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GCLP NEWSLETTER

Message from the Co-Directors



Professor Jonathan Crowe

Associate Professor Danielle Ireland-Piper

The year 2019 saw the *Global and Comparative Law and Policy (GCLP) Network* launch its first 'social and legal change' event under the leadership of Professor Jonathan Crowe. Three prominent survivors of sexual violence—Nina Funnell, Bri Lee and Saxon Mullins—shared their experiences with the legal system in a panel discussion held at Bond University. The panellists reflected upon the challenges they encountered in their cases and made suggestions for reform.

The GCLP also hosted a number of other events, including a guest lecture providing comparative perspectives on free speech, a seminar on global constitutionalism, and, thanks to Assistant Professor Narelle Bedford, a NAIDOC Week event. The GCLP was further delighted to serve as co-host to the Chief Justice of the High Court of Australia, the Hon. Susan Kiefel AC. The Chief Justice delivered the 2109 Sir Gerard Brennan lecture with her address 'How common is the common law? A historical and comparative perspective'. The lecture was well-attended, including by the profession, staff, and students.

The research activities of many GCLP members caught the attention of the media, and a number also contributed 'impact' pieces, such as to *The Conversation*. GCLP members continue to contribute quality publications and several interesting comparative and international projects are underway. We also owe a note of thanks to our 2019 student volunteer, Alana Bonenfant, for her assistance.

We are looking forward to our 2020 event, to be co-hosted with the Centre for Professional Legal Education: 'Climate change, the law, and legal education'. The event will take place at Bond University on 29-30 May 2020. Keep an our on our website, www.bond.edu.au/gclp, for further details and a copy of the program.

As ever, the GCLP remains grateful to the Faculty of Law at Bond University for its support of GCLP events and projects.



The GCLP co-hosted the Hon. Chief Justice Susan Kiefel (3rd from the left) as the speaker and special guest for the 2019 Sir Gerard Brennan Dinner at Bond University.

THE GCLP 2018-19 YEAR IN PHOTOS



The GCLP hosted Kennedy Graham and Graham Hassel from the New Zealand Centre for Global Studies. Ken and Graham spoke to the topic, 'Global Constitutionalism in the 21st Century: The UN in a Time of Crisis'. A lively discussion ensued!



Seen above: Professor Kristine Bowman.

'Two different and polarising schools of thought on free speech tend to talk over each other and nuance is lost', said Professor Kristine Bowman during her Twilight Lecture at Bond University, hosted by the GCLP. Thanks to Tonya Roberts for her role in organising this event



Danielle Ireland-Piper was appointed a visiting 'Sutherland Fellow' at University College Dublin in March-April 2020



Professor Jonathan Crowe (L) and Associate Professor Danielle Ireland-Piper (R) both assisted Professor Dan Svantesson in convening and hosting the 2019 'Technology and Jurisdiction' Colloquium.



The May 2019 meeting of the GCLP Network at Bond University—"bring a research idea and a plate to share"—provided an opportunity to develop research ideas and options for collaboration



Under the leadership of Narelle Bedford, three GCLP members formed a Panel to lead a discussion during NAIDOC week 2019. The panel featured a comparative perspective from three different countries on the theme of 'Voice, Treaty, Truth.' Assistant Professor Narelle Bedford (L) provided an Australian example on the topic of Voice, Assistant Professor Lisa Bonin gave Canadian examples on the topic of Treaty (M), and Assistant Professor Louise Parsons (R) provided a South African example on the topic of Truth. The event was well attended and promoted throughout Bond University. It also featured snacks representing the three focus countries!

GCLP INSIGHTS: Clair Duffy**OPTIONS FOR JUSTICE:
ACCOUNTABILITY FOR ATROCITIES**

Left: GCLP Member, Barrister and Semester Teaching Fellow, Clair Duffy, Faculty of Law, Bond University

In August 2019, I accepted an invitation to go to El Salvador to be part of an event being hosted by the London School of Economics' Institute for Global Affairs (in partnership with others). I was asked to speak about the major findings of my co-authored publication, [Options for Justice: A Handbook for the Design of Accountability Mechanisms for Atrocity Crimes](#). Luckily, the publication is also available in [Spanish!](#) As a panellist over the course of two days of symposiums and workshops, I acquired knowledge of the Salvadoran context, for example from [the Truth Commission's report](#) which highlights many findings in relation to the context and atrocities that occurred during the 80s and early 90s. There are discussions in El Salvador right now relating to the possibility of setting up a mechanism to prosecute alleged perpetrators of atrocities during the civil war. In fact (and in parallel to these discussions about setting up a specialised mechanism), there is one case (a test case of sorts) going forward in the north-eastern village of [El Mozote](#). When I arrived in San Salvador, the presiding judge in that case had just issued some pre-trial decisions laying more charges against the 18 military officers who are on trial for their roles in the massacre, including Domingo Monterrosa, who is alleged to have led the massacre.

According to the Truth Commission report, about 75,000 civilians were killed during the civil war, and about 80% of the atrocities were committed by government forces (extensively funded and supported by the US government). Until the last few years, amnesty laws (brought about as part of a peace agreement between the government and 'rebel' forces) prevented anyone being prosecuted for the crimes committed during the civil war. However, in a fairly complicated turn of events, the Salvadoran Supreme Court declared the amnesty law unconstitutional (spurred on by strategic litigation before the Inter-American Court of Human Rights) and this has paved way for prosecutions to be initiated in recent years. As with every single one of these situations, however, politics may trump any of these prosecutions at any time. And, in fact, in May of this year, there was political dialogue about the passing of a new amnesty law (ironically named a 'National Reconciliation Law') to block the prosecutions once again. For now, this hasn't happened, but the threat of it looms large; and is part of the reason why there are discussions around a specialised mechanism with local and international involvement to—possibly—insulate those investigating, prosecuting, and presiding over cases of this nature from the prevailing political whims of the day.

I was honoured to be a part of this public forum, and on the following day, to be part of a panel of experts convened at the University of Central America to discuss options for justice (and—maybe even more so—their limitations) with various government and civil society representatives. On the day of the public forum, some of the most moving words came from two Salvadoran Supreme Court judges who spoke—quite defiantly—about the need for justice, and the fact that they had, and would continue to, refuse to bow to political pressure. During the many years during I have been exposed to post-conflict justice scenarios, I have learned that it is often the courage of members of the judiciary to stand independently that is key to seeing any of these politically unpopular cases move forward. Time will tell.

Clair Duffy

From 22-26 September 2019, Clair also participated in the [International Bar Association's annual conference in Seoul](#). As part of this conference, Clair was a panellist at one of the IBA War Crimes Committee sessions entitled 'Fact-finding in support of accountability for atrocities.' She participated on this panel alongside Signe Poulsen (head of the UN High Commissioner for Human Rights' Seoul Office), Stephen Rapp (former US Ambassador-at-large for war crimes) and Jim Goldston (Executive Director of Open Society Justice Initiative in New York).



Above: Co-director and Professor Jonathan Crowe

GCLP Co-Director Professor **Jonathan Crowe** has received widespread media attention for his research on the 'mistake of fact' excuse in Queensland rape law. His research extends over the past 15 years, and for the past 2 years, he has been working alongside author and activist Bri Lee to expand this research. Together, they submitted a report to the Queensland Attorney-General in March 2019 which has been accepted for publication in the *University of Queensland Law Journal* (see Page 5). Further, the Bond University Faculty of Law held its first 'legal and social change' Twilight Seminar titled 'Survivors Speak: How the Criminal Justice System responds to Sexual Violence' in June 2019, which was attended by members of the local community, as well as media. On 9 July 2019, consent and 'mistake of fact' laws were referred to the Queensland Law Reform Commission for review. The announcement regarding the Attorney-General's referral to the QLRC can be found here: <http://statements.qld.gov.au/Statement/2019/7/9/palaszczuk-government-to-refer-consent-laws-to-queensland-law-reform-commission>. For more information about Jonathan and Bri's research, please visit: <https://www.consentlawqld.com/>.

Annette Greenhow participated in several media interviews and was asked to provide expert comparative sports law commentary on several concussion stories during the year, including a live interview of ABC Perth, and a Good Weekend feature story in *The Age* and the *Sydney Morning Herald*.



Jonathan Crowe and Danielle Ireland-Piper, 'Are the government's whistleblowing laws unconstitutional?', Ngara Institute (13 November 2018) <<https://www.ngarainstitute.org.au/articles/2018/11/13/are-the-governments-whistleblowing-laws-unconstitutional> >.

Jonathan Crowe and Rachael Field, 'The empty idea of mediator impartiality', Australian Dispute Resolution Research Network Blog (3 October 2019)

Jonathan Crowe, 'Could mediation transform democracy?', Australian Dispute Resolution Research Network Blog (10 October 2019)

Jonathan Crowe, 'Is there a moral test for legal validity?', Fifteen Eighty-Four: Academic Perspectives from Cambridge University Press (16 April 2019)

Danielle Ireland-Piper, 'Cricket bats and constitutions', 'Women in Law' series curated by Iram Satti, Edward Elgar (5 March 2019) < <https://elgar.blog/2019/03/05/cricket-bats-and-constitutions/> >.

Danielle Ireland-Piper, 'What happens if you commit a crime in space?', Radio 2ser (28 August 2019) <<https://2ser.com/what-happens-if-you-commit-a-crime-in-space/>>

Danielle Ireland-Piper, 'Space crimes', Interview with Radio Adelaide (2 September 2019) <<http://radioadelaide.org.au/2019/09/02/space-crimes/>>

Alice Taylor, 'Concerns around religious discrimination bill', Interview with Radio Adelaide (3 September 2019) <<http://radioadelaide.org.au/2019/09/03/concerns-around-religious-discrimination-bill/>>.

INTERVIEWS,
PODCASTS
AND MORE....

BOOKS

Jonathan Crowe, *Natural Law and the Nature of Law* (Cambridge University Press, 2019).

Jonathan Crowe, *Legal Theory* (Thomson Reuters, 3rd ed., 2019).

Eric A. Witte and **Clair Duffy**, *Options for Justice: A Handbook for Designing Accountability Mechanisms for Grave Crimes* (Open Society Foundations, 2018).

BOOK CHAPTERS

Narelle Bedford and Amy Hiscox, *Right to Information and Freedom of Information*, in Ana Oertel and Aimee McVeigh (eds), *The Queensland Law Handbook* (Caxton Legal Centre Inc, 2019).

Narelle Bedford and Darren O'Donovan, *Are objects provisions valuable to primary decision-makers? The case of Australia's National Disability Insurance Scheme*, in Jeffrey Barnes (ed), *The Coherence of Statutory Interpretation* (Federation Press, 2019).

Danielle Ireland-Piper, *Extraterritorial Jurisdiction and the Cosmopolitan State*, in Richard Beardsworth, Garret Brown and Richard Shapcott (eds), *The State and Cosmopolitan Responsibilities* (Oxford University Press, 2019).

PEER-REVIEWED JOURNAL ARTICLES

Jonathan Crowe, 'Functions, Validity and the Strong Natural Law Thesis' (2019) 10 *Jurisprudence* 237.

Jonathan Crowe, 'The Authentic Judge: French Existentialism and the Judicial Role' (2019) 47 *Australian Bar Review* 41.

Jonathan Crowe, 'The Narrative Model of Constitutional Implications: A Defence of Roach v Electoral Commissioner' (2019) 42 *University of New South Wales Law Journal* 91.

Jonathan Crowe, 'Not-So-Easy Cases' (2019) 40 *Statute Law Review* 75.

Jonathan Crowe, Rachael Field, Lisa Toohey, Helen Partridge and Lynn McAllister, 'Bargaining in the Shadow of the Folk Law: Expanding the Concept of the Shadow of the Law in Family Dispute Resolution' (2018) 40 *Sydney Law Review* 319.

Umair Ghori, 'Encroachment of Social Licence in Australia's Trade and Investment' (2019) *University of Western Australia Law Review* (46)1.

Danielle Ireland-Piper, 'Teaching Public Law in a Comparative Paradigm: Virtues and Vices' (2018) *The Law Teacher* 53(1).

Danielle Ireland-Piper, 'Outdated and Unhelpful: the Problem with the Comity principle and the Act of State Doctrine' (2018) 24 *Australian International Law Journal* 15.

Danielle Ireland-Piper and **Jonathan Crowe**, 'Whistleblowing, National Security and the Constitutional Freedom of Political Communication' (2018) 46 *Federal Law Review* 3.

Alice Taylor, 'The Conflicting Purposes of Australian Anti-Discrimination Law' (2019) 42 (1) *University of New South Wales Law Journal* 188.

POLICY AND LAW REFORM SUBMISSIONS

Narelle Bedford, Submission to the Statutory Review of the amalgamated Administrative Appeals Tribunal (24 August 2018).

Umair Ghori, 'Submission in Response to Review of the ADGSM: International trade and investment law perspective' (submitted in response to call for public consultations regarding the review of the ADGSM, 24 September 2019).

Alice Taylor, Submission to the Commonwealth Attorney-General's Department's Consultation on Religious Freedom Bills, as part of the Australian Discrimination Law Experts Group (2 October 2019).

Alice Taylor, Submission No 587, Sex Discrimination Amendment (Removing Discrimination Against Students) Bill 2018, to the Australian Senate Legal and Constitutional Affairs Committee as part of the Australian Discrimination Law Experts Group (25 January 2019).

Alice Taylor, Fredman et al, 'Redressing the Race Pay Gap', Submission to the British Government Inquiry into the race pay gap in Britain (2019).

Forthcoming**publications**

Victoria Baumfield, 'The Australian Paradox: Conservative Corporate Law in a Progressive Culture' in Beate Sjafell and Christopher Bruner (eds), *The Cambridge Handbook of Corporate Law, Corporate Governance and Sustainability* (Cambridge University Press, forthcoming December 2019).

Jonathan Crowe and Bri Lee, 'The Mistake of Fact Excuse in Queensland Rape Law: Some Problems and a Proposal for Reform' (2020) 39 *University of Queensland Law Journal* (forthcoming).

Jonathan Crowe, 'The Geneva Conventions and their Additional Protocols' in Eve Massingham and Annabel McConnachie (eds), *Ensuring Respect for International Humanitarian Law: The Duty of States* (Routledge, 2020) (forthcoming).

Umair Ghori, 'Three Lessons on the Construction of Export Controls Under WTO Law' (2020) *University of Queensland Law Journal* (forthcoming).

Umair Ghori, 'The Confluence of International Trade and Investment: Exploring the Nexus between Export Controls and Indirect Expropriation' (2020) *New Zealand Yearbook of International Law* (forthcoming).

Alice Taylor, 'The Duty to Adjust and the Problem of Persistent Misreading' (2019) 45(2) *Monash University Law Review* (forthcoming).

OTHER HIGHLIGHTS

GCLP Members **Rebecca Azzopardi**, **Jonathan Crowe**, and **Danielle Ireland-Piper** and were involved in the 'Technology and Jurisdiction Legal Research Team' led by Dan Svantesson. Each helped deliver a colloquium and each presented a paper in what turned out to be a very engaging and successful event, and will likely be repeated next year in 2020.

Narelle Bedford provided a submission to the Statutory Review of the AAT which was quoted by former High Court Justice Ian Callinan AC QC in his report on the amalgamation of *Tribunal Amalgamations Act 2015*, which was tabled in Federal Parliament for the Attorney-General's Department.

Annette Greenhow presenting at 'Play the Game', a biennial multi-disciplinary conference on sport, held in Colorado Springs. Opportunities exist to investigate research projects drawing from the challenges facing sport and law enforcement in the area of doping and match fixing, particularly the challenges presented by the extraterritorial nature of enforcement. Watch this space! **Annette is also co-investigator on a 2019 SSHRC Partnership Development grant** examining Youth Sport Concussion in Canada. Lead by Professor Alison Doherty of Western University, Annette is working with a team of 14 research experts and industry stakeholders in Canada. The interdisciplinary nature of the project presents a novel and exciting opportunity and Annette looks forward to sharing her experiences with Bond colleagues as the project progresses over the next three years.

Danielle Ireland-Piper was invited to visit University College Dublin as a Sutherland Fellow Visiting Scholar from March—April 2019.

Alice Taylor presented two papers at the Berkeley Comparative Equality and Anti-Discrimination Law Study Group Annual Conference at Stockholm University in June 2019. Her forthcoming publication, 'The duty to adjust and the problem of persistent misreading' was presented along with her co-authored publication (written with Liam Elphick) 'Discrimination as a Tort? Possibilities and Problems'.

BLOGS AND OTHER IMPACT PIECES

Narelle Bedford, 'AAT: Importance, Independence and Appointments' *Australian Public Law Blog* (10 April 2019) < <https://auspublaw.org/2019/04/aat-importance-independence-and-appointments/> >.

Jonathan Crowe, 'Consent is not a 'romance killer'. The mistake of fact defence for rape needs to go' *The Guardian* (28 January 2019) < <https://www.theguardian.com/commentisfree/2019/jan/08/consent-is-not-a-romance-killer-the-mistake-of-fact-defence-for-needs-to-go> >.

Danielle Ireland-Piper, 'Does Citizenship-Stripping Make Sense, And Is It Even Legal?' *New Matilda* (14 March 2019) < <https://newmatilda.com/2019/03/14/explainer-citizenship-stripping-make-sense/> >.

Danielle Ireland-Piper, 'What happens if you commit a crime in space?' *The Conversation* (28 August 2019) < <https://theconversation.com/star-laws-what-happens-if-you-commit-a-crime-in-space-122456> >.

Danielle Ireland-Piper, 'Space Laws: Criminal Jurisdiction in Outer Space' *International Law Reporter Blog*, International Law Association (Australia) (October 2019) < <http://ilareporter.org.au/2019/10/space-laws-criminal-jurisdiction-in-outer-space-danielle-ireland-piper/> >

Liam Elphick and **Alice Taylor**, 'Religious Discrimination Bill is a mess that risks privileging people of faith above all others' *The Conversation* (30 August 2019) < <http://theconversation.com/religious-discrimination-bill-is-a-mess-that-risks> >.

Save the Date: 29-30 May 2020 - a joint CPLE/GCLP event.

"CLIMATE CHANGE, THE LAW, AND LEGAL EDUCATION"

UPCOMING EVENTS 2020

If the global temperature rises by 1.5°C, humans will face unprecedented climate-related risks and extreme weather events. The Intergovernmental Panel on Climate Change has reported that such a rise also brings 'climate-related risks to health, livelihoods, food security, water supply, human security, and economic growth'. This means the potential effects of climate change are pervasive on many, if not all, aspects of society and human existence. It is no surprise then, that climate change law 'is a rapidly developing area of law' and 'an organising principle whose time has arrived'. Further, changes in global climate may also have an impact on most, if not all, aspects of law and regulation; not least because even climate change law itself is interdisciplinary and sits 'at the intersection of several areas of law, including environmental law, energy law, business law, and international law'. Efforts to address climate change also raise legal and policy questions as to the constitutional and administrative relationships between tiers of government and governance; and have given rise to new types of private litigation. This interdisciplinary impact creates both an opportunity and a responsibility to consider the place of climate change in legal education and on all areas of law and legal research. In that context, this event invites participants to consider the place of climate change in legal education and research, and to reflect how respective areas of expertise might respond to one of humanity's greatest challenges.