

AACL

Australian Association of Constitutional Law

NSW PROGRAM OF EVENTS — 2014

Thursday, 13 February 2014

'JUDGES AS ROYAL COMMISSIONERS' REPRISED: THE INVOLVEMENT OF AUSTRALIAN JUDGES IN EXTRA-JUDICIAL WORK

The George Winterton Memorial Lecture 2014, delivered by **Professor Fiona Wheeler** (ANU College of Law):

The late George Winterton, published *Judges as Royal Commissioners* in 1987. In this paper, he claimed there was 'overwhelming' justification for the view 'that judges should generally decline to undertake extra-judicial governmental duties'. This was because the use of judges in such roles 'can endanger public confidence in the independence, impartiality and competence of the judiciary'. At the same time, he argued that the *Boilermakers Case* 'should be overruled' and replaced by a more flexible principle preventing federal courts from exercising functions at odds with their role as repositories of judicial power. Over 25 years later, this lecture reprises the themes — notably the need for judges to avoid controversy arising from contact with political matters — that Winterton explored in this characteristically incisive essay. Drawing on archival research undertaken by the speaker, the lecture will provide a window into the rich, though neglected, history of the involvement of Australian judges in extra-judicial work and explore the reasons why Winterton's arguments remain valid today.

Supreme Court of NSW, Queens Square, Sydney, Banco Court (Level 13), 6:00–7.30pm

This joint event was organised by Sydney Law School, AACL and the University of Western Australia.

Thursday, 1 May 2014

PANEL ON THE UNIONS OF NSW POLITICAL FINANCE CASE

In *Unions of NSW v NSW* [2013] HCA 58, the High Court found two sections of the *Election Funding, Expenditure and Disclosures Act 1981* (NSW) invalid for impermissibly burdening the freedom of political communication implied by the *Australian Constitution*. In doing so, the Court affirmed its acceptance of 'anti-corruption' as a legitimate object of electoral reform but found these laws invalid as having no relation to such an object. In this seminar, the members of the panel will explore the significance of the case for constitutional law, election law and law reform.

The Panel:

Professor Adrienne Stone (Melbourne Law School)

Associate Professor Joo-Cheong Tham (Melbourne Law School)

Dr Anika Gauja (Department of Government and International Relations, University of Sydney)

Chair: **Mr Ian Temby AO QC** (St James Hall Chambers)

This event is hosted by AACL in conjunction with the Electoral Regulation Research Network.

Federal Court, Queens Square, Sydney, Court 18B, 5:30 pm

NSW Convenor: tel (02) 9223 0185 • fax (02) 9221 3788 • DX Sydney 328 • mantziaris@stjames.net.au • Sixth Floor St James Hall, 169 Phillip Street, Sydney, NSW 2000.

National Secretariat: c/o Jean Goh • tel (03) 8344 1011 • fax (03) 8344 1013 • law-cccs@unimelb.edu.au • Melbourne Law School, 185 Pelham Street, University of Melbourne, Vic 3010.

Tuesday, 9 September 2014

THE CONSTITUTIONALITY OF SHADOW CRIMINAL LAWS: WHERE (IF ANYWHERE) WILL THE HIGH COURT DRAW THE LINE?

Paper presented by **Professor Jeremy Gans** (Melbourne Law School):

Last year, Dr Gabrielle Appleby examined the past, present and future of state law and order regimes and concluded that the High Court's *Kable* doctrine may have killed off State experiments in criminal justice in favour of constitutionally 'safe' court-based schemes that appealed to no-one (AACL, Sydney, 23 October 2013). The same examination just one year later yields a different conclusion. State parliaments have started experimenting with laws that give powers to decide guilt and punishment to non-court bodies. Indeed, Victoria has enacted the nation's first one-person detention statute in two decades. This paper looks at the High Court's possible role in prompting these developments and its potential role in stopping them.

Commentators: **Mr Robert Bromwich SC** (Commonwealth Director of Public Prosecutions)
Mr Timothy Game SC (Forbes Chambers)
Dr Gabrielle Appleby (Adelaide Law School)

Chair: **The Hon Justice Margaret Beazley AO** (President, NSW Court of Appeal)

Federal Court, Queens Square, Sydney, Court 18B, 5:30 pm

Wednesday, 5 November 2014

THE PRINCIPLE OF LEGALITY

Paper presented by **Mr Brendan Lim** (Visiting Fellow, UNSW Law School)

In accordance with the "principle of legality" or "clear statement principle", courts will not construe statutes to abrogate certain common law rights unless very clear words require them to do so. Why? Is it because of fidelity to legislative intention? Is it because substantive legal values recommend the course regardless of legislative intention? The answer matters because the principle of legality should not be extended beyond its rationale. The rationale for the principle of legality will tell us which rights engage the principle, and it will tell us what kind of legislative clarity is needed to displace the principle. On one view, rights are called 'fundamental' *because* they are rights that the parliament does not in fact intend to abrogate. On another view, rights are 'fundamental' in a more objective sense, because they are recognised to be 'important', or perhaps because they are 'vulnerable' in the sense that the ordinary political process is inherently inapt to protect them. The paper will explore these themes in the context of recent cases, building on the author's work in "The Normativity of the Principle of Legality" (2013) 37 *Melbourne University Law Review* 372.

Commentators: **The Hon Justice Nye Perram** (Federal Court of Australia)
Associate Professor Dan Meagher (Deakin University)

Chair: **The Hon Murray Gleeson AC QC**

Federal Court, Queens Square, Sydney, Court 18B, 5:30 pm

Tuesday, 9 December 2014

COMPARATIVE CONSTITUTIONAL LAW – FINAL COURTS ROUND–UP 2014

This annual seminar will provide an outline of recent constitutional developments in several overseas jurisdictions that are of key interest to Australian constitutional lawyers. Experts from each jurisdiction will report on three of four major constitutional cases argued or decided over the last year; changes in the composition and politics of each country's highest court; and flag the state of debate over constitutional reform. Together, the panellists will also discuss the potential relevance of these comparative developments for current issues in Australian constitutional law.

Speakers: **Professor Mark Tushnet** (Harvard Law School)
 Dr Thomas Poole (London School of Economics)
 Mr Madhav Khosla (Harvard University, India)

Chair: **Professor Rosalind Dixon** (University of New South Wales)

This is a joint event organised by the Gilbert+Tobin Centre of Public Law (UNSW) and AACL.

Federal Court, Queens Square, Sydney, Court 18B, 5:30 pm

MEMBERSHIP OF AACL

I invite you to become a member of AACL. The association was formed in 1998 as a forum for scholars and practitioners of constitutional law throughout Australia. It now has some 500 members throughout Australia and over 200 members in Sydney alone. More information on AACL may be found at www.aacl.asn.au

Why you should become a member

AACL seminars are mostly restricted to members of AACL. Copies of papers are distributed to members in advance of the seminar by email.

Members also receive other benefits such as newsletters and updates on constitutional law developments and events throughout the year.

Eligibility

A person may become an ordinary member by applying for membership and paying the annual subscription. The annual subscription is **\$70.00** (concession \$50.00). The membership year runs from July to June of each year. Membership is open to a person who is:

- A judge, legal practitioner or government legal officer.
- A current or former teacher of constitutional law or scholars engaged in research in the field of constitutional law or a related discipline.
- A member of an association which is a member of the International Association of Constitutional Law or similar foreign associations as approved by the Council.
- Someone who is adjudged by the Council as having a sufficient interest, whether by reason of practical experience or occupation, in the field of constitutional law.
- A law student with written approval from a teacher of constitutional law.

Application form and nomination

Under the current rules of the Association, an application for membership must be nominated and seconded by existing members. If you would like to join AACL, please:

1. **Fill out the form on the next page:** Send the form to the NSW Convenor (Christos Mantziaris). The Convenor will take care of nomination, seconding and placement on the AACL NSW email list. The form will then be forwarded to the National Secretariat.

AND

2. **Pay the membership fee:** Make an online payment for membership at <http://www.aacl.asn.au/> (or follow the instructions to send a cheque to the National Secretariat). *Please do not send any cheques or cash to the NSW Convenor.*

New members who join in the period February to June 2014 will be credited with membership for the 2014/2015 financial year.

Enquiries regarding membership and interstate activities

Please direct all enquiries regarding membership or interstate activities to Ms Jean Goh, the Administrator of AACL: tel **03 8344 1011** or law-cccs@unimelb.edu.au

8 September 2014



Dr Christos Mantziaris
Convenor, NSW Chapter of AACL

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AUSTRALIAN ASSOCIATION OF CONSTITUTIONAL LAW

ABN 11 717 363 928

MEMBERSHIP APPLICATION FORM

Surname			
Name			
Title			
Position			
Institution			
Address			
State		Postcode	
Phone	[]		
Email address (obligatory)	[Listing of a permanent 'personal' email address rather than a 'work' email address is preferred. This might avoid more frequent, work-related email address changes]		

I hereby apply for Membership of the *Australian Association of Constitutional Law*

..... (signature) (date)

Proposed by*: (signature)

Seconded by*: (signature)

* At the applicant's request, these fields may be completed by the NSW Convenor and another current AACL member.

PAYMENT

Please make your membership fee payment online, at the website of the Australian Association of Constitutional Law: <http://www.aacl.asn.au/membership/>.

If you intend to attend AACL events in Sydney, please forward the form for nomination, seconding and processing to: Dr Christos Mantziaris (NSW Convenor of AACL), St James Hall Chambers, 6/169 Phillip Street, Sydney NSW 2000 (DX 328 Sydney) or simply scan/email to: mantziaris@stjames.net.au