender, and feminist histories, marital and reproductive histories, periodical studies, and the historical connections between law, society, and lived experiences.

Judge Willis and the Unmaking of Settler Sovereignty

Leigh Boucher, Macquarie University

This paper will explore a series of contested or sometimes completely over-ruled judgements by the often-maligned colonial Judge Willis in 1840s Victoria. Before Willis was removed from his post, he made a series of judgements that threw the legal foundation of settler sovereignty into question. He implied the possibility of a legal plurality in which Indigenous law was recognised. Even though NSW judges had resolved these questions a few years before, Willis continued to suggest that jurisdiction was not completely achieved. So too, he threw up sharp questions about where law-making authority lay for settlers as well. For Willis, sovereignty was a site of considerable political contest. What might these judicial failures and illegalities reveal? The paper will examine how legal and cultural approaches to Willis' judicial legacy would tell a very different story about the moment when settler sovereignty was achieved. It will also raise a series of questions about why legal history seems to be forever discovering that sovereignty was determined 'later than we thought.' What happens if an historical approach to sovereignty suggests it was constantly remade rather than achieved, always about to happen rather than at some point accomplished.

Bio

Leigh Boucher is a Senior Lecturer in History at Macquarie University. His research interests centre on the relationship between sovereignty and citizenship in settler political cultures. He has published work on settler liberalism, ideas about racial difference, the history of anthropology, and filmic representations of gender and race.

Criminalising his customers. Namatjira and the illusory promise of Aboriginal citizenship

Kathy Bowrey, University of New South Wales

Albert Namatjira (1902-1959) is Australia's first famous Aboriginal artist. Readings of Namatjira's life, art and national significance are enmeshed with narratives about colonialism, Australia's national identity, Aboriginal assimilation and the importance of rights of citizenship. He was the object of numerous racist laws throughout his life and is commonly misattributed today as the first Aboriginal citizen of Australia. Tales about national progress developed alongside the commercialisation of Namatjira's art, and the two histories – the story of his art and the 'reward' of his citizenship — are inescapably intertwined. This paper explores these linkages focussing on one of most striking and perplexing legislative reforms of the assimilationist era. *The Ordinance to amend the Police and Police Offenders Ordinance 1923-1954* 1957 (NT) made it an offence to buy a painting or drawing by an Aborigine or ward without written permission of the Director of Welfare. It came into effect on the very same day that citizenship was conferred on Namatjira. If Namatjira's artistic accomplishment and public stature was such that he 'deserved' citizenship, why was freedom of contract deliberately excluded from the rights bestowed upon him? This paper offers a counter-narrative to the conventional story that this short-lived regulation was designed to protect Aboriginal artists from exploitation. In explaining the state interest in pursuing this regulation I explore precisely what was it about the Aboriginal art production that was so dangerous it needed to be tightly regulated.

Bio

Dr Kathy Bowrey is Professor in the Faculty of Law at UNSW. Her research explores laws and practices that inform knowledge creation and the production, distribution and reception of technology and culture. Her primary expertise relates to intellectual property, information technology regulation, regulatory theory,

media practice, business history, feminist scholarship and a concern for Indigenous rights. She is particularly interested in interrogating the structures and frameworks that affect artists' professional opportunities and the construction of Australian national identity.

Legal History of Cyberspace: The Australian Experience

Christopher Brien, Victoria University

The Federation of Australia was influenced by communication technology. Debates in the 1890s led to the Commonwealth Parliament having the legislative power under s51(v) 'to make laws with respect to postal, telegraphic, and other like services'. Geoffrey Blainey's 'tyranny of distance' interpretation of Australian history is useful but does not adequately explain the matter by focusing on transportation. Other commentators such as Hirst, Livingston and Moyal have reconsidered Australian history from the perspective of analogue communication technology.

During the 1990s and the arrival of the World Wide Web, digital technology became easy to use. The existing physical controls brought about by analogue technology were removed. Increasing amounts of information are able to be collected and stored, combined with other information and communicated over vast distances at great speed. Usually when digital technology is discussed, attention is focused upon the 'latest and greatest'.

Cyberspace is the place where a telephone conversation occurs. Comparing how Australian law responded to the telegraph cable with that of Cyberspace, it is possible to distill principles that are lacking from contemporary discussion. Communication technology has changed but the issues remain the same.

Bio

Dr Christopher Brien is a Senior Lecturer at Victoria University, Melbourne. He teaches in the areas of Equity and Trusts and Administrative Law. Chris has held positions at the University of New South Wales, James Cook University and Charles Sturt University. Before commencing an academic career, he was Tipstaff to Justice Cripps, Chief Judge of the Land and Environment Court of New South Wales and Tipstaff to Justice Loveday of the Supreme Court of New South Wales. He has had books published by Oxford University Press and Butterworths/LexisNexis.

A Master Mariner's left testicle and the Law of Surgical Consent in Interwar Canada

Blake Brown, St Mary's University

See full abstract and bio in panel presentations section - Page 48.

'The Attorney General's Mind' New South Wales 1840 -70

Paula-Jane Byrne, University of New England

The initiation of criminal cases was made at Magisterial level and the sheets of paper on which depositions were written were sent to the Attorney General's office. The Attorney General often found depositions inadequate, returning them and writing critical letters saying that pleas should not have been taken and evidence was incomplete.

This was the mechanics of law and for this period not all depositions have survived and are in far poorer condition than earlier periods. I became interested in the Attorney General's pencil markings in the margins of depositions, the underlining and the scribbled initials and terms - because these markings determined if a person would appear at all in the court rooms of the colony.

In this marking we can see the Attorney General's reasoning and this paper deals with these pencil markings as part of the frontier, part of the producing of Aboriginal subjects.

Bio

Dr Paula-Jane Byrne is author of *Criminal Law and Colonial Subject* and *The Diaries of Ellis Bent*. She has taught at several Australian universities and held research positions at others as well as working at community level. Her last course was *A History of Aboriginal Political Thought* in 2017.

The Transformation of the Half-caste Category in Central Australia: Race and Law on the Frontier 1910-1937

Timothy Calabria, La Trobe University

This paper uses critical discourse analysis to explore the valence of the term 'Half-caste' as applied on the central Australian frontier. I argue that between 1910-1937 colloquial meanings of 'Half-caste' became imbued with legal force. Until 1937, the Northern Territory's legal definition was limited, ambiguous or both. The 1910 Aboriginals Act defined a 'Half-caste' as a person with an Aboriginal mother and a non-Aboriginal father. This definition failed to contain Aboriginality for people with Aboriginal paternity or a 'blood quantum' of less than half Aboriginal. In 1914, the Alice Springs' Protector of Aborigines incarcerated a widow and seven of her children in a shed, establishing the town's 'Half-caste' children's Home, the Bungalow. As a woman with three white grandparents, the widow, Topsy Smith, should not have been legally subject to the Protector's powers. Indeed, it was based on informal recognition of children's lighter complexions in Aboriginal camps that police interned them at the 'Half-caste' Home. This practice continued unchanged after the 1918 Aboriginals Ordinance redefined a 'Half-caste' as a person with an Aboriginal or 'Half-caste' parent. This circular definition was doubly ambiguous; it either failed to contain Aboriginality beyond the 'one-quarter' category, or it contained every person with any degree of Aboriginal heritage. For these children at what Stoler described as the 'frayed edges of taxonomies', police continued to use state controls to determine their conditions of existence. They grew up in the highly-visible, inadequate institution in the town's centre, where the children's presence reinscribed their inclusion in the 'Half-caste' category. When a policeman knocked on her door in 1937, former inmate and daughter of Topsy Smith, Emily Geesing, was reincarcerated in the Bungalow. Geesing sued for her freedom and won. Her victory sparked redefinition of laws and greater scrutiny of their application in the endless classificatory dialectic of the settler colonial frontier.

Bio

Timothy is a PhD Candidate at La Trobe University in Melbourne. He completed his Bachelor of Arts at the University of Tasmania, where he double-majored in Ancient Civilisations and History. He completed his Honours year at La Trobe University in 2016, where he received First Class Honours, the Pro-Vice Chancellor's Commendation and the Richard Broome Prize. He has written for *The Medic* and *Backstory*. On a Research Training Program scholarship, he is currently working on a PhD that focuses on different historical iterations of racialised childhood in rural Australian institutions.

Politics and Procedure: The Libel Trials of D. Algar Bailey, 1916-18

Lyndsay Campbell, University of Calgary & Heidi Exner

See full abstract and bio in panel presentations section - Page 49.

"The Past and Future of the Maori": Apirana Ngata, first Maori law graduate, speaking back to settler colonialism in the 1890s

Jane Carey, University of Wollongong

In 1892, Apirana Ngata, then the first Maori university student and soon to become the first Maori law graduate, won the Canterbury College essay prize for a lengthy paper on 'The Past and Future of the Maori'. In this youthful piece, Ngata, who would go on to a long and sometimes controversial political career, reflected at length on the history of his people and the serious challenges they were currently facing. Much of the essay was overshadowed by the widespread, dire predictions that the Maori people were facing 'extinction'. He rehearsed ideas and arguments that would become central to his later politics. In doing so, he

demonstrated a sophisticated command of Pakeha racial thought and a comparative sensibility of the wider project of European (settler) colonialism.

An 1891 newspaper editorial had described Ngata's entry into the university as 'an epoch' and expressed the hope that more 'young chiefs' would follow his example: 'a few Native lawyers' would help stop Maori becoming the 'victims of unscrupulous Pakeha agents' in their land transactions. Surprisingly however, Ngata himself opposed the idea that more Maori should follow in his footsteps to university studies or legal qualifications. While agreeing that the 'land question [had] become the greatest of native difficulties of today', he argued instead that the very survival of the Maori people was the more urgent issue. As he put it, it would be far better for the chiefs to 'wage a war against disease and death ... to rescue their race', instead of wasting their remaining energy in 'squabbles over a few worthless expensive acres'. In this paper I explore why Ngata (at this moment) did not support Maori engagements in legal contestations of the appropriations of settler colonialism. I argue that he nevertheless talked back to the impositions of the New Zealand state in significant ways.

Bio

Jane Carey is a senior lecturer in history and Co-Director of the Centre for Colonial and Settler Studies at the University of Wollongong. Her work spans across settler colonial, women's and Indigenous histories. She is the editor of several collections including *Re-Orienting Whiteness* (Palgrave, 2009), *Creating White Australia* (Sydney University Press, 2009), and (with Jane Lydon) *Indigenous Networks: Mobility, Connections and Exchange* (Routledge, 2014). She is currently completing a monograph on the history of Australian women and science and is engaged in ongoing research examining Indigenous engagements with western science.

Regulating Dress in a Pandemic: formal and informal regulation during the 1918-1919 influenza pandemic in Australia

David J Carter, University of Technology Sydney & Mark De Vitis, University of Sydney

The 'Spanish' Influenza pandemic swept across the world one-hundred years ago. Lasting from 1918-19, the pandemic is estimated to have caused anywhere between 20 and 100 million deaths worldwide. In Australia, the threat of the pandemic was a trigger for significant enlargement of Commonwealth quarantine powers and intensification of the 'dense administrative site' that is the Australian border. While a national maritime quarantine was established, individual citizens were compelled to undertake or refrain from particular behaviours. Theatres, schools and some shops were forced to close, facemasks were required, travel was halted and church services and public meetings prohibited.

Contemporary pandemic response planning relies on the history of the influenza pandemic of 1918-19 as the basis for modelling. Yet, surprisingly little is known about the legal and regulatory responses to the threat of influenza during 1918-19, and even less about how specific public health measures that produced forms of exclusion and confinement were received and resisted by the Australian public. In this paper, we present a history of attempts to regulate dress during the 1918-19 Influenza Pandemic in Australia. Dress was a key 'battleground' in the defence against the spread of influenza, and the biopolitics of influenza more broadly. For example, in an effort to curb the spread of the disease, gauze masks were made compulsory in parts of New South Wales in February 1919. Tracing a new history of this regulation of masking, we show how both formal and informal modes of regulating dress came into contact with established practices of dressing in ways that reveal how formal legal and regulatory efforts to respond to major health crises were shaped, re-shaped and resisted by established forms of cultural regulation of fashion and dress.

Bios

Dr David J Carter is a lecturer in the Faculty of Law at the University of Technology Sydney where he focuses on the legal, regulatory and governance challenges involved in the delivery of safe, effective and sustainable healthcare services. At present, he teaches and writes on the regulatory practice of health law, public health law and criminal law, applying historical and empirical methods in aid of advancing legal and regulatory strategies for reducing the burden of healthcare-related harm and death. His most recent work focuses on the history of public health law responses to HIV transmission.

Dr Mark De Vitis is a lecturer in the Faculty of Arts at the University of Sydney, where he specialises in the study of cultures of dress and dressing, both past and present. In support of his doctoral research he was the recipient of a residency at the Cité internationale des Arts, Paris through the Power Institute, and has also

held a research fellowship at the Getty Research Institute in Los Angeles. He has most recently been awarded the 2016-2017 Charles Montgomery Gray fellowship at the Newberry in Chicago.

Ethno-territorial division and economic exclusion in Soviet Central Asia

Aminat Chokobaeva, University of Sydney

This presentation will trace the relationship between state-building and racialized practices of exclusion in early Soviet Central Asia by examining the state-sponsored campaign of administrative division, known as *raionirovanie* (regionalization). As a part of the broader push for decolonization, *raionirovanie* was intended to facilitate “peaceful cohabitation” of the settler and native population through establishment of ethnically homogenous districts.

My paper will show that far from equalizing the settler and indigenous population, *raionirovanie* had legitimized and institutionalized the settlers’ control of contested resources. The consolidation and expansion of European minority districts served to concentrate the best agricultural land in the region in the hands of colonists who already occupied some of the most fertile land in the region and enjoyed better access to state services. Furthermore, the creation of European canton in the republic’s capital had effectively created an autonomy within an autonomy and gave the Bolshevik leadership capacity to intervene in the domestic affairs of the republic on behalf of the European population.

Ultimately, as this paper will demonstrate, the Soviet policy of ethno-territorial consolidation reproduced, in every practical sense, the colonial policies of racial segregation. The creation of self-administered minority ethno-territorial units served to insulate and protect the privileges of the European minority, while simultaneously putting a check on the political and economic demands and ambitions of the native majority.

Bio

Aminat Chokobaeva is an associate lecturer at the University of Sydney. Her interests include the uprising of 1916 in Semirech’e as well as the broader issues of state-building and governance in the region. She has previously published on the Soviet historiography of the uprising of 1916 and the politics of memory in independent Kyrgyzstan.

Driving Sovereignty: OA_RR

Georgine Clarsen, University of Wollongong

Childhood memories of being forcibly bundled into a big black official car, of confusion and terror, of last glimpses through the back window at distraught family left behind, very often feature in the Stolen Generation testimonies that have been placed on the public record since the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families. This paper considers one prominent Melbourne artist’s very personal response to those painful narratives.

Reko Rennie’s three-channel video installation, OA_RR, was featured in Defying Empire, the National Gallery of Australia’s 3rd National Indigenous Art Triennial in 2017 and earlier in Venice Biennale. OA_RR is an 8-minute road movie featuring a hand-painted 1973 gold Rolls Royce Corniche, a symbol of settler power and arrogance, which Rennie drives from his Melbourne home onto his Kamilaroi Country in northwestern NSW.

Rennie painted the Corniche in pink and khaki, in his signature camouflage Visible/Invisible style, which brings together Kamilaroi carved tree patterns (dendroglyphs) and urban spray can art. With a snapshot of his much-loved Nan mounted on the immaculate inlaid timber dashboard and mesmerizing soundtrack by Nick Cave and the Bad Seeds, Rennie reaches the country where she was born under a tree, and then stolen from her family as a child. Rennie carves circular patterns into the red earth through a series of burnouts, referencing the massive, ephemeral sand engravings that Kamilaroi people created for ceremony. He then turns the Rolls Royce back to his Melbourne home.

In this paper, I take up Reko Rennie’s invitation to consider his performance of mobile, regal sovereignty as an Indigenous refusal of settler power.

Bio

Georgine Clarsen is an Associate Professor and Discipline Leader of History at the University of Wollongong (https://scholars.uow.edu.au/display/georgine_clarsen). Her research has focused on mobilities in settler colonial Australia as a distinctive constellation of raced and gendered practices. She is a founding editor of the journal *Transfers: Interdisciplinary Journal of Mobility Studies* (<http://journals.berghahnbooks.com/transfers>), and of the book series *Explorations in Mobility*, both published by Berghahn Press (<http://www.berghahnbooks.com/series/explorations-in-mobility>).

Murder, Treason and Dissent – the Use of Criminal Legislation to Silence Dissent in New Zealand in the 1860s

Tim Conder, Holland Beckett

During the New Zealand Land Wars of the 1860s, the colonial authorities used a variety of tools to suppress and minimise Māori dissent. One of the most pernicious ways was through the use of the criminal law to reclassify Māori protest and resistance as a simply criminal act bereft of its political context. In particular, two incidents in the Bay of Plenty near the close of the Land Wars, demonstrate the way in which criminal law was used to deal with armed resistance and to suppress trouble makers without acknowledging the validity of their grievances. This paper traces the early history of murder prosecutions in New Zealand, from the trial of Maketu Wharetotara through to the execution of Mokomoko and contrasts the punitive approach taken to murder with the more merciful approach taken to those convicted of treason. The paper argues that the use of murder charges was an intentional attempt to deny the legitimacy of Maori resistance within the context of continued attempts to assert British sovereignty over Aotearoa.

Bio

Tim Conder is a Tauranga-based lawyer who does work in both criminal and civil litigation. Tim has represented Māori organisations both in applications before the Māori Land Court and in the criminal court. He recently completed his LLM thesis through Auckland University on the topic of Murder Sentencing with a focus on how the current regime lines up with its historical antecedents.

The making of colonial women: Women's use of the courts in a mid-nineteenth century British colony

Libby Connors, University of Southern Queensland

The abolition of slavery, ending of convict transportation and other great reforms of 1830s Britain had invigorating political effects in the Australian colonies in the 1840s and 1850s. While pastoralists fought rear-guard campaigns to renew transportation and emancipists and small settlers joined the movement for self-government, colonial women shared in hopes of colonial betterment. This paper investigates women's use of the lower courts in what was then northern New South Wales in the 1840s and 1850s. Living in towns still affected by frontier violence and significantly outnumbered by men, working class women negotiated an all-male legal system despite the sneers of the local newspaper and the occasional opposition of the male magistracy. In these fleeting glimpses women's determination to defend and assert their limited rights provides insights into those relations of colonial intimacy that were otherwise hidden and into their own rising hopes in the mid-century.

Bio

Dr Libby Connors is associate professor of history at the University of Southern Queensland. She has been involved in the Australian and New Zealand Law & History Society for many years and presented much of the evidence in her book, *Warrior*, (Allen and Unwin, 2015) at successive conferences. *Warrior* was awarded the 2015 Premier's Award for a Work of State Significance and in 2016 the AHA's Magarey Medal for Biography and the ANZLHS Prize in Legal History. She is currently president of the society.

Kidnapped, Trafficked and Detained! The problem of minor girls in the British Protected Malay States between the 1880s to the 1910s

Vicki Crinis, University of Wollongong

By the 1880s humanitarian campaigns were starting to build around girls and trafficking. Social scientists, feminists and internationalists began to question the age of consent. What age could a girl consent to sex work? How can girls be protected against moral danger? This paper argues that in peninsular Malaya, the colonial government introduced legislation that allowed for minor girls to be removed from any threat to their morality and returned to their parents or confined in carceral spaces until reaching the age of consent to be married. While they sought to improve the welfare of girls, these official measures fitted the logic of colonisation. The colonisation of Malaya relied on the labour of transient male workers and women of age to work in the tolerated brothels, but as a show of colonial paternalism, the government rescued minor girls to appease the international community and as a denial of their complicity in the traffic of women and girls.

Bio

Vicki Crinis is an Honorary Fellow in the School of Humanities and Social Inquiry, Faculty of Law, Humanities and Creative Arts, at the University of Wollongong. She has published a co-edited book, journal articles and book chapters on women's labour, migrant workers in Malaysia as well as labour rights and Corporate Social Responsibility in the clothing industry. Her current research interests include migration for prostitution, emotions and trafficking, colonial Malaya, feminism, humanitarianism and internationalism. Crinis' forthcoming journal article, 'Trafficking in the Federated Malay States 1920-1940: from migration for prostitution to criminality', will be published in the *Journal of Imperial and Commonwealth History* in 2019.

Foreign Fighters' Redux: revisiting 20th century border controls and citizenship

Ruth Delaforce, Charles Sturt University

Contemporary state responses to foreign fighters include robust border controls and reviews of citizenship. There is a clear message from strong (developed) states that foreign fighters risk non- repatriation, denial of travel through passport cancellation, and loss of citizenship. The strategies have been subject to much scholarly and political debate, particularly regarding the families and children of foreign fighters, and vulnerable young people lured to conflict regions. The border control strategies are neither novel nor unusual for states – particularly strong states – in managing risky individuals. Throughout the 20th century, in civil wars and especially during the era of decolonisation, strong states utilised similar border control strategies, either to facilitate or obstruct movements of foreign fighters, also referred to as mercenary soldiers. This presentation reviews the mechanisms of border control by strong states in the Spanish Civil War, during the era of decolonisation and more recent intra-state conflicts. Foreign fighter movements were often impeded through collusion between security and intelligence agencies; tactics included the cancellation of passports, detention in transit states, and denial of transportation. Conversely, states could also facilitate the movements of risky individuals. Risk management was (and still is) an important factor in state facilitation or obstruction. It is proposed that state border control strategies are not novel, but an historical management tool adapted for contemporary events. The primary difference today, however, being that state mechanisms of border control are increasingly overt and vulnerable to discovery by the media and social activists. The historical analysis provides insight into the ambiguous nature of state border controls and management strategies for risky individuals and groups.

Bio

Ruth Delaforce is a Lecturer in Criminology and Policing at the Centre for Law and Justice, Australian Graduate School of Policing and Security, Charles Sturt University. Her research interests include the military-crime nexus, private military and security companies, plural policing, transnational organised crime, insurgency and counterinsurgency studies. Dr Delaforce is an Associate Editor of *Salus Journal*, and previously co-editor of the *ARC Centre for Excellence in Policing and Security Briefing Paper* and *Working*

Paper series (2011-2013). Prior to entering academia, Dr Delaforce was employed in the private and public sectors, and law enforcement.

A History of Duty and its Role in Societal Cohesion

Chris Dent, Murdoch University

“Duty” is central to key aspects of today’s law. The “duty of care”, for example, underpins many of the relationships (both actual and potential) that we, in society, are part of. The history of the concept, generally, has not been explored. There have, of course, been explorations of specific duties (including of fiduciary duties), but none that has considered the introduction of the term across a range of legal areas. That task is the focus of this paper.

The broader project starts the analysis with the use of the term in the early modern period. This conference paper, however, is limited to the circumstances in which the term came to be adopted between 1750 and 1850. The range of court decisions to be touched on include those from trust, negligence, defamation, company and employment law, as well as legal statements about the duties owed by lawyers. In order to provide the context of the uses in these areas, the eighteenth century legal treatises will be considered, as will works from political philosophy (including, but not limited to, the texts of Pufendorf and Bentham).

The research shows that the original intent behind the use of the term was to impose a moral constraint on the actions of parties. Later uses, however, reflect a furthering of the interests of the capitalist class. Both purposes may be seen to be reactionary – not necessarily completely excluding others, instead, they are better understood in terms of ordering society in line with the dominant ideologies of the time.

Bio

Chris is an Associate Professor at Murdoch University School of Law. Prior to that, he was in a research-focused position at Melbourne Law School – mostly at the Intellectual Property Research Institute of Australia. Much of his work focuses on the history and theory of intellectual property. This work that has been expanded to include the histories of specific concepts – such as “confusion” in trademark law and the use of legal constructs (e.g. the reasonable person) in law generally.

The Great War & Border Making: Tracking Itinerant Punjabis

Hardeep Dhillon, Harvard University

During the Great War, national and colonial governments generated the largest scale of human detainment in modern history (at the time) and placed the mobility of humans across the globe under greater scrutiny and duress. In this era, wartime laws reflected the globalization of restrictions on mobility during an era of imperial rule where colony and metropole mirrored one another in the policies that would reflect those who could be legally prohibited, exempted, and contained. This paper explores the wartime legalities that were constructed to legitimize the detainment, deportation, and movement of imperial citizens and foreign subjects in India. It highlights how the laws developed by colonial officers to contain mobility built borders beyond the perimeter of colonial India moving from Sindh southwards around the Coromandel and Malabar Coasts and northeast through the Bay of Bengal. Instead, the British imperial government focused on curtailing mobility at the sites of port cities, frontiers, internment camps, and within villages. By focusing on the development of borders and curtailed mobility at these sites, the imperial government could monitor the flow of people – particularly of humans now labeled foreigners and political activists to ensure that they would not rebel or stoke rebellion against the imperial state. This paper argues that it was this enhancement of border making and curtailed mobility that enabled the colonial government to shatter leftist solidarities, reconfigure humans as imperial citizens and foreign subjects, allies and enemies, loyalists and threats to preserve the colonial government and colony in an era of characterized by mobility and transnational solidarities.

Bio

Hardeep Dhillon is a Ph.D. Candidate in the History Department at Harvard University with a secondary in Women, Gender, and Sexuality Studies (WGS). Her dissertation, titled *Indians on the Move*, explores the role of mobility and dissent in the formation of imperial law. Her work has been supported by the Fulbright DDRA Program and other sources of funding. Her larger interests include histories of gender, anticolonialism and

violence, disability, migration, mobility, citizenship, empire, race, and surveillance. In addition to her research, Hardeep is deeply invested in teaching and mentorship. To contact Hardeep, please email hdhillon@g.harvard.edu.

Displacing Tikanga: ‘Micro-encounters’ in the Courts of the Coloniser

Shaunnagh Dorsett, University of Technology Sydney

On 21 December 1846, Wiki, a Māori woman, laid an information against Thomas Murray for assault. Wiki told the Resident Magistrates Court that she had been struck and kicked without provocation, and called a ‘bloody native woman’. Murray was found guilty and fined 5/ and costs or 10 days hard labour. Wiki’s case was quickly forgotten. We know nothing of Wiki or Murray other than that on 21 December they met in the newly inaugurated Resident Magistrates Court, a court created in part with the specific agenda of providing a forum through which to encourage Māori to forsake tikanga and engage with settler law. Wiki’s case was only one of over a thousand cases brought to the Auckland Resident Magistrates Court in its first 14 months of operation – some by Māori, more by settlers. It stands, however, as a moment in which we can glimpse the beginning of something much larger: the process of displacement of tikanga Māori and the assimilation of Māori to settler law. This paper, then, tells a story of the displacement of law and the taking of jurisdiction not through a meta-narrative of sovereignty, or a tale of violent physical dispossession, but through a myriad of day to day micro-encounters – such as that of Wiki and Murray – in the lowest courts in the land.

Bio

Shaunnagh Dorsett is Professor of Law at the Faculty of Law, University of Technology Sydney where she is Director of the Faculty’s Area of Research Excellence in Law and History. She is author or editor of a number of books, mostly recently *Juridical Encounters: Māori and the Colonial Courts, 1840-1852* (AUP 2017), which was shortlisted for the 2018 Ernest Scott Prize.

Rise of the Guilty Plea in Australian Supreme Courts

Lisa Durnian, Griffith Criminology Institute

Pleading guilty in criminal trials is a relatively recent phenomenon. Historical scholarship examines this shift in the context of plea bargaining developments in American jurisdictions; there is no historical research investigating the guilty plea phenomenon in Australian courts. Further, the historical research largely ignores guilty pleas which do not fit the plea bargaining framework. This doctoral research analyses large scale Supreme Court register data from the Prosecution Project database to identify when the guilty plea first dominated case outcomes in the Queensland, Victorian, and Western Australian Supreme Courts. The research then turns to an in depth archival examination of the guilty plea phenomenon in the Queensland jurisdiction. It identifies some of the key practices and processes of key criminal justice actors including police, lawyers, and the judiciary, that appear to have influenced this critical development in Australia’s criminal courts.

Bio

Lisa Durnian is a Griffith Criminology Institute PhD student on the ARC Laureate project ‘Prosecution and the Criminal Trial in Australian History’. Her recently completed doctoral thesis explores the guilty plea phenomenon whereby traditional criminal jury trials were replaced by defendants’ pleading guilty. This research involves analyses of large scale data of criminal prosecutions in the Supreme Courts of Queensland, Western Australia, and Victoria between 1901 and 1961 that track changes in the disposition of criminal cases over time. It also analyses a range of historical sources including criminal depositions, legal texts, and historical newspaper reports to untangle the critical processes providing the foundation for this important transformation in the modern adversarial system. Her research interests include prosecutions of property theft and patricide offences.

Immigration and Struggles for Racial Justice in Marriages and Relationships between Indigenous Australian Women and American Servicemen in WWII

Catriona Elder, University of Sydney & Karen Hughes, Swinburne University

Between 1941 and 1946 more than 1 million US troops, including 9,000 segregated African Americans, were stationed across Australia and a wide array of social relations were formed that tested the entrenched racial boundaries established by the White Australia Policy, the US Immigration Act and the Jim Crow laws of the US south. The war momentarily overshadowed some of the concerns of controlling Aboriginal peoples, and indeed an array of intimate relations were formed that crossed entrenched racial boundaries established by the White Australia Policy and the US Jim Crow and immigration laws. Largely Aboriginal women were prohibited from marrying US servicemen and immigrating to the US, under its racialised 1924 *Immigration Act*, which admitted only African-descended people of colour.¹ On the Australian home front, too, mixed relations were discouraged through punitive consorting laws, passed in a 1939 amendment to the *Aborigines Act, SA, 1911*. About a dozen Aboriginal women, were able to enter the US under an official war bride scheme yet required extensive documentation that certified proof of ‘more than fifty per cent white ancestry’. This paper examines the legacies of those wartime relationships within the broader context of trans-colonial race-based injustice, social rupture and the struggles for civil and human rights in the post-war period. In choosing this historical period we are able to assess the impact, especially personal trauma and violence that emerges in spaces where this is legalised racial inequality. We explore the violence that surrounded these marriages during the war, when the women were surveilled by the Australian state, and in the aftermath of that war, when the socio-legal framework in both Australia and the United States meant the couples were subject to individual, familial, structural and epistemic modes of violence.

Bios

Dr Catriona Elder's areas of research expertise are in 20th- 21st century Australian cultural identity, especially relations between Indigenous and non-Indigenous peoples in Australia. In particular she has intensively explored some of the ways in which non-Indigenous peoples think about belonging and has analysed both the pleasure and anxiety that inform narratives of national belonging. Specific projects have focused on assimilation in popular fiction; whiteness and government immigration and Indigenous policy in the 1950s and 1960s. This work has drawn on and contributed to the development of Critical Whiteness Studies and Settler Colonial Studies in Australia.

Karen Hughes is a Senior Lecturer in Indigenous Studies at Swinburne University, Melbourne. She is currently a Visiting Research Scholar at New York University. Her research explores cross-cultural, settler-colonial histories transnationally. She is a Chief Investigator on the ARC Indigenous Discovery project ‘Children born of War: Australia and the War in the Pacific 1942 – 1945’ with Victoria Grieves and Catriona Elder. New work explores the artistic, social and cultural legacies of pioneering mid-century Indigenous community-based photographers in Australia and North America.

Attending to place in academic life*:

realising sovereign-to-sovereign relations in theory and practice

Julie Evans, University of Melbourne

This paper considers the responsibilities of scholars in settler societies not only to understand, but also to make broadly accessible, the past and continuing effects of colonialism, including in the local places where we live and work. With reference to Australian critical legal theory on how sovereign-to-sovereign relations might be realised in practice, I offer some reflections on the complementary significance of the *Minutes of Evidence* project, a collaborative undertaking between Indigenous and non-Indigenous creative artists, educators, and researchers in Victoria. Funded under the ARC Linkage scheme, the project drew on the records of an 1881 parliamentary inquiry into the Coranderrk Aboriginal Reserve to increase public understanding of Victoria's shared colonial history, spark public conversations about structural injustice, and raise awareness about the role of ‘meeting points’ in finding ways to live together ‘lawfully’ (Dorsett & McVeigh (2012) *Jurisdiction*). Alongside a range of interdisciplinary publications, outcomes include the popular verbatim theatre play *Coranderrk: We Will Show the Country* and jointly-produced curriculum

modules and classroom resources to support the teaching of *History* and *Civics & Citizenship* in Victorian secondary schools. I conclude with some observations on a new locally-grounded ARC Indigenous Discovery project *Indigenous leaders: lawful relations from encounter to treaty*, which brings historical assertions of the need for sovereign-to-sovereign relations in Victoria into conversation with contemporary treaty processes.

* Genovese, A., (2014) 'On Australian Feminist Tradition: Three Notes on Conduct, Inheritance and the Relations of Historiography and Jurisprudence' *Journal of Australian Studies*, vol. 38 (4), 430-444

Bio

Julie Evans is Principal Fellow at the University of Melbourne (Melbourne Law School/Criminology). Her work explores the significance of western law's relation to Indigenous and non-Indigenous peoples from the late 15thc to the present with a view to fostering lawful ways forward. She was Lead CI on Minutes of Evidence project (<http://www.minutesofevidence.com.au/>) and is currently joint CI on Indigenous leaders: lawful relations from encounter to treaty. Her books include *Edward Eyre, Race and Colonial Governance* (2005); *Equal Subjects, Unequal Rights* (co-authored 2003) and *Sovereignty: Frontiers of Possibility* (co-edited 2012). *Keeping Hold of Justice: Encounters Between Law and Colonialism* is forthcoming (co-authored 2019).

Indigenous peoples and the 'state' – A comparative discussion of Australia, Canada and New Zealand

Loredana Giarrusso, Monash University

This paper examines how Indigenous and non-Indigenous populations have been unable to reach agreement in respect of a treaty and broader notions of constitutional recognition throughout Australia's constitutional history. This contrasts with similar British-derived nations such as Canada and New Zealand where the colonising power recognised Indigenous people as land owners from the outset, including the acknowledgement of pre-existing rights and a capacity to govern within the parameters of British sovereignty.

In New Zealand, Māori leadership structures and politics were recognised as part of the British legal system as early as 1840 with the Treaty of Waitangi and continued throughout the second half of the 19th century with the establishment of Māori seats in the New Zealand legislature. Similarly, British colonial governments entered treaty relationships with Canada's Indian populations during the 19th century, and in 1867 the Canadian Supreme Court and the British Privy Council recognised the existence of native title to land at common law. The process of treaty making in these countries is central to continuing developments where the fundamental rights of Indigenous people are considered part of the policy making process.

From the outset of British colonisation in Australia, its developing legal and governance structures have demonstrated a fundamental lack of recognition of Indigenous peoples' sovereignty. While more recently federal governments have attempted to implement policies of Indigenous self-determination, these policies have been limited and short lived as evidenced with the abolition of the Australian Torres Strait Islander Commission in 2005, and the continuing inability of governments to enter into treaties or afford constitutional recognition to Indigenous people. This trend appears reflective of an ongoing inability to reconcile race relationships between Indigenous and non-Indigenous populations in Australia.

Bio

Loredana Giarrusso is a part-time PhD candidate in the Monash University School of Social Sciences under the supervision of Doctors Nicholas Economou and Rachel Standfield. Her research investigates whether the history of Indigenous policy failure is indicative of the failure of Australia's political and governance structures to engage with and recognise the basic rights and interests of Indigenous Australians with a particular focus on race relations. Loredana has a legal background and practises as a family lawyer on a part time basis. Her research interests include Indigenous policy history in Australia and other jurisdictions, political history in Australia, and Australian colonial history.

Redress for historical child abuse in Australia and Ireland: the role of race and colonialism

Kate Gleeson, Macquarie Law School

In this paper I am concerned with the historical implications of the deceptively complex question of why it is that the Irish State has responded with comprehensive State-funded redress for historical child abuse, when the Australian State has refused this remedy despite its international leadership exhibited in the Royal Commission into Institutional Responses to Child Sexual Abuse. It is my argument that the difference in State responses ultimately and predominantly concerns race, and that contemporary responses to historical child sexual abuse must be appreciated through the combined lens of race, biopower and colonialism. I argue that the 19th and 20th century institutionalisation of children in each country represented a technique of biopolitics aimed at homogeneous racial purification and the health of the national population. Furthermore, the differing ways in which that race-based institutionalisation was understood and carried out in each country has had profound implications for the possibilities of redress today. In short, the institutionalisation of Irish children aimed to protect and cultivate an 'Irishness' that became ascendant in the Irish Republic through the repossession of colonised land and resources and reclamation of culture and language, and therefore may be acknowledged and redressed without disturbing the nation's postcolonial identity. In contrast, the Australian race-based institutionalisation of children formed one stage of a coordinated program of ultimately inconclusive cultural and biological Indigenous genocide motivated by land acquisition, that cannot be acknowledged and redressed without fatally disturbing the national mythology of the Australian 'settlement' and provoking the 'epistemological crisis' of White Australia. Hence the 'slow violence' of race based colonialism endures in different ways in the

Bio

Dr Kate Gleeson is senior lecturer and research director in Macquarie Law School. She has published widely on the regulation of bodies, sex and sexuality in comparative and historical contexts. She has particular expertise in justice for crimes of institutional and historical child sexual abuse in Australia and internationally.

Towards a History of Lawlessness: Settler-Colonial fantasies of moral righteousness

Lou Glover, University of Wollongong

'The transition from rude barbarism to moral civilisation is the least seldom accomplished; when knowledge illuminates the mind, high civilisation is sure to follow.'

'The Aborigines of the Colonies', *Port Phillip Gazette and Settler's Journal*,
01 November 1849, Victoria.

Aboriginal nations of 'Australia' developed over centuries from a foundation in the highest lawful authority possible *from* place. They functioned, and where possible still function, as a high moral civilization, as evidence by oral testimony and archaeological and anthropological records of early colonists and settlers. Yet the writer of this excerpt from the 1849 was casting doubt on of the possibility for Aboriginal people, in their state of "rude barbarism", to transition into western ideas of 'high (moral) civilisation'. The "knowledge that illuminates the mind" that the writer was advocating involved exploiting and abusing Country to profit, and consume spoils from extractionist colonies on Country. The Capitalist settler colonial behaviours and actions that have inundated Country since James Cook first trespassed on Aboriginal Country exemplify a history of lawlessness. Lawlessness that has *legal* clout.

Lawfulness has morality principles but it is clear that legal does not equal moral. Settler legislation that enforces a lawless, immoral, exploitative paradigm is perceived as moral and, in that belief of righteousness, mobilises a force of settler outlaws, wreaking havoc on Country. Colonized people are not immune to this force. We are all implicated in participating in the lawless paradigm initiated by James Cook and can track its effects through climate change, mental ill-health, environmental degradation, and poverty.

Lawlessness – ‘a state of disorder due to disregard of the law’

In this paper I consider this key question: how can history account for such widespread lawlessness? By considering the settler-colonial inundation of ‘laws’ and ideologies, and applying the Aboriginal notion of physically patterning into place (CF Black), this paper seeks productive ways of using history to understand the state of disorder, its relationship to law and what remedies a history of lawlessness may avail.

Bio

Lou Glover is undertaking her PhD in History and Cultural Studies at the University of Wollongong with the ARC Centre of Australian Biodiversity and Heritage (CABAH). Her work is concerned with viewing Deep Time (Aboriginal) histories concurrently with colonial histories of Southern Sea Country. In 2017 she won the university medal for her honours thesis called 'Deep Time People: Resilience, Inundation and Fishing Rights on the South Coast'.

Rivers as sovereign boundaries; places of colonial engagement, and prospective treaty sites

Lee Godden, Melbourne Law School

The state of Victoria enacted the *Yarra River Protection (Wilip-gin Birrarung Murron) Act* in 2017 with an historic session of parliament for the second Reading Speech where Indigenous leaders for the first time entered the Victorian parliament as First Nations peoples and spoke to the cultural values integral to protecting the river. This paper explores the legal history of the river as a meeting place, a space of exclusion and colonial sovereignty punctuated by indigenous resistance and resultant violence, and more recent efforts to engage Aboriginal people in the co-management of the river and to provide for cultural flows. The paper explores this history against the backdrop of moves in other jurisdictions to accord legal personality to rivers, for example, as a component of indigenous peoples¹ settlement and compensation negotiations with settler states. The paper concludes with an analysis of the prospects for compensation and reconciliation around the river in the current treaty negotiations taking place in Victoria.

Bio

Professor Lee Godden is Director, Centre for Resources, Energy and Environmental Law, Melbourne Law School, The University of Melbourne. She has long-standing research interests in the history of water law and Aboriginal rights to water and in 2017-8, she completed research on legal models for cultural flows.

Laws of Decolonial Genre: The Politics of Figuration in the Postcolonial *Bildungsroman*

Michael R Griffiths, University of Wollongong

While the world or postcolonial *Bildungsroman* is concerned (as Joseph Slaughter has argued) with figuring human rights through human development, it is also concerned with national development; the latter is often developed through allegory. Yet, the political exigencies that urge on the postcolonial writing of decolonization can equally be served by realism, arguably more so than allegory. Perhaps the paradigmatic postcolonial *Bildungsroman*, Tsitsi Dangarembga's *Nervous Conditions* is also notable for the tension it presents between realism and allegory. As Jacques Derrida has argued, genres and modes such as these govern the production of texts and their relation to history.

The novel codes a relation to the decolonizing relation of Zimbabwe. Babamukuru, the Uncle of Tambu—*Nervous Conditions*' protagonist—returns to Zimbabwe from Britain to take up the post as schoolmaster in 1965, the year in which Zimbabwe's War of Liberation began. The same year, within the narrative, Tambu's brother Nhamo “began to distinguish himself at school” (5). As such, Tambu's struggle for education and independence can be read as paralleling that of Rhodesia as such, placing us in the domain of Jameson's

notion of national allegory. Yet, the novel does not simply map characters onto positions of correspondence vis a vis the nation. This is accomplished not the least through the emphasis on the embodiment of Tambu and her cousin Nyasha, who develops an eating disorder that also figures a rejection of colonial education.

If the novel, then, both borders on allegory and refuses to reduce to it, it does do in particular through the form of narration particular to the *Bildungsroman*. The greater the distance of the narrator from the diegetic world of the text, the greater their omniscience, the further the text is from allegory.

Beyond Legal Exclusion: understanding the performativity of cultural appropriation claims

Marie Hadley, University of New South Wales

This paper draws upon ethnographic material generated during Captain Cook's South Seas voyages and the insights of Judith Butler and Gayatri Spivak amongst others to explore cultural appropriation allegations in settler states as a performative utterance, specifically a reaction to the manifestation of colonial desire for the Other. Using the example of Indigenous-inspired tattoo imagery known as 'tribal', the distinctly colonial dimensions of the western gaze on Pasifika tattoo is investigated.

The failure to protect Indigenous cultural imagery and arts styles from appropriation is frequently criticised in intellectual property scholarship. The conventional, progressive critique is that the western bias of copyright's cornerstone principles do not recognise the unique context within which Indigenous art is produced, owned and regulated, suggesting complicity in the cultural harms of appropriation, and necessitating *sui generis* interventions. While doctrinal framings of cultural appropriation provide valuable insight into the politics of legal exclusion in settler states, this approach is nevertheless limited. It does not provide the tools to reflect on the nature of cultural appropriation claims as performative utterances or the relationship between cultural appropriation and colonialism – a link which is often asserted but rarely theorised in conventional progressive scholarship. At a time when Indigenous possessive claims over cultural forms, iconography and artistic styles in settler states such as Australia and New Zealand have multiplied, attracting attention upon cultural appropriation in international fora, it is timely to consider what cultural appropriation allegations *do* as well as what they *say*.

Bio

Marie Hadley is a PhD candidate at the University of New South Wales. Her doctoral research is an interdisciplinary study of the intersection of cultural appropriation, copyright law and Pasifika tattoo imagery, with particular attention on the performativity of cultural appropriation claims, the relationship between cultural appropriation and colonialism, and the informal systems of legality that mark cultural production. She has published on cultural appropriation and tattoo, Indigenous art and copyright law, and inquest law.

Biopolitics and feminist theory: telling the story of the political life and natural rights of colonial women in New Zealand through the laws of succession

Dee Holmes, University of Waikato

Succession laws, property ownership and the right to vote were intertwined in the political life of colonial women at the turn of 20th century New Zealand. While social norms and statistics can help build a picture into the lives of women, it is the duties, choices and individual freedoms that frame gender, sexuality, the law and politics during this time. The predecessor of the Family Protection Act 1955 was the Testator's Family Maintenance Act of 1900 which created a natural right to have more of a life, a better life where adequate provision had to be made for the proper support and maintenance of families of the deceased. Where husbands could not will away all of the property and leave them with nothing. But juridical power was inherent at the time and with contention as to how much power the state could use to impinge on the natural rights of citizens during life and death. The political rationale for such a move was motivated by colony building and creating an order as to how the population should be controlled. Where men had an obligation not to leave their families destitute during their lifetime, this

did not extend past death. By 1900 women had been able to exercise their political voice by voting and any concerns about the disastrous effect that this would have on the domestic lives of the colony population or the economic viability within the colony had been unfounded. But the economic disparity that a lack of succession laws created was of real concern in the colony and this law was a way to correct the imbalance.

Bio

Dee Holmes is a second year PhD Candidate enrolled at the University of Waikato- Te Piringa Faculty of Law. The focus of her thesis is on bringing more certainty and clarity to section 4(1) of the Family Protection Act 1955 by redrafting it. The origins of this section dated back to 1900 and has been interpreted by the Courts as the “moral duty” on the deceased to provide adequate provision for the proper maintenance and support for family under their estate. The supervisors for the thesis are Professor Margaret Wilson and Sir Grant Hammond.

Adjudicating Ownership in a Contested Territory: A fight against resource extraction from exile

Randi Irwin, The New School for Social Research

Displaced for forty years, Saharawi refugees and their political leadership (the Polisario) have developed various decolonization strategies that aim to end Morocco’s presence in Western Sahara. While the United Nations recognizes the Polisario as the official representatives of Saharawis - but not the sovereignty of the Saharawi Arab Democratic Republic - the possibilities afforded to nation-states are not altogether absent for the state-in-exile based out of the refugee camps in Algeria. The inconsistent and often-changing international recognition of the Saharawi Arab Democratic Republic provides the opportunity to better explore the stakes of law and power as entry points into the study of sovereignty more broadly. In this paper, I consider two legal cases, set in different jurisdictions. Both cases take on the question of resource rights and resource extraction in Western Sahara, but the differences between the two jurisdictions has profound impacts on the outcomes. Moving between the European Court of Justice and a courtroom in South Africa’s Eastern Cape, I aim to show how the Saharawi decolonization struggle and its decades-long commitment to building a history of legality has generated spaces of political possibility and economic opportunity for the state-in-exile. I suggest that the sovereign recognition of the Saharawi state by South Africa, the African Union, and forty-four other nations is a project of refusal, one that rejects Morocco’s colonial aspirations in the territory and moves beyond decolonization (Simpson 2014 & 2017, Sturm 2017). In this paper I ask: What might the legal strategies deployed from a refugee camp, by a state-in-exile, tell us about the future of decolonization and the politics of international recognition in the twenty-first century?

Bio

Randi Irwin is a PhD Candidate in Anthropology at The New School for Social Research in New York. Her doctoral research is focused on the struggle for Western Sahara’s decolonization, led by the Saharawi state-in-exile from a refugee camp in Algeria. Her research focuses specifically on the role of natural resources in mediating knowledge production, territorial rights, formations of citizenship, and legality. Randi’s dissertation research was funded by the National Science Foundation and The New School. She is currently a board member for the Association of Political and Legal Anthropology in the United States.

Sir Owen Dixon’s Curious Legacy and the Demise of Privy Council Appeals in Australia

Tanya Josev, Melbourne Law School

A number of academics and jurists regard Owen Dixon’s judgment in *Parker v R* (1963) 111 CLR 610 as Australia’s ‘declaration of judicial independence’ (to use Justice Kirby’s words) insofar as the judgment expressly refused to adopt English legal principles in Australian law. Why did Dixon choose this moment for such a forceful, yet considered, rejection of English law? Was this a statement limited to the case’s particular facts, or did it have wider implications? In this paper, I look to Dixon’s personal correspondence with fellow jurists to try to understand why he moved so strongly to distance himself not from English law per se, but from the Privy Council in the late 1950s and early 1960s. I suggest that there is an argument to be made

that Dixon's own jurisprudence presaged Federal Parliament¹'s actions to limit Australian appeals to the Privy Council, and furthermore set the scene for the flowering of a uniquely Australian jurisprudence in the 1960s onwards.

Bio

Dr Tanya Josev is a Senior Lecturer at Melbourne Law School, researching in legal and political history. Her first book, *The Campaign Against the Courts: A History of the Judicial Activism Debate*, was published by Federation Press in 2017. Her current research interests include judicial biography, and the evolution of the binary understanding of the judicial role as involving 'activism' and 'restraint' across various common law jurisdictions.

From historical chains to derivative futures: Title registries as time machines

Sarah Keenan, Birkbeck Law School

This paper looks at how changing legal methods for proof of land ownership affect the form of the property-owning subject, and thus also affect issues of space, sovereignty and citizenship. For centuries, transferring ownership of land under common law was a slow process requiring the construction of a chain of paper deeds evidencing decades of prior possession. In 1858, colonist Robert Torrens developed a new system for the transfer of land in South Australia, where the land was understood by colonial powers as 'new'. With the intention of making land a liquid asset, Torrens' system of title registration shifted the legal basis of title from a history of prior possession to a singular act of registration. Analysing the structure and effects of title registration, engaging with interdisciplinary work on time, and taking H.G Wells' iconic time travel novella as a point of departure, I argue that title registries can usefully be understood as time machines. Like the machine H.G Wells imagined, title registries use fiction to facilitate fantastical journeys in which the subject is radically temporally dislocated from the material constraints of history. As with time machines, it tends to be a transcendental white male subject who is most likely to survive this dislocation. While based on fiction, the impacts of title registries are very much real, facilitating humanity's arrival at racist, dystopic landscapes in the here and now.

An argument for the recognition of Maternal Rights in International Human Rights Law to ensure mothers equitable citizenship and spaces of sovereignty.

Anna Kerr & Darelle Duncan, Feminist Legal Clinic Incorporated

To date there has been a failure to accord legal recognition to maternal rights or make adequate provision for women's greater physical and psychological investment in reproduction. The failure to ensure adequate financial support by the state during mothering and to eliminate workforce discrimination related to pregnancy and parenting has resulted in women with children suffering systemic financial disadvantage and loss of status. This has resulted in unfair treatment of mothers and the creation of "uneven citizenship" by effectively excluding them from higher levels of participation in the workforce and public life.

Women have historically been at risk of having their children removed if they have not secured the continuing patronage of a willing man through the institution of marriage. Even now child removal continues to be a threat for disadvantaged women. This paper will consider Australia's sad history of child removal and current moves to increase rates of adoption and to commodify women's reproduction.

Marriage has historically functioned as a key instrument to confine and control women. Rather than dispense with it as an archaic instrument of patriarchal control over women and children, its role has now been enshrined by its expansion to same sex relationships. This paper will consider the failures of Australian family and domestic violence law, the Hague (Child Abduction) Convention and international human rights law to protect maternal rights and provide women with children with a means of escaping abusive heterosexual relationships.

Finally, the recent impact of a gender-neutral approach has seen the dismantling of many hard-won women's services, such as women's refuges, and the loss of women's few "spaces of sovereignty." This paper will

suggest that the recognition of women's maternal rights is a way forward to reclaim those rights being steadily eroded under the guise of gender equality.

Bios

Anna Kerr MA LLB has worked as a lawyer for over 25 years and is the founder of the [Feminist Legal Clinic Incorporated](http://www.feministlegal.org) which is located in Sydney and works to advance the human rights of women and girls by supporting feminist groups, services and campaigns. She is also a member of NSW Legal Aid's Domestic Violence Practitioner Scheme. She has qualifications in law, psychology, English and education and a passion for the study of Herstory. She can be contacted through her website at www.feministlegal.org.

Darelle Duncan MEd FACEL is a co-convenor of the [Feminist Legal Clinic Incorporated](http://www.feministlegal.org). In addition to a long career in education, including as a School Principal, she is a long-term adoption law reform campaigner and member of [Origins](http://www.feministlegal.org). She was involved in successfully lobbying for changes to the Adoption Act to allow for access and reunions. She also established the Australian Women's Party in 1995 and stood as a Senate candidate and has published widely on gender issues.

Ecclesiastical Principles in the Bars to Divorce of Victorian England

Henry Kha, Macquarie Law School

The enactment of the *Matrimonial Causes Act 1857* was a watershed moment in the history of the laws of England. The Act introduced a legal system of civil divorce and established a court based family justice system. Despite the legal changes, equitable principles that had hitherto operated in the Ecclesiastical Court, particularly in cases of divorce *a mensa et thoro* (i.e. judicial separation), continued to shape the bars to divorce. The paper seeks to analyse the connections between ecclesiastical principles and the bars to divorce that operated under the *Matrimonial Causes Act 1857*. In particular, the discretionary bars of the petitioner's adultery and unreasonable delay, and the absolute bar of collusion will be explored. Firstly, the petitioner's adultery could bar the person seeking a divorce based on the equitable principle of clean hands. The Court expected "those seeking equity must do equity" or in the words of A.P. Herbert, "A dirty dog will get no dinner from the Courts." Secondly, unreasonable delay in petitioning for divorce was a bar to divorce based on the equitable doctrine of laches. It was particularly influenced by the civil principle of *vigilantibus non dormientibus aequitas subvenit* (equity aids the vigilant, not the ones who sleep [on their rights]). Thirdly, a petitioner who was found to have partaken in an act of collusion in order to satisfy the ground of adultery would be barred from being granted a divorce based on two equitable principles: clean hands and *volenti non fit injuria* (to the consenting, no injury is done). The paper highlights the importance of ecclesiastical principles and equitable doctrines in understanding the divorce law of Victorian England.

Bio

Dr Henry Kha is a lecturer at Macquarie Law School. He was previously lecturer at the University of Auckland and tutor at the University of Queensland. His main research interests are family law and contract law in Australia, England and New Zealand from both a legal historical and contemporary perspective. Henry completed his PhD from the University of Queensland on "The Reform of English Divorce Law: 1857–1937."

The Strange Case of Dr Oronhyatekha and Mr Martin: 'Indian' Enfranchisement in Victorian Canada

Coel Kirkby, Sydney Law School

See full abstract and bio in panel presentations section – Page 52.

Seafaring labour law 'between the maintenance of discipline and the exercise of undue severity'

Diane Kirkby, University of Technology Sydney

This paper addresses the conference theme as it taps into a discussion about "degrees of unfreedom" with a focus on a form of labour that is characterized by its mobility, military-style discipline and violence. It takes the example of the Australian Navigation Act and its provisions for disciplining seafarers. Seafaring labour

was distinctly different from land-based labour, particularly in the area of labour discipline. Legal constraints were placed on industrial action in merchant shipping, and labour conditions were regulated by penal rather than civil or industrial law. Most accepted forms of industrial action in shore occupations were criminal offences if and when they were taken on board even if a ship was in port. Going on strike risked criminal prosecution. Imprisonment was punishment for 'desertion' or 'absence without leave' perpetuated well into the 20th C. in the provisions of navigation acts. Australia's legislation originally set out to protect Australian labour but was subsequently described as 'vicious' after amendments were made to reinforce the disciplinary provisions under the Menzies government in the 1950s.

Bio

Diane Kirkby is Professor Law and Humanities at UTS, and the author of numerous books and articles on labour history. She is Deputy President of the Australian Society for the Study of Labour History, and serves on the Advisory Board of the International Labour and Social History Conference of the European Labour History Network. In 2017 she co-edited *Labour History and the Coolie Question* with Sophie Loy-Wilson. This paper comes from her ARC-funded research on maritime workers.

Violent crime and the social lives of Chinese male servants in colonial Singapore, 1910s-1930s

Claire Lowrie, University of Wollongong

See full abstract and bio in panel presentations section – Page 51.

Memsahib, mistress or prostitute? Maud Lipshut's life between Singapore and Australia

Sophie Loy-Wilson, University of Sydney & Jessica Hinchy, National Technology University Singapore

See full abstract and bio in panel presentations section – Page 50.

'Attendance has improved now that the winter has ended': School attendance, housing and seasonal mobility in the 1950s and 1960s in the mill towns of East Gippsland

Beth Marsden, University of Melbourne

In the 1950s and 1960s, the small mills of East Gippsland were a source of employment—and sometime housing—for Indigenous men. Small state schools sometimes operated in the small towns close to mills, providing education for the children of families living in mill housing, and employed by the mills. The attendance of Indigenous children at schools in this region was a source of anxiety for the Education Department and the Aborigines Welfare Board. The isolation of the mill towns, along with the relative proximity of the border with New South Wales, combined with the absence of policy or communication between the Education Department and the Aborigines Welfare Board about the education of Indigenous children, meant that for some families, the expectations of compulsory schooling did not always determine the experience of schooling. Drawing on the minutiae of school pupil registers and the Aborigines Welfare Board papers detailing the surveillance of some Indigenous families, this paper examines how the compulsory system of schooling was influenced by variables such as seasonal work and mobility, housing, and environmental influences. The capacity of the Education Department to uphold the legislation mandating attendance and the minimum school leaving age was, this paper argues, also influenced by these compounding factors, and by the choices made by Indigenous families. This paper questions how Aboriginal parents and families negotiated the expectations and restrictions of the compulsory school system and considers how an understanding of the families' choices can contribute to knowledge about the school and education system during the era of assimilation policy in Victoria.

Bio

Beth Marsden is a PhD Candidate (History) at the University of Melbourne. Her PhD research examines the education and schooling experiences of Indigenous students in Victoria in the 1950s and 1960s within the framework of Indigenous mobilities. This research interrogates how understandings of Indigenous mobility can help us to know more about how assimilation policies and practices were resisted by and impacted upon Indigenous children and families in Victoria.

The legal protection of Chinese women in prostitution in 1880s Darwin

Julia Martínez, University of Wollongong

See full abstract and bio in panel presentations section – Page 50.

The politics of compensation for victims of racism: a legal aftermath of anti-Chinese goldfields riots in Australia's first era of immigration restriction

Paul Macgregor, Dragon Tails Association & Juanita Kwok, Charles Sturt University

The Buckland riot in Victoria in 1857 and the Lambing Flat riots in NSW in 1860-61 are the two most well-known peak experiences of anti-Chinese violence during the Australia's first period of racially discriminatory legislation (1855-1867). Much has been written about the events themselves, what they tell us about racism in colonial Australia, and how much they were progenitors of the White Australia era, the second phase (1880-1973) of racially discriminatory legislation. This paper looks at the (reasonably) successful attempts by Chinese victims of the violence to petition for compensation from the governments of Victoria and NSW. We consider this aspect in the light of the Chinese being foreigners, of not being British subjects, and with this being the case, we interrogate the concepts of rights and responsibilities, both legal and moral, that were at the heart of the arguments for and against compensation. The Treaty of Nanking (1842) between the British and Chinese empires enjoined each imperial government to look after the welfare of the other's subjects while in each other's jurisdiction. Yet each of the governments of Victoria and NSW felt considerable political embarrassment from the reasonable claims that their lack of attention to early and adequate policing in new rushes had allowed the rioting to occur. We argue then that the compensation decisions, while partly based on legal precedents, were partly about showing that the governments were restoring order, or perhaps, laying claim to being the legitimate providers of order, by paying restitution for damages. However, the difficulties that the Chinese miners of Lambing Flat experienced in actually receiving the approved compensation indicate an underlying ambivalence towards treating the Chinese fairly, an ambivalence that was also expressed in competing views debated in the legislatures at the time, regarding whether the exclusion of Chinese immigrants was reasonable - or morally abhorrent.

Bios

Paul Macgregor, historian and heritage consultant, is Secretary of the Dragon Tails Association, which organizes biennial conferences on Chinese diaspora history and heritage. He is also President of The Uncovered Past Institute, which undertakes archaeological excavations with public participation, and has recently completed an excavation of the Harrierville Chinese mining village in Northeast Victoria. Curator of Melbourne's Chinese Museum from 1990 to 2005, he has published widely, organised many conferences and exhibitions, and worked on several major research projects, all on Chinese Australian history. He is currently researching Chinese economic activity in Australia, and the material culture heritage of Chinese Australians, as part of a wider investigation of the nineteenth and early twentieth century co-evolution of European and Asian societies in Australasia, China, Southeast Asia, North America and the Pacific/Indian Ocean worlds.

www.paulmacgregor.info

Juanita Kwok was born in Sydney and gained her BA at the University of Sydney. She has been living in Bathurst since 2008. Juanita completed her Honours thesis at Charles Sturt University on the representation of Chinese in Australian feature films made in the era of the White Australia policy. She is currently undertaking a PhD with Charles Sturt University on the history of the Chinese in the Bathurst district from

the 1850s to 1950s. She is co-author of the high school textbook *Film Asia: New Perspectives on Film for English* (Curriculum Corporation, 2002), which won the Australian Teachers of Media (ATOM) Award in 2003 for Best Reference Resource for Secondary Teachers. She was co-founder and co-director of the Sydney Asia Pacific Film Festival 2000-2002.

One State, Two Districts, and a Mosaic of Entitlement: Land and Inheritance in Taieri and Hokianga

Jane McCabe, University of Otago

The history of land alienation in New Zealand, whereby large swathes of the South and then North Islands were prised from Māori ownership/occupation and into Crown coffers, has been the subject of much scholarship in recent decades. Less attention has been paid to the complex trade in land that ensued – both between the Crown and individual purchasers, and amongst these new ‘owners’ of the land. This talk presents early findings from a cross-cultural study of intergenerational land transfer that focuses on this trade, as it occurred within and between farming families in two districts: Taieri (in the south) and Hokianga (in the Far North). The study interrogates and broadens the notion of a ‘farming family’ by including families descended from Chinese market gardeners and Dalmatian wine growers, as well as Scots, Māori, and the many ‘mixed’ families who count (and identify with) two, and often three, of these cultural threads in their ancestry.

Here I argue that a layered approach to land ownership is necessary to understand the way that a steady diet of political rhetoric over land entitlement actually played out on the ground. The right to buy and sell land – a core component of citizenship – was applied extremely unevenly over the study period (1870-1970), and any investigation of this trade needs to explore not only British and Māori but also non-British families, who were often subject to exclusionary legislation. Moreover, what this study has revealed very clearly is that marriage – and especially intermarriage – complicates these issues to such an extent that land ‘rights’ can only be understood by imagining land ownership, land trade, and inheritance, as constituting a mosaic of community relationships forged by constant negotiation between cultural, economic, bureaucratic and familial priorities.

Bio

Jane McCabe is a Lecturer in History at the University of Otago, where she teaches papers on Modern India, Colonial India, Migration to New Zealand, and Global History. Her monograph *Race, Tea and Colonial Resettlement: Imperial Families, Interrupted* (Bloomsbury, 2017) examined a Presbyterian scheme that resettled 130 mixed-race children from Indian tea plantations to New Zealand in the early 20th century. Jane’s current research project, funded by a Royal Society of New Zealand Marsden Grant, is a cross-cultural history of land and inheritance.

Citizenship, Exclusion and Property: the “Right to Rent” provisions and unsettled tenants in England

Kate McCarthy, University of Chester

The Immigration Act 2014 introduced into England a regime of limiting access to rented accommodation in the private sector based on the prospective tenant’s citizenship, nationality or immigration status. In what have become known as the “right to rent” provisions, private landlords are expected to check the documents of an occupier before granting a residential tenancy agreement (and *landlords* may be subject to civil and criminal penalties). The “right to rent” provisions produce categories of acceptable (and lawful) tenants based upon documentary evidence of citizenship or immigration status and are an integral part of the Conservative government’s “hostile environment” policy. Conversely, the provisions produce categories of those who must not be housed, must not become settled in private, domestic properties, and also those who have only a limited “right to rent” and thus are subject to disadvantage and discrimination in accessing housing. The official policy line narrates that those individuals who have somehow permeated the formal border of the state are subject to checks by private landlords and are to remain ‘unsettled’ until they leave the territory due to the hostility of the housing environment. The provisions have been subject to numerous critiques.

In this recent example of exclusion and the production of difference amongst prospective tenants, we can see the process of delineating acceptable occupiers (or settlers) based upon citizenship and immigration categories. The problematic nature and deeper historical aspects of the “right to rent” was highlighted by the “Windrush” scandal of early 2018 where many Caribbean migrants in England lacking documentation were denied housing and other services based on their lack of formal citizenship and documentary status. This paper will explore how the recent Immigration Act 2014 provisions echo historical processes of the creation of categories of ‘settlement’ and citizenship in the sphere of property law.

Bio

Kate McCarthy has worked in universities in both England and Australia. Her research interests include interdisciplinary work across law and history with a focus on conceptions of property, both in historical context and their contestation in recent legal provisions. She is currently senior lecturer in law at the University of Chester in England.

Mexican American Studies + Latinx Identity Building: Legal Realities for Ethnic Studies in Arizona

Erika Sylvia Nacim, University of Arizona

What if a system has been built not for you or by you, but constructed to exclude, disempower, and oppress you- then constantly restructured (legally) to silence you when there is any sign of progress, resistance, or revolution? This is the basis of many “American” institutions; structures built with an imperialist white supremacist capitalist patriarchal foundation (hooks, 2004). The “American” education system does not deviate from this blueprint, organized so whiteness is centered and instilled in pupils and students of color’s identities and histories erased- not only from the curriculum but from the individual.

The goal: colonize the mind

The process: assimilationism

Colonization has never ceased but instead is executed in a different form- physical exploitation came first, retrieval of psychological agency related to cultural identity is the current accepted method. The establishment of ethnic studies in U.S. classrooms serves as not only a decolonial process to assimilationism but a counter hegemonic one as well; revolutionary for the marginalized, dangerous for hegemony. The Mexican American Studies (MAS) program in the Tucson Unified School District (TUSD) was established as an act of resistance against the further erasure of Mexican American history in education but instead treated as a threat to “promote the overthrow of the United States government” (AZ HB2281, 2010). The impact MAS had on Latinx adolescents is analyzed within three contexts- race, power & domination, and resistance. This analysis is grounded in intersectionality, utilizing Mexican American literature to deconstruct how race, ethnicity, gender, sexuality, class, and documentation status figure into the struggle for a fair and just education in Arizona. Outlining the historical, social, and legal realities for MAS and the positive impact on Latinx adolescence identity building and educational outcomes.

Bio

Erika Sylvia Nacim was born and raised in El Paso, Texas. Crossing the border daily into Juárez was an integral part of her childhood. Though as she grew older and border politics more insidious, trips across the Rio Grande ceased. She attended High School in Tucson, Arizona and learned of a harsher border reality. She has backgrounds in Cell Biology, Spanish Literature, and Global Public Health. Erika is a full-time PhD student in Mexican American Studies and intends to continue her work in social justice- dismantling and disrupting oppressive systems impacting education and health. She will always question her position in academia and work tirelessly to hold herself and the institutions she belongs to accountable.

Never mind that whispering in your hearts

Jennifer Newman, Australian Catholic University

In June of 1844, Richard Windeyer reprised considerations of the rights status that might be afforded Aborigines previously made in a public debate in 1842. Colonial barrister and parliamentarian, Windeyer

established an enduring legacy in his closing words: “What means this whispering in the bottom of our hearts?”

Windeyer’s view pervades the republication of Henry Reynolds’ *Whispering* book ten years on, propels the commitment undertaken by conservative advocates, *Uphold and Recognise* and shadows the sudden appointment of a special envoy on Indigenous Affairs. The spectre of Windeyer murmurs behind some paragraphs of the Uluru Statement from the Heart.

Windeyer’s response to that whisper: “for the more debased, the more vile, the more wretched we have shewn the Aboriginal to be the more imperatively is the duty cast upon us by fit means of education to make him conscious of the dignity, the holiness of the Mind he shares with ourselves.” I suggest positive movement to recognition and treaty is significantly impeded with Windeyer’s legacy extant, casting individual and national attention introspectively.

Never mind that whispering in your hearts. Listen up over here to the myriad calls for voice, treaty, truth.

Bio

Grown up in Narromine, NSW; descended from long lines of Wiradjuri and Australian yarn spinners; presently residing on Wangal Country.

Jennifer has worked with Aboriginal and Torres Strait Islanders adult learners in universities and TAFE, and has developed and delivered Aboriginal Studies programs in Sydney and abroad.

In the Doctoral Program at the Institute for Social Justice, Jennifer’s research examines the discourse of constitutional recognition in Australia. Since the Uluru Statement from the Heart was delivered to the Australian people in July 2017, progress towards recognition shudders to gain traction in a conservative political climate. Through Indigenist discourse analysis, with a strong narrative turn, Jennifer proposes an idea of engagement on the strength of reciprocal principles, as an alternative to compromise between adversarial powers.

The British North America Act, 1930 and Métis-State Relations in Western Canada (1930-1964)

Nicole O’Byrne, University of New Brunswick

The British North America Act, 1930 (the Natural Resources Transfer Agreements or NRTAs) marked the end of a lengthy battle between the provincial governments of Saskatchewan, Alberta, and Manitoba and the federal government of Canada. Prior to 1930, the provincial governments did not have administrative control over their natural resources, which were managed by the federal Department of the Interior. As a result, the three prairie provinces did not share equal constitutional status with the other Canadian provinces that did control their own resources. Under the terms of the new constitutionalized intergovernmental agreements the provincial governments agreed to fulfil the federal government’s continuing obligations to third parties after the transfer. One of these obligations was the redemption of Métis scrip issued by the federal government to extinguish the Métis share of Aboriginal land title. After the transfer, however, the provinces resisted granting more land to satisfy what they considered to be a federal obligation. The provinces refused to redeem Métis scrip entitlements and the federal government did not enforce the terms of the NRTAs. Both the federal and provincial governments failed to live up to the terms of the constitutional agreement and the Métis scrip issue fell through the jurisdictional cracks of Canadian federalism.

This paper examines the historical context and consequences surrounding the state’s failure to recognize Métis scripholders’ rights-based claims to land and assertion of control over lands previously controlled by the federal government. As a result, provincial governments pursued different needs-based natural resources and Métis policies. In this paper, I will argue that Métis political efforts directly influenced this policy development and are a cogent example of resistance to the imposition of state colonialism.

Bio

Nicole O’Byrne (Ph.D.) is an Associate Professor at the Faculty of Law, University of New Brunswick. Nicole’s research focuses on the history of Canadian federalism, Métis-State relations and non-constitutionalized intergovernmental agreements including the The British North America Act, 1930 (the Natural Resources Transfer Agreements). She has published articles about various aspects of Métis history and is currently

writing a book on the history of Métis-state relations in Alberta, Saskatchewan and Manitoba (1870-1970). She is the President of the Canadian Law and Society Association. Her teaching areas include Aboriginal law, Evidence and Criminal law.

A Comparative History of Medicare in Atlantic Canada (1965-1970)

Nicole O'Byrne, University of New Brunswick

See full abstract in panel presentations section – Page 49.

Sovereignty, exclusion and dispossession in early Irish law

Pamela O'Neill, University of Sydney

In a recent article in *Ériu*, I argued that early Irish law included a procedure whereby an offender was placed in a small wicker boat on the border of the community's territorial waters with those of one or more neighbouring communities. The destination of the boat would determine the fate of the offender: if they arrived in a new territory, they would be *amurchoirthe*, 'sea-deposit', without kin or legal capacity; if they returned to their own territory, their fate varied according to the offence they had committed. Some offences entailed inclusion tempered with dispossession, while others entailed full reinstatement. In this paper, I consider the concept of sovereignty as enacted in the spatial practice of placing the offender at the border, and the practice of exclusion and dispossession as an exercise of sovereignty, with the objective of sustaining the integrity of the community. I argue that, for each specified offence, the final result of the procedure acted to neutralise the harm to the community and minimise the risk of reoffending.

Bio

Dr Pamela O'Neill is an honorary research associate at the University of Sydney and Principal of the Australian School of Celtic Learning. Her background is in Celtic Studies and Jurisprudence, and her principal research interest is in the legal and ecclesiastical history, landscape and material culture of early medieval Ireland and Scotland. She is series editor of the Sydney Series in Celtic Studies, co-editor of the *Australian Celtic Journal*, secretary of the Celtic Council of Australia and public officer of the ANZLHS. She was founder, president and journal editor of the Australian Early Medieval Association.

Shaping Forced Migration: International Norms and the Status of Refugees and Internally Displaced Persons

Phil Orchard, University of Wollongong

Today, refugees and internally displaced persons (IDPs) are both protected by distinct international regimes; these regimes, however, vary significantly with refugees protected both by the 1951 Refugee Convention and by the United Nations High Commissioner for Refugees while IDPs are protected at the global level only by the soft law Guiding Principles on Internal Displacement and the UN's Cluster Approach. And yet both groups are more similar than different: both need protection because they cannot necessarily count on the protection of their own state; both have been forced to flee due to persecution, human rights violations, and other indignities. The significant difference between the two is that one group – refugees – have crossed an international border while the other – IDPs – remain within their own state.

By exploring the international response to these two groups across the 20th century, this paper will argue that the significantly different forms of international response are not driven primarily by the distinction created by borders; but was actually created through differing and contingent notions of sovereignty vis-à-vis international organizations and through ad hoc policy responses which have led to two distinct sets of international normative understandings. This argument will be made by focusing on four historic periods: responses to refugees under the League of Nations; the negotiations around the 1951 Refugee Convention; UNHCR's approach to IDP assistance in the 1970s; and, finally, international recognition of the IDP issue by the UN in the early 1990s.

Bio

Phil Orchard is an Associate Professor of International Relations at the University of Wollongong and a Senior Research Fellow at the Asia-Pacific Centre for the Responsibility to Protect. His research focuses on international efforts to provide legal and institutional protections to forced migrants and war-affected civilians. He is the author of *A Right to Flee: Refugees, States, and the Construction of International Cooperation* (Cambridge University Press, 2014), which won the 2016 International Studies Association Ethnicity, Nationalism, and Migration Studies Section Distinguished Book Award, and the forthcoming book *Protecting the Internally Displaced: Rhetoric and Reality* (Routledge, 2018). He is also the co-editor, with Alexander Betts, of *Implementation in World Politics: How Norms Change Practice* (Oxford University Press, 2014).

Stolen motherhood? Barriers to Aboriginal mothering in the Stolen Generations era

Anne Maree Payne, University of Technology Sydney

This paper focuses on the structural barriers to Aboriginal motherhood in the Stolen Generations era, detailing inequalities in Aboriginal mothers' status as the legal guardians of their children, their lack of access to social security benefits readily available to most other Australian mothers, the requirement for some Aboriginal mothers living on missions and reserves to return to work irrespective of their carers' responsibilities, and the impact of heightened state surveillance of and intervention in Indigenous families. Although issues such as "neglect" and parental "consent" have often been the focus of public debate about child removals in the Stolen Generations era, Aboriginal mothers at this time often had limited parental rights in relationship to their children, and government policies directly contributed to the circumstances of deprivation many Indigenous families experienced. Focusing on the previously undocumented experiences of the mothers of the Stolen Generations, this paper will challenge perceptions about 'neglectful' Aboriginal mothers and argue that the motherhood of Aboriginal women in the Stolen Generations era was stolen from them, with intergenerational impacts that continue to reverberate in Aboriginal families to this day.

Bio

Anne Maree Payne currently works as a sessional academic in the Department of Social and Political Sciences at the University of Technology Sydney, where she teaches Aboriginal Political History and a range of equity-related subjects. She completed her PhD in 2016, "Untold Suffering? Motherhood and the Stolen Generations". Her research interests lie primarily in the area of gender and human rights.

Confinement in the Hawaiian Kingdom, Before and After Annexation: Understanding Incarceration Disparities Wrought by Injustice

Avis Poai, William S. Richardson School of Law

"If color is ever to rule Hawaii—which God forbid!—that color must be white." This sentiment, expressed a few days before the passage of the Hawaiian Organic Act, posited that a small minority of white foreigners comprised of a few thousand should govern over a territory populated by over 100,000. Inclusion in the United States should have meant broader participation of the population in all aspects of government. Racist characterizations of the native populace as incompetent were used as an argument to explain why democratic freedoms should not prevail in an American territory.

This paper begins by providing a demographic profile of the prison and asylum population during the Kingdom of Hawai'i, from approximately 1866-1902. By examining prison records, asylum records, original case files, and governmental reports, I attempt to answer the following questions. To what extent did Hawai'i's prison and asylum population resemble the wider population of the Kingdom, and in what ways did it differ? What was the national origin and racial profile of those inmates? What types of incarceration-specific characteristics do we see at various times in history? Were there any changes in Hawai'i's incarcerated population subsequent to contemporary policy and legal changes that were implemented?

Prior to annexation, in comparison with the general population, Hawaiians were under-represented in both the prison and asylum populations. Indeed, Hawaiians only became over-represented at the turn of the

century. In modern times, Native Hawaiians comprise 24% of the general population of Hawai‘i, but represent 39% of the prison population.

A Native Hawaiian proverb states, “I ka wā mamua, i ka wā mahope”—the future is in our past. In other words, history informs our present understanding and guides us to a more knowledgeable future.

Bio

Avis Poai is an assistant faculty specialist at the William S. Richardson School of Law. She serves as the Director of Legal History and Student Outreach at Ka Huli Ao Center for Excellence in Native Hawaiian Law. She directs Punawaiola, a bilingually produced digital archives website and blawg that actively supports the preservation and online dissemination of Hawai‘i’s invaluable historical, legal, traditional, and customary materials. She was an associate editor for *Native Hawaiian Law: A Treatise* (2015) a 1,400 page tome cited by both the Hawai‘i Supreme Court and the U.S. Supreme Court.

Liberty and Oppression in England after 1688

Wilfrid Prest, Adelaide Law School

The ‘Glorious Revolution’ of 1688-89 has traditionally been celebrated as a momentous constitutional watershed, which signalled that the contest for sovereignty between crown and parliament over the previous century had been decisively resolved in parliament’s favour. The law courts and legal profession played a prominent role in that contest, and legal issues were central to the ‘Heads of Grievances’ drawn up by the assembly which presented the ‘Declaration of Rights’ to Prince William of Orange and his English wife Mary before they were formally offered the throne. But while ‘Liberty and Property’ became a favourite slogan for supporters of the Revolution, its opponents maintained that they were now ‘often arbitrarily rob’d of our Liberties’. This paper considers the repressive measures, including indefinite imprisonment without trial, used against Jacobites and others by the post-revolutionary regimes between 1689 and 1714, and the extent to which these marked a new departure in state violence against citizens and subjects.

Bio

After graduating from the University of Melbourne and the University of Oxford, **Wilfrid Prest** taught history, mainly at the University of Adelaide, until 2003, when he moved to the Adelaide Law School; he is now Professor Emeritus of History and of Law. His publications include four single-author monographs, most recently *William Blackstone: Law and Letters in the Eighteenth Century* (OUP, 2008, 2012), and numerous edited collections, including *Blackstone and His Critics* (co-edited with Anthony Page - Hart Publishing, 2018). Together with co-authors David Lemmings and Mike Macnair, he is currently writing *The Oxford History of the Laws of England, Volume 9, 1689-1760*.

Dog Licence: Western Australia’s Natives (Citizenship Rights) Act 1944

Peter Prince, Independent Scholar

The paper will examine personal stories from the *Natives (Citizenship Rights) Act 1944* (WA). This State law purported to grant ‘citizenship’ to Indigenous applicants who ‘adopted the manner and habits of civilised life’. A successful applicant was ‘deemed to be no longer a native or aborigine’ and instead received ‘all the rights, privileges and immunities of a natural-born or naturalised subject of His Majesty’. This trespassed on federal responsibility for citizenship and naturalisation. But Commonwealth Attorney-General Sir Garfield Barwick, Solicitor-General Kenneth Bailey and senior Commonwealth lawyers found no contravention of the Australian Constitution. Barwick said Western Australian ‘Citizenship’ was ‘really no more than a certificate of exemption’ from the operation of State laws, especially the *Native Welfare Act 1904*. That law prevented the sale of liquor to any ‘native’. Indigenous Australians derided Western Australia’s ‘certificate of citizenship’ as a derogatory ‘dog licence’ they had to show to get a beer. As one man wrote after the Hall’s Creek publican refused to serve him, ‘I will not buy a dog collar in Western Australia to put around my neck to become a citizen of one State. A man better without it’.

Bio

Peter Prince received his PhD in 2016 from the ANU College of Law for his thesis *Aliens in their own land. 'Alien' and the rule of law in colonial and post-federation Australia*, which is available online at <https://openresearch-repository.anu.edu.au/handle/1885/101778>.

Listening to the Dictation Test: a history of settler speech and power on Kulin land.

Nadia Rhook, University of Western Australia

The late 19th Century saw the transnational emergence of language tests as a tool by which to create 'white men's' countries. Scholars have long acknowledged that the Dictation Test was a key tool in the exclusion of people of colour from an imagined 'White Australia'. Crucially, the Test did not offend British liberal sensitivities because it discriminated on the basis of language and literacy, rather than explicitly on the basis of race. Scholars have paid much less attention to the structural significance of the settler and state-sanctioning of English language supremacism and linguistic discrimination. This paper will visit the ground-level processes whereby the Dictation Test was eventually sanctioned by settler legislators. It does so by moving off the polyglot streets of 1890s Melbourne, and between the heavy bluestone walls of the Magistrate's Court, where JPs judged the English ability of Asian hawkers license applicants, and Parliament House, where self-consciously 'English-speaking men' espoused a racially exclusive form of national belonging. Listening to how *in-situ* urban speech(es) informed the imagined and legal construction of the Australian nation in the lead up to 1901 Federation offers a closer perspective on the oral performances by which settler power was performed and made in buildings designed to usurp Indigenous sovereignty, and orients us toward the profound importance of speech in the historical and contemporary performance of settler power.

Criminality, Insanity and the Politics of Punishment: Victoria, 1880-1939

Georgina Rychner, Monash University

Historians of crime have produced insightful scholarship regarding the politics of capital punishment in late nineteenth and early twentieth-century Australia, positioning categories of race, gender and class as central to decisions in discretionary reprieves for mercy. This paper seeks to examine how discourses of insanity operated within this framework of post-trial sentencing, in a period where mental illness was increasingly used to excuse crime, yet professional understandings of insanity remained undeveloped and divided. Focussing specifically on public and Executive interpretations of criminal insanity, this paper will address how the State used discourses of mental fitness to distinguish a 'criminal class' that needed to be excised from society. Understandings of insanity increasingly became the legal point on which offenders were spared or executed. This mental assessment was considered legitimate and scientific, yet often rested on cultural judgements regarding categories of race, class and gender. Based on a study of 215 capital trials held in Victoria, this paper will demonstrate how mental fitness came to frame cultural judgments of criminal responsibility in Australia's past.

Bio

Georgina Rychner is a PhD candidate at Monash University, researching insanity and criminal responsibility in Victorian capital trials. Her interests include histories of medicine, gender and law. She has published on the subject of colonial infanticide in *Lilith: A Feminist History Journal* and *Infanticide/Mothers Who Kill* (forthcoming), and on the insanity defence more broadly in *Health and History*. She is assistant editor of *Vida*, blog of the Australian Women's History Network.

Chifley and the Banks: Lessons from the First Banking Royal Commission

Eugene Schofield-Georgeson, University of Technology Sydney

The current Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry has unveiled a litany of misdeeds from within the belly of Australian capitalism. But the fraud and criminality practised by the powerful within the banking and finance sector, exposed over the past year, has a much longer history. So too does the repeated practice of holding institutional inquiries into Australian banking. Indeed, the current inquiry is revealing that its predecessors far proven largely futile in regulating the conduct of bankers and the capital they control. What can be learned from this history?

This paper examines the findings, recommendations and aftermath of the first of five major federal banking inquiries in Australia known as the Royal Commission into Monetary and Banking Systems (1935-1937). Presided over by a range of notable economists, public servants and politicians, including Ben Chifley (later Prime Minister, 1945-1949), this Royal Commission led to the establishment of the most comprehensive, far-reaching and, in hindsight, radical central planning and regulation of banking ever developed in Australia. One of its key findings resulted in the establishment of an Australian central bank. However, the bulk of regulations proposed by this Royal Commission were outmanoeuvred by the banking sector and their connections within the Australian ruling-class. Nowhere was this more apparent than in Ben Chifley's final push to master the banks once-and-for-all by nationalising them - a regulatory plan thwarted by the High Court of Australia.

Bio

Dr Eugene Schofield-Georgeson is a lecturer at UTS Law School where he teaches Australian Constitutional Law. He is the author of a new book in the field of Australian legal history, *By What Authority? Criminal Law in Colonial NSW, 1788-1861*, published by Australian Scholarly Publishing (2018).

Ambivalent citizenships: Aboriginal demands, refusals, and the problem of legibility

Ben Silverstein, Australian National University

See full abstract and bio in panel presentations section – Page 52.

The Utility of Migrant Women as Social Control: The 'Management' of Female Migration to Britain and Australia in the Twentieth Century

Evan Smith, Flinders University, Marinella Marmo, Flinders University & Anastasia Dukova, Griffith University

This paper will explore government discourses surrounding migrant women to Britain and Australia in the twentieth century and their treatment by the border control system. Both countries have historically used their border control systems as a form of what David Garland has described as 'social control' and migration policy, as well as practice, has been used in attempts to create 'manageable' migrant populations.

Whilst heavily racialized, there was also a gendered dimension to the management of migrants to both countries. During the twentieth century, the majority of labour migration was by men, who were often young and single. These young and unattached migrant men were seen as a threat by both the British and Australian authorities, who saw them as a sexual threat to the 'white' host nation. One threat came from the prospect of inter-marriage between migrant men and British/Australian women, while the other threat came from the fear that migrant men were sexually virile and/or deviant. The British and Australian governments sought to overcome this gender imbalance amongst migrant communities and the fear of the sexualised young male migrant by allowing migrant women from similar national and ethnic groups to immigrate to develop homogenous nuclear family units within these migrant communities.

This informal policy revealed a tension within the aims of the border control system in both countries. Both countries actively sought to limit their intake of non-white/non-British migrants, but allowed some non-white/non-British women into Britain and Australia as they had a utility as a potential wife or sexual partner for the migrant men that already resided in both countries. However this did not mean that restrictions were relaxed for migrant women coming to Britain and Australia; on the contrary, potential migrant women had to demonstrate to border control officials that they fulfilled the requirements as a spouse or future spouse, with often severe physical or bureaucratic scrutiny placed upon them.

Bio

Evan Smith is a Research Fellow in History in the College of Humanities, Arts and Social Sciences at Flinders University, South Australia. He has written widely on political extremism, national/border security and migration across the Anglophone world in the twentieth century. He is currently part of the ARC Discovery Project, 'Managing Migrants and Border Control in Britain and Australia, 1901-1981' with Associate Professor Andrekos Varnava, Associate Professor Marinella Marmo, Emeritus Professor Eric Richards and Dr Anastasia Dukova.

Consorting with Half-Castes: Sovereignty's Dwelling in Fractured Legality

Eddie Synot, Griffith University

One century after the 1837 Select Committee on Aboriginal Tribes expressed concern with intercourse between Europeans and Aboriginals, many people found themselves the continued target of laws aimed at shaping acceptable subjects through the policing and engineering of Australian society. Often enforced at the whim or discretion of local officialdom and assisted by a surveilling society, those targeted or trapped by such laws often existed at the intersections of race, class and gender. Indigeneity, as target and product of this surveillance, could be ignored or emphasised, depending on the situation or purpose. Value attributed to Indigeneity could vary from the demand for free and cheap labour to the availability of Indigenous bodies for white consumption as opposed to the control of intimate relations, public drinking and uncontrolled presences in public and private white spaces. Non-Indigenous men and women could also have themselves considered practically Indigenous by association, with consorting laws coalescing biological and sociological distinctions of race to deny access to social programs such as relief work due to their associations. While these laws were used to project a desired ideal rather than a reflection of the reality of many, they nonetheless had serious effects on those impacted, reinforcing further the intersections of race, class and gender. Beyond a threat of control – always thick in the air, inhibiting breath and movement itself – the reality for many was that the laws and their application were perpetuated by a sovereignty that necessitated both the denial and affirmation of their existence. Australian society was one that relied on the simultaneous invisibility and visibility of Indigenous bodies, a shifting marker cruelly determining existence and non-existence according to settler authority. I investigate this experience of law and sovereignty as continuing to exist as fractured legality. I argue that constant in the pervasiveness of colonial sovereignty today is that it continues to dwell in a fractured legality that is denied. That denial and its basis within its own necessitation continues to literally have deadly consequences for those targeted or unfortunate enough to have walked into the eye of the law.

Bio

Eddie Synot is an academic lawyer completing his PhD at Griffith University with the Griffith Law School. Eddie teaches in the Griffith Law School and the School of Humanities, Languages and Social Science and works for the GUMURRII Student Support Unit supporting Aboriginal and Torres Strait Islander students through higher education. Eddie's doctoral research focuses on an interdisciplinary engagement with liberal constitutionalism and settler sovereignty through the developments toward recognising Aboriginal and Torres Strait Islander peoples in the Australian Constitution.

Magna Carta's Sovereignties—Individual or Communal? A Reconsideration of Holt

Jason Taliadoros, Deakin University

Magna Carta is not often thought of as a document setting out issues of sovereignty between the indigenous Anglo-Saxons and the post-Conquest Normans, or as a treaty between the two. But it *does* talk about rights and both communal and individual entitlements, which sit as a substrate to any conceptions of sovereignty.

This paper takes as its starting point the iconic Magna Carta document of 1215 and the dominant strand of historical scholarship on it: JC Holt's *Magna Carta*, which entered its third edition (2015) on the 800th anniversary. Holt characterised the rights in Magna Carta as communal. Yet neither Holt nor other scholars considered the inherent quandary raised by the description of such entitlements as communal, when

epistemologically they could equally be described as individual. But a Hohfeldian reading demonstrates that Holt's categories might not be very useful. Yes, the rights are stated in communal terms in Magna Carta. But the line between communal and individual was very thin. Although the drafters may have expressed rights in these terms, it did not necessarily mean that they thought those rights could not be enforced by individuals. The language we use for expressing something does not necessarily align with the way we use it or think about it.

This paper begins with some preliminary discussion of Holt's analysis of Magna Carta. It then outlines Hohfeld's categories of law. The rest of the paper then examines the chapters of Magna Carta. Chapter 1 and the enacting clause, for instance, provides the opportunity to examine the subjective/objective distinction in *ius*, famously examined by Tierney in a manner quite opposed to Holt. I then turn to Hohfeld to question the value of this communal/individual distinction. Even if rights are expressed in communal terms, a person could actually think of them as individual.

Bio

Dr Jason Taliadoros completed his BA, LLB, BA (Hons), and PhD at the University of Melbourne. Jason has taught at the University of Melbourne in the Department of History; Siena College in the Faculty of History and the Faculty of Religious Studies; and, since 2011, in the Deakin Law School, where he is now a Senior Lecturer in Law (Torts). Jason's research is in the fields of medieval religious and intellectual history and English and European pre-modern legal history. He has published more than 18 book articles and book chapters as well as a monograph in these fields. See <http://www.deakin.edu.au/about-deakin/people/jason-taliadoros>.

Citizenship as Domination: The Making of Palestinian Citizenship in Israel

Lana Tatour, University of New South Wales

See full abstract and bio in panel presentations section – Page 53.

The Bureaucratic Logic of Registration

Marc Trabsky, La Trobe University & Laura Griffin, La Trobe University

The nineteenth century witnessed a shift from clerical to civil registration of births and deaths in England, set in motion by the *Births and Deaths Registration Act 1836*. Prior to this Act, parish registers had been maintained since at least 1538, when first mandated by Thomas Cromwell following the split from Rome. Baptism and burial registration at the parish level was largely driven by concerns over property rights and transfers, such as questions of inheritance, probate and conveyance.

Following the 1836 Act and its creation of the General Register Office, however, the logic of registration shifted towards an impossible, almost Sisyphean task. This shift was exemplified by the use of the register to compile statistics, track populations and monitor natality and mortality rates. The formation of the General Register Office ushered in a bureaucratic logic: individuals became records in a register, records became data points feeding into a data set, and individuals, rather than parishes, were tasked with a civic responsibility to register births and deaths in the family.

This paper explains how the technology of registration not only transformed individuals into records, but also oriented the discourse of the register towards the statistical knowledge of populations. While academic literature on the history of the register has charted the appearance of public health discourses in the nineteenth century, we trace how the re-generation of the technology of registration cultivated medical, legal and bureaucratic relations between the unborn, the living and the dead. The Registrar General utilised this technology to create medical truths, shape knowledge of populations and recognise births and deaths in law.

Bios

Dr Marc Trabsky is a Senior Lecturer at La Trobe Law School, La Trobe University. He writes in the intersections of legal theory, history and the humanities. His research examines the theoretical, historical and institutional arrangements of law and death. He has published on a diverse range of topics, including coronial law and forensic medicine, technologies of registration and repatriation, and institutional frameworks for

memorialising, archiving and disposing the dead. He is currently finalising a book manuscript titled *Law and the Dead: Techniques, Theories and Institutions* (Routledge, 2019, forthcoming).

Dr Laura Griffin is a Lecturer at La Trobe Law School, La Trobe University, and is Managing Editor of the Australian Feminist Law Journal. Laura completed her PhD in 2011 at the University of Melbourne. This ethnographic project adopted a theorisation of border as apparatus, to examine various forms of regulation experienced by migrant domestic workers in South Africa. Laura's current research considers the role of registration law in the modern or colonial state, particularly in relation to pregnancy, birth and reproductive loss. Her broader interests extend to theology, gender, globalisation and state practices and relations broadly conceived.

Regulating Ambiguity: Interraciality during the Internment of Japanese Canadians, 1942-1949

Mary Anne Vallianatos, University of Victoria (Canada)

This paper examines the Canadian state's regulation of interracial marriages and mixed-race Japanese Canadians between 1942 and 1949. I recount an overlooked part of the Internment history and describe how the state's entry into the intimate space of interracial family life sustained hegemonies of 'race,' gender and nation. In 1942, the Canadian government uprooted and expelled approximately 21,000 people of "the Japanese race" from the coast of British Columbia following the Japanese attack on Pearl Harbor. Japanese Canadians were displaced to carceral sites and labour camps across the country and many were deported to Japan. During the war-time period and until 1949, the federal government's regulatory scheme authorized officials to grant exemptions from incarceration to those "Japanese women" married to "Occidental men" and their "Eurasian children." Critically, this paper demonstrates that the operation of Canada's interracial marriage regulation was manifold.

Contrary to the official state discourse, historical records show that bureaucrats, when faced with ambiguous cases, deployed racial logics to adjudicate people's fates. In some cases, mixed-race Japanese Canadians were denied exemptions and sent to carceral sites. In other cases, Japanese Canadians married to Chinese Canadians were granted exemptions, while some Japanese Canadian men married to White women were incarcerated and other men were exempted. These contradictions in the archival memory and governance of interraciality provide insight into the nationalist discourses that normalized White entitlement to place. I argue that the interracial marriage regulation emerged to control cross-racial intimacies that defied modernist racial categorization. Juridical technologies worked to stabilize the boundary between White and 'Other' because only with a clear boundary could Canada operationalize its racialized, masculinist construct of the Japanese 'Enemy alien.' This racial schema provided justification for the mass incarceration, dispossession, and forced relocation of state citizens, which would continue for years after the war's end.

Bio

Mary Anne Vallianatos is a PhD student with the University of Victoria, Faculty of Law. My dissertation examines the relationship between law and Asian raciality and how such racialization is connected to colonial imperatives such as modernity. My research interests include critical race feminism, legal history and postcolonial studies, hybridity and Asian diasporas, and constitutions. I hold a three-year Social Sciences and Humanities Research Council of Canada Doctoral Scholarship. I completed my masters at Columbia Law School where I researched comparative and foreign law, with a focus on constitutions. My LLM research has been published in a peer-reviewed journal article.

"We were met with the general cry that there was a great njaa [famine]" Comments on the Native Foodstuffs Ordinance 1924, Tanganyika Territory.

David V Williams, University of Auckland

The paper I propose is an analysis of the law on the books and a comment on the law in action concerning "famine relief" in colonial Tanganyika [now Tanzania Mainland]. The key statutory provisions were the Native Foodstuffs Ordinance 1924 and section 8(p) of the Native Authority Ordinance 1926. Local instances of the use of these Ordinances that I discuss include the Native Foodstuffs (Mbulu) Order 1934. The paper

will argue that, from the perspectives of the colonised, these apparently well-meaning laws aimed at the relief of famine can best be understood as a direct attack on the conditions of peasant reproduction. They forced the peasantry to engage in cash-cropping at the expense of subsistence and food security. Colonial officials thought that famine was endemic to African peasant economies and was best prevented by authoritarian measures to coerce the peasantry to engage in non-food cash crops for the international market. Failure to obey such measures led to coerced labour on state projects under powers given by the Native Authority Ordinance. The underlying real policy on "famine relief" may be gleaned from the 1929 words of a Provincial Commissioner's report in "a terrible year of drought": " 'If we allow the sale of grain on the markets before the tax is in, fools will sell their food. If we have not collected most of the tax before the rains fall, people will not be able to devote themselves to their shambas [gardens]. Let us stop the sale of food and push the tax now.' This was the policy followed generally in the province, and the tax figures already show an increase over the collection for the whole of the last financial year."

Though the loss of life in Tanganyikan famines in the period from 1929-34 was small in number compared to that of millions of deaths in the Bengal famine in 1943-44, the perspectives of authors such as Madhusree Mukerjee (*Churchill's Secret War*, 2010) and Shashi Tharoor (*Inglorious Empire*, 2017) illustrate similar patterns of colonial indifference to famine affecting peasant communities in favour of over-riding imperial policy objectives.

'Exclusion and confinement and the criminal with '... esteemed cultural attainments': some reflections on experiences of 'financial crime' in Britain and Australia from c1830 -'

Gary Wilson, Nottingham Trent University & Sarah Wilson, University of York

In 1855 London private bankers Strahan Paul and Bates were tried and convicted of the embezzlement of moneys belonging to their firm's clients. Their trial forms part of a small cluster of key 'business fraud' trials from which contemporary 'transformative understandings' (Friedrichs, 2012) of financial crime would emerge (Wilson, 2014). Here, it has been proposed (Wilson, 2014) that as nineteenth-century Britain grappled with the arrival of 'large-scale illegality that occurs in the world of finance and financial institutions' (Friedrichs, 2012), this scandal together with the collapse of the Royal British Bank in 1856 helped to concretise determination that persons who were not of 'less esteemed cultural attainments' would be punished for financial wrongdoing, notwithstanding not conforming 'to popular stereotype of "the criminal"' (Sutherland, 1945). Notwithstanding very considerable contemporary legal innovation, including the pivotal Punishment of Frauds Act 1857, perception remains that Britain's responses to financial crime are woefully inadequate. This paper explains how these perceived difficulties intersect with conference themes, and can be explored through challenges of applying confinement and/or exclusion to those not conforming 'to the popular stereotype of "the criminal"' across time.

In explaining how understanding perceived difficulties for Britain has led to interest in Australian experiences of financial crime, past and present, the paper illuminates progress which has been made to date on writing an Australian history of financial crime. It does this drawing on a wealth of data from the Griffith Criminology Institute based Prosecution Project, channelling this, and explaining what is next for the project, through engaging with conference themes of exclusion and confinement. It examines the historical data alongside present-day Britain and Australia, drawing on key discourse on punishment found within Crime History and Criminology as well as within Law, with key intellectual framing including Braithwaite's seminal *Crime, Shame and Reintegration* (1989).

Bios

Gary Wilson (gary.wilson@ntu.ac.uk) is a Reader in Law in the Centre for Business and Insolvency Law at Nottingham Trent University. After reading Law at the University of Oxford, Gary spent a period of time as a corporate lawyer in private practice (in Eversheds Nottingham) primarily engaged in listed company work, with this followed by time as a Senior Lecturer in law at the University of Leeds. Gary's article 'Business, State, and Community: 'Responsible Risk Takers', New Labour, and the Governance of Corporate Business' (2000) *Journal of Law and Society*, 27(1), 151 was reprinted in P O'Malley *Governing Risks. Governing Risk* is a volume in the prestigious *International Library of Essays in Law and Society* edited by Austin Sarat, which as a series explores the development of the modern intellectual 'law and society' movement through collections of the 'most influential examinations and interpretations' of 'major trends' in key areas of law and society.

His current work continues to have a strong 'business, law, and regulation' emphasis, drawing heavily on the work of Polanyi and Braithwaite.

Sarah Wilson (s.wilson@york.ac.uk) is a Senior Lecturer in Law at York Law School, University of York, UK. After reading Law at Cardiff Law School she commenced studies in Modern British History gaining a MA (History) and PhD (History) before taking up a number of posts in UK Law Schools. Sarah has published widely in the sphere of Financial Crime and wider Financial/Banking law and regulation, with her 2014 monograph *The Origins of Modern Financial Crime: Historical foundations and current problems in Britain* also looking to encourage greater utilisation of history and historical methodology for legal research and teaching. Sarah is a longstanding contributor to Lloyds Law Reports Financial Crime, and has helped to shape its new International Section. Sarah's international work on financial crime and securities and financial regulation is increasingly focusing on Australia, and she currently embarking on writing a history of Australian experiences of financial crime.

Moritz Meyer and the Medical Board: Preventing Refugee Doctors from Practising Medicine in Victoria, Australia, 1937-58

Gabrielle Wolf, Deakin University

In 1937, the Medical Board of Victoria (Board) refused to register Moritz Meyer to practise medicine in Victoria, Australia. Meyer was a Jewish doctor who had completed his medical degree in Germany and obtained postgraduate qualifications in Scotland. Meyer successfully challenged the Board's decision in the Supreme Court of Victoria and the Board's appeal against that decision to the High Court of Australia was dismissed. In response to Meyer's victory, the Board, under the influence and together with the British Medical Association, successfully lobbied the Victorian Parliament to prevent doctors from practising medicine in Victoria unless they had completed their studies in Victoria or in a country in which Victorian doctors, by virtue of their registration in Victoria, were entitled to practise medicine. Meyer's case received substantial press coverage, but historians have referred to it only in passing. This paper seeks to illuminate the significance of Meyer's matter. It analyses the decisions in this case and considers their impact on European doctors who sought refuge in Victoria immediately before, during and after World War Two, and on the medical profession and lay community. It then attempts to explain these reactions to Meyer's matter.

Bio

Dr Gabrielle Wolf is a Senior Lecturer in the School of Law at Deakin University. Her fields of research include the current and past regulation of Australian health practitioners, health records and sentencing law. She has recently had accepted for publication book chapters and articles on these subjects, the latter in academic journals including *Sydney Law Review*, *University of New South Wales Law Journal*, *Journal of Law and Medicine* and *Monash University Law Review*. Gabrielle previously worked as a researcher in the Law and Policy Program of the Data to Decisions Cooperative Research Centre, and as a lawyer in private practice and in-house, practising in a range of areas and particularly the regulation of health practitioners. She holds a PhD in History, LLB and BA (Hons) from the University of Melbourne.

Japanese responses to refugees and the rationales

Atsushi Yamagata, University of Wollongong

In 1981, Japan amended its Immigration Law in the form of the Immigration Control and Refugee Recognition Act. This allowed it to ratify the United Nations Refugee Convention. Although it accepted refugees from Vietnam, Cambodia and Laos in the 1980s, Japan has accepted very few refugees since then. According to the UNHCR, there were 25.4 million refugees around the world as of the end of 2017, but most refugees are hosted in developing countries. There are calls for developed countries to accept more refugees. Under these circumstances, however, Japan remains reluctant to accept refugees. In 2017, only 20 people out of 19,629 applications were recognised as refugees in Japan. Between 1982 and 2017, Japan recognized only 708 refugees out of 60,675 applications. As there is not enough public support for asylum applicants, they are often put under unstable life conditions while their applications are being processed. Applicants who do not have a valid status of residence can be detained in immigration detention centres, which are criticized for their harsh conditions. The Japanese government is getting even tougher on asylum applicants, insisting that most of them are economic migrants abusing the Japanese refugee recognition system. While maintaining a

restrictive attitude to the admission of refugees, Japan is the fourth largest donor to the UNHCR and it has occasionally pledged a large amount of financial assistance to support displaced people through international organizations. Given the increasing number of refugees around the world, it is significant to discuss Japanese responses to refugee and the rationales and to consider how Japan might change its attitudes. I will present my analysis of the rationales behind these conflicting Japanese responses to refugees from political, cultural and historical perspectives.

Bio

Atsushi Yamagata is a PhD candidate in the Faculty Law, Humanities and the Arts at the University of Wollongong. His main topic of research is Japanese responses to refugees after the Second World War. His interest is not only in the Japanese government's policy but also responses to refugees by civil society in Japan. He previously completed a Master of Human Sciences at Waseda University and a Master of International Studies at the University of Wollongong. His publications include "Conflicting Japanese Responses to the Syrian Refugee Crisis", *Asia-Pacific Journal: Japan Focus* 15.24.2 (2017).

PANEL PRESENTATIONS

Law, Medicine and Society in Twentieth Century Canada: Private and Public Regulatory Strategies

Panel Abstract:

This panel considers the implications of the professionalization of medicine and its interface with both state and more individualized regulatory practices and approaches in Canada in the twentieth century. Through an examination of medical malpractice, the negotiation and implementation of Medicare, and the regulation of the medical profession's membership as an incident to criminal libel proceedings, this panel considers how the law frequently disempowered some groups, including patients and non-regular doctors, while empowering state actors and professional medical organizations, including the Canadian Medical Protective Association and provincial regulatory bodies. These developments had important implications for the provision of medicine, non-traditional practitioners, and injured patients. Some kinds of medical professionals lost the right to practice, or at least to hold themselves out as doctors. Patients alleging malpractice fought to defeat doctors represented by increasingly powerful interest groups. Canada's poorest province struggled to create the necessary administrative structures and raise sufficient financial means to implement a nationally-regulated system of Medicare. In exploring these trends, these papers highlight the various ways historical actors tried to resist or reshape the outcomes of these trends through allegations of criminal libel, negligence actions, and political negotiation.

A Master Mariner's Left testicle and the Law of Surgical Consent in Interwar Canada

Blake Brown, Saint Mary's University

Canadian legal historians have devoted little attention to the history of medical malpractice law. This paper will examine an aspect of this subject, the tort litigation that arose over issues of consent in advanced surgeries, by offering a contextualized case study of *Marshall v. Curry* (1933). In the 1920s and 1930s several patients sued when surgeons undertook more invasive procedures than agreed to prior to surgery.

In *Marshall*, a master mariner from Nova Scotia sued for \$10,000 in damages for negligence and trespass after a surgeon in Halifax removed his left testicle without his prior approval during a hernia operation. He lost at trial, and the *Canadian Medical Association Journal* called the case "one of the most important in recent years upon the legal responsibility of the surgeon." *Marshall* was in some respects unusual, in that most such cases involved a woman suing a surgeon who removed part of her reproductive system without permission.

On the other hand, it was typical in that judges consistently deferred to the judgment of doctors. This case study will be used to explore why these kinds of cases became more common in the early twentieth century, tease out the law of consent in Canada in this period, and suggest what the case tells us about judicial attitudes towards patients and doctors.

Bio

Dr Blake Brown is an Associate Professor in the Department of History at Saint Mary's University and is an Adjunct Professor at the Schulich School of Law of Dalhousie University. He is a co-author of *A History of Law in Canada, Beginnings to 1866* (University of Toronto Press, forthcoming), and author of *Arming and Disarming: A History of Gun Control in Canada* (University of Toronto Press, 2012) and *A Trying Question: The Jury in Nineteenth-Century Canada* (University of Toronto Press, 2009). His articles have appeared in journals such as the *Canadian Historical Review*, *Canadian Journal of Law and Society*, the *American Journal of Legal History*, and the *Journal of Law & Social Inquiry*.

Politics and Procedure: The Libel Trials of D. Algar Bailey, 1916-18

Lyndsay Campbell, University of Calgary & Heidi Exner

Between 1916 and 1918 in Calgary, an English ex-pat named D. Algar Bailey found himself prosecuted for libel on three separate occasions over slurs that appeared in a newspaper he edited and published. Two prosecutions related to innuendoes related to the war effort, and the other to a local “chiropodist” and his entitlement to call himself Doctor. Each prosecution was initiated in a different way: one was a direct indictment with no grand jury or preliminary hearing, one was a private prosecution brought by the aggrieved politician, and the doctor’s utilized the usual procedure, in which the complained was deposed before a magistrate in a preliminary hearing before the case went forward to trial. These three cases afford an opportunity to explore the operation of criminal justice – and especially of libel in political cases – in a place that has largely escaped scholarly attention, but whose criminal justice system blended traditional Canadian practices and remnants of the more paramilitary system of justice conducted by the Royal North-West Mounted Police of a few decades earlier.

Bio

Dr. Lyndsay Campbell is an Associate Professor at the University of Calgary, cross-appointed between Law and History. She is a co-editor, with Tony Freyer, of *Freedom’s Conditions in the U.S.-Canadian Borderlands in the Age of Emancipation* (Carolina Academic Press, 2011) and is currently co-editing, with Ted McCoy and Mélanie Methot, *Canada’s Legal Pasts: Looking Forward, Looking Back*, an open source collection of essays to be published by the University of Calgary Press. Her manuscript, *Truth and Privilege: Libel Law in Massachusetts and Nova Scotia, 1820-1840*, is on its way to publication. Articles have appeared in journals including the *Law & History Review*, the *Canadian Journal of Law and Society*, and the *Queen’s Law Journal*.

A Comparative History of Medicare in Atlantic Canada (1965-1970)

Nicole O’Byrne, University of New Brunswick

Despite its importance as both policy and symbol in Canada, Medicare has rarely been examined by historians. One of the main reasons for this is the decentralized nature of the Canadian federation in which the story of Medicare belongs as much to the history of individual provinces than to a single, national narrative. Introduced as a federal-provincial cost-sharing program in the 1960s, the policy of universal medical care coverage aligned with the political goals of the provincial governments in Atlantic Canada (both Liberal and Conservative). In this article, the author critically analyses the domestic context of all four Atlantic provinces; in particular, the political and administrative history of Nova Scotia which allowed for the unique adoption of a public-private partnership that had the authority to administer the province’s single-payer Medicare program. The comparative method used in the paper illuminates similarities in each province’s approach due to shared regional identity as well as the differences due to the unique political cultures and well-defined provincial identities.

Bio

Dr. Nicole O’Byrne is an associate professor in the Faculty of Law at the University of New Brunswick. Her research focuses on the history of Canadian federalism, public policy history and non-constitutionalized intergovernmental agreements, including the *The British North America Act, 1930* (the Natural Resources Transfer Agreements) and Medicare. She has published articles about various aspects of Métis history and is currently writing a book on the history of Métis-state relations in Alberta, Saskatchewan and Manitoba (1870-1970).

She has published two co-authored articles on the history of Medicare and is currently working on an article about the history of Medicare in the Atlantic region. Her research interests also include criminal law and evidence subjects such as criminal libel, judicial independence and the admissibility of illegally obtained evidence.

She is the current president of the Canadian Law and Society Association.

Intimacy, Violence and Colonial Law: Australia-Asia Connections

Panel Abstract:

This panel explores the relationship between intimacy, violence and the law in the colonies of Western Australia, the Northern Territory and Singapore during the early twentieth century. These colonies were connected by Asian networks of trade and labour migration and shared similar colonial hierarchies built upon notions of racial, class and gendered difference (Martinez & Vickers 2015; Lowrie 2016; Loy-Wilson 2017). At the same time, the colonial imperative of creating white settler societies in Western Australia and the Northern Territory resulted in very different legislative contexts compared to that of Singapore. The papers in this panel consider the ways in which working class people, including Chinese and white Australian prostitutes and Chinese male servants, navigated these different legal regimes. As a variety of historians have argued, the management of intimacy and violence was a central preoccupation for colonial legislators (Edmonds & Nettelbeck 2018; Wanhalla 2011; Bailkin 2006; Collingham 2001). We are interested in how sex workers and domestic servants exercised agency in the context of colonial laws which variously sought to protect, control or punish them for their role in intimate and violent acts.

The legal protection of Chinese women in prostitution in 1880s Darwin

Julia Martínez, University of Wollongong

Writing in *Power and Charity*, historian Elizabeth Sinn discusses the aftermath of the 1875 United States prohibition of the immigration of Chinese women as prostitutes (2003: 107). What was legal in colonial Hong Kong at the time, was increasingly frowned upon in United States and other white settler societies. British and American discourse focussed on the protection of Chinese women from apparent slavery, while fuelling the anti-immigration sentiment at the heart of this legislation. In Australia, the historical literature has not yet recorded such a debate; it being understood that there was no such pattern of immigration or restriction of Chinese women. The Australian press was critical of the alleged evils of Chinese immigration, but over the fate of white women in prostitution, not Chinese women. This paper seeks to explore an overlooked aspect of Australian history, the presence of Chinese women in prostitution in Darwin during the 1880s. In the absence of any sustained official debate, this paper seeks to analyse a small number of local police court cases that involved Chinese women. The colonial government's legal response to Chinese women in Darwin was ambivalent, but generally supportive of their presence, and the practice of prostitution. Having allowed the importation of thousands of male Chinese labourers to help develop the new colony, they were pragmatic in their approach to the presence of Chinese women. But the court cases examined here also confirm that the protection of Chinese women was understood in terms of their protection against Chinese men. This sentiment was also reflected in colonial Singapore and Hong Kong where British officials understood their role as that of protectors. This paper attempts to tease out the commonalities of these cases, aiming to situate North Australian history in terms of a broader comparison with colonial Asian and United States histories.

Bio

Julia Martínez is an Associate Professor of History at UOW. She held an ARC Future Fellowship (2013-2017) on historical 'traffic' in women in the Asia Pacific. Her monograph (with Adrian Vickers) *The Pearl Frontier: Indonesian Labor and Indigenous encounters in Australia's northern trading network* (University of Hawai'i Press, 2015) won the 2016 Queensland Literary Award's History Award; the NT History Award; and was shortlisted for the AHA Ernest Scott Prize. She writes on domestic service: with Claire Lowrie in *Gender and History* and *Pacific Historical Review* and with Lowrie, Steel and Haskins in *Colonialism and Male Domestic Service* (Bloomsbury, 2018).

Memsahib, mistress or prostitute? Maud Lipshut's life between Singapore and Australia

Sophie Loy-Wilson, University of Sydney & Jessica Hinchy, Nanyang Technological University, Singapore

This paper explores the transnational life of an Australian piano player, Maud Lipshut, whose sexual behaviour and public presence became the subject of multiple scandals in Singapore and Western Australia in the early 1900s. The story of Maud's brief life connects to several broader histories: the linkages between Australia and Asia; British colonial anxieties about 'poor whites'; the criminalisation of 'immoral' women; and the politics of inter-racial intimacies. In 1905, Maud left Western Australia for Singapore, where she began working as a piano player in hotels. After a pub fight one night in July 1905, Maud became embroiled in an investigation into the murder of a British soldier. This violent case came to rest on Maud's sexual relationships and the question of whether she was a prostitute. As the case progressed, it exposed the sexual, gendered, racial and class tensions of the colonial port city of Singapore.

Bios

Sophie Loy-Wilson is a Lecturer in Australian History at the University of Sydney who works on the long history of Australian engagement with China. Her first book, *Australians in Shanghai: Race, Rights and Nation in Treaty Port China* was published with Routledge in 2016. Her new research is on labour rights and Chinese 'coolie' migration to Australia and the Pacific.

Jessica Hinchy is an Associate Professor in History at the National Technology University Singapore NTU. Her research examines gender, domesticity, and colonialism in late eighteenth and nineteenth century north India and book on this topic will be published by Cambridge University Press in 2019.

Violent crime and the social lives of Chinese male servants in colonial Singapore, 1910s-1930s

Claire Lowrie, University of Wollongong

The historical literature on domestic service in colonial Singapore has explored in some detail the living and working lives of the Chinese *amahs* (female servants) who predominated in domestic service from the late 1930s and into the post-colonial era. The working conditions and experiences of *mui tsai* (bonded servant girls) employed within Chinese homes has also been documented. Far less is known about the lives of the Chinese men who made up a majority of the domestic servant workforce in Singapore from the late nineteenth century and into the 1930s. This paper aims to illuminate the experiences and perspectives of the Chinese migrant men who worked as servants by analysing crimes of murder and physical assault perpetrated by these men between the 1910s and 1930s. Drawing inspiration from Brenda Yeoh and Shirlena Huang's (1998) study of Filipina and Indonesian domestic workers in contemporary Singapore, I study these crimes in order to highlight the lives of Chinese male servants 'beyond the domestic sphere' and within the public spaces of the city. While cases in which Chinese male servants were convicted of murder or assault were rare, they received a great deal of public attention in Singapore. Salacious details of the crimes and the arrests along with the processes of conviction and sentencing were reported in detail in the local English-language press. Further insights into the crimes were provided by the testimonies of the accused and of witnesses during coroner's court proceedings. I draw upon this rich archive to shed light upon the daily lives of these workers, exploring how servants moved around the city, where they lived and slept, what they did in their leisure time and the factors which resulted in them becoming victims or perpetrators of violent crime.

Bio

Claire Lowrie is a Senior Lecturer in History at UOW. She works on the history of colonialism and labour in northern Australia and Southeast Asia. Her first book, *Masters and Servants*, was published by Manchester University Press in 2016. Her ARC Discovery Project on the history of 'houseboys' (with Julia Martinez, Frances Steel and Victoria Haskins) has led to the publication of a second book this year (*Colonialism and Male Domestic Service across the Asia Pacific*, Bloomsbury). She is a co-editor (with Haskins) of *Colonization and Domestic Service* (Routledge 2015) and has published in *Modern Asian Studies*, *Pacific Historical Review* (with Martinez), *Journal of Colonialism and Colonial History*, *History Australia* and *Gender and History* (with Martinez).

Indigeneity and settler colonial strategies of citizenship

Panel Abstract:

Questions of citizenship and Indigeneity have been, and continue to be, fraught sites of conflict in settler colonial situations. Citizenship can be conceptualised as a set of rights available by qualification, rights that are struggled for to empower individual and collective subjects. But settler citizenship has also been critiqued as a process of subjectification, one that seeks to transform Indigenous people into subjects of settler sovereignty, constraining and eroding their capacity to enact and practice Indigenous sovereignties. In this sense, citizenship also emerges as a marker of allegiance: to a settler sovereign order, rather than to Indigenous political belonging. It is for this reason that Aileen Moreton-Robinson insists that (white settler) citizenship operates as a 'weapon of race war', working to empty Indigeneity of its critical potential and to channel Indigenous politics away from sovereignty and instead into a 'racialized rights discourse'.

Legal histories that address the operation of citizenship through Indigeneity and settler colonialism can offer critical genealogies of these concepts and their practical limits. In this panel, through studying debates and practices of Indigenous citizenship in Canada, Australia, and Palestine, we seek to complicate these questions and to track some of the stakes in claims either for or against these rights.

The Strange Case of Dr Oronhyatekha and Mr Martin: 'Indian' Enfranchisement in Victorian Canada

Coel Kirkby, Sydney Law School

In the mid to late nineteenth century, the Canadian government enacted the enfranchisement process for 'Indian' subjects. This voluntary process tested an applicant's degree of civilization, and thus their readiness to hold private property. If successful, an applicant severed his or her ties to their community in order to fully assimilate into settler society. The ultimate aim of enfranchisement was to break up First Nations and assimilate 'Indian' subjects as citizens in settler society. This paper examines the enfranchisement process through the life of one exceptional applicant: Dr Oronhyatekha (aka Mr Peter Martin). His story is usually told as a life lived in two worlds. He was a Mohawk man from the Six Nations (Haudenosaunee/'Iroquois') reserve, but left to study medicine at the Universities of Toronto and Oxford before leading the largest fraternal insurance body in Canada. Yet his failed enfranchisement application in 1872 suggests a different interpretation. Oronhyatekha did not see himself as a man of two worlds—half-'chief' and half gentleman—but a brave and lonely individual pursuing his singular vision of an alternate world where the Haudenosaunee confederation had fulfilled its great potential instead of suffering the reality of the steadily erosion of Six Nations' autonomy. Re-interpreting Oronhyatekha's life in this light reveals how one individual sought to sustain a vision of the Haudenosaunee nation as an equal sovereign people within a larger colonial and imperial constitutional order. His success and failure reminds us that the violence of colonial rule was epistemic as well as material; a loss of alternate imagined worlds promising more just ways of living together.

Bio

Coel Kirkby is a Lecturer at Sydney Law School. He was elected the Smuts Research Fellow in Commonwealth Studies at the University of Cambridge for 2017-8. Before that he was a McKenzie Fellow at Melbourne Law School and Endeavour Fellow at UNSW. Coel is completing a monograph that examines the ideology, institutions and politics of 'native' status across the British Empire over the nineteenth century. His current project is an intellectual history of jurisprudence in the context of empire over the century from Austin to Hart, and Marx to Kelsen.

Ambivalent citizenships: Aboriginal demands, refusals, and the problem of legibility

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In May 1939, the Australian government considered and approved a citizenship test developed by the Director of Native Affairs for application to Aboriginal people. There would be, he estimated based on his anthropological experience, 'probably not more than ten or twelve' Aboriginal people 'who would be entitled to citizen rights' in 'the whole of Australia'. But while this new regime was a response to increasingly forceful demands emerging from Aboriginal political mobilisation, the advent of some citizenship rights—the right to vote, for instance—was met with ambivalence by a number of Aboriginal people.

In this paper I will trace the characteristics of Aboriginal claims for Australian citizenship in the 1930s, arguing that they emerged from a specifically Indigenous politics and political practice. The governmental response, which refracted these claims through the thought of advising anthropologists and administrators, instead interpreted entitlement to citizenship rights as deriving from Indigenous abandonments of native political belonging. And the response of some Aboriginal people—those who refused to vote in Darwin in 1940s, for example—is indicative of the disconnect between their aspirations and the constraints of settler colonialism.

Bio

Ben Silverstein is a Postdoctoral Research Fellow in History at ANU. His first book, titled *Governing Natives: Indirect Rule and Settler Colonialism in Australia's North*, will be published by Manchester University Press in November this year. It explores Australian articulations of indirect rule as a mode of governing Aboriginal people in the interwar period and builds on research into settler colonialism and race, sovereignties, and governing territorialities.

Citizenship as Domination: The Making of Palestinian Citizenship in Israel

Lana Tatour, University of New South Wales

Citizenship is epistemologically understood to be an institution that is intrinsic to the fulfilment of political membership and subjectivity in the modern nation state, including the settler colonial state. Citizenship, in settler colonial context, however is neither natural nor neutral. It is deeply imbricated in the settler's pursuit of racial privilege and in colonial histories of genocide, ethnic cleansing, assimilation and dispossession.

Drawing on original archival research, this paper traces the making of the Israeli citizenship regime and considers the ways in which the question of citizenship was intimately tied to considerations of territory, population management, sovereignty, and processes of subjectivation. Palestinian citizenship in Israel emerged mainly as an instrument of ethnic cleansing, and was constitutive to foregrounding the legitimacy of settler sovereignty and the de-facto annexation of occupied territories. Understanding citizenship as a process of subjectivation, this paper further shows that the extension of Israeli citizenship to the Palestinians who remained in the newly established state was considered and referred to by the government and the judiciary as an act of gesture. The notion of gesture was foregrounded in the legal racial demarcation between Palestinians (who were required to be naturalised) and Jewish settlers (viewed as natural and authentic subjects of citizenship). Citizenship thus functioned as a legal embodiment of settler indigenisation and native de-indigenisation processes, and as an infrastructure that shapes, to this day, Palestinian structural inferiority and vulnerability in the Jewish state.

Bio

Lana Tatour completed her PhD at the University of Warwick in the UK. She is a postdoctoral fellow at UNSW faculty of law, and a visiting lecturer at UNSW School of Social Sciences. She was previously a Fellow at the Australian Human Rights Centre, the Palestinian-American Research Centre, and the Franz Rosenzweig Minerva Research Center, the Hebrew University of Jerusalem.