



# DLS Research Report

## April 2020

### Recent Publications

#### 1. Books

Two months in a row and no books – we can blame COVID19

#### B1: Book Chapters

See above

#### C1: Articles

**Tamsin Paige**, 'Wilfully Blind: The Security Council's Response to Genocide in Rwanda' (2020) 22 *Journal of International Peacekeeping* 136-147

**Shiri Krebs**, Ingrid Nielsen and Russell Smyth, 'What Determines the Institutional Legitimacy of the High Court of Australia?' (2020) 43(2) *Melbourne University Law Review* 605

**Antje Kreutzmann-Gallasch**, 'Universal ultrafast broadband after Brexit – a distinct possibility or rather wishful thinking?' was published in (2020) 41(5) *European Competition Law Review* 225-233

**Dan Meagher**, 'The "Always Speaking" Approach to Statutes (and the Significance of its Misapplication in *Aubrey v The Queen*)' (2020) 43(1) *University of NSW Law Journal* 191-217

**Zehra G Kavame Eroglu & Karen Powell**, 'The Role and Effectiveness of ASIC Compared with the SEC: Shedding Light on Regulation and Enforcement in the United States and Australia' (2020) 31 *Journal of Banking and Finance Law and Practice* 1-17

### Other Research Activities

#### Conference and seminar presentations

**Jean Du Plessis**, delivered the Ross Parson Corporate Lecture, titled “The Purpose of the Corporation Redefined: Recent Developments in Australia and the US” at the Sydney Law School, University of Sydney, 16 March <https://law-events.sydney.edu.au/?mec-events=the-purpose-of-the-corporation-redefined-recent-developments-in-australia-and-the-us>

## Media appearances

**Samantha Hepburn**, Opinion Piece: ABC News Online: “ We have a fuel problem and coronavirus has handed us an extraordinary opportunity to fix it” (22 April 2020)

<https://www.abc.net.au/news/2020-04-22/coronavirus-oil-price-fuel-security/12170390>

**Samantha Hepburn**, Seven News TV Interview: Liquid Fuel Security and the Federal Governments \$94 million US Oil Purchase (23 April 2020)

<https://7news.com.au/politics/australia-weighs-up-boost-to-fuel-reserves-c-991896.amp>

**Samantha Hepburn**, Radio Interview with Sinead O’Connor - ABC Australia Wide - 6.30pm Liquid Fuel Security in Australia (22 April 2020)

[https://abcmedia.akamaized.net/radio/local\\_perth/audio/202004/aip-2020-04-22.mp3](https://abcmedia.akamaized.net/radio/local_perth/audio/202004/aip-2020-04-22.mp3)

**Samantha Hepburn**, Radio Interview: Triple M Breakfast – (23 April 2020, 8.15am)

- <https://www.triplem.com.au/shows/brian-carlton-the-spoonman/catch-up/fc3242e7-2825-4483-b8a0-aba6000d6b4d>

**Jane Kotzmann**, ‘Sentience: What It Means and Why It’s Important’ 8 April 2020, Sentient Media,

<https://sentientmedia.org/sentience-what-it-means-and-why-its-important/>

**Marilyn McMahon**, ‘Pell Decision: Why Sexual Offence Trials Often Result in Acquittal, Even with Credible Witnesses’, *The Conversation*, April 8, 2020

**Felicity Gerry** and Lorana Bartels, ‘Transmitting COVID-19 to another person could send you to prison for life. Here’s why this is worrisome’, *The Conversation* (online, 14 April 2020)

<https://theconversation.com/transmitting-covid-19-to-another-person-could-send-you-to-prison-for-life-heres-why-this-is-worrisome-135957>

**Felicity Gerry**, “2Ser Radio Friday 24 April ‘Call for prisoners to be released amid COVID19

Outbreak’(Available at <https://2ser.com/experts-call-for-prisoners-to-be-released-amid-coronavirus-outbreak/>

## Other publications and research related activities

**Samantha Hepburn**, Parliamentary Submission: Submission to the Discussion Paper on reform of the National Environment Act (EPBC Act) April 2020, 10pp

**Jane Kotzmann**, Assisted with submission on behalf of Animal Justice Party, “Submission on the Environment Protection and Biodiversity Conservation (EPBC) Act 1999 (April 2020), 50pp  
Nicole de Souza (with comments from **Felicity Gerry**), ‘The Nth Room case and modern slavery in the digital space’, *The Lowy Institute* (online, 20 April 2020) <https://www.loyyinstitute.org/the-interpret/nth-room-case-and-modern-slavery-digital-space>

**Felicity Gerry** and Raphael de Vietri, *A Quick Reference Guide for Criminal Lawyers in Victoria during the COVID-19 Pandemic* (Quick Reference Guide, 2<sup>nd</sup> ed, April 2020)

<https://www.lexisnexis.com.au/en/COVID19/blogs-and-articles/a-quick-reference-guide-for-criminal-lawyers-in-victoria-during-the-covid-19-pandemic/>

Second National Open Letter from **Felicity Gerry** et al to Australian Governments on COVID-19 and Prisons and Youth Detention Centres, 20 March 2020

<https://www.greenslist.com.au/assets/papers/Second%20open%20letter%20to%20Australian%20governments%20re%20prisons%20and%20COVID-19%20-%20with%20signatures.pdf>

**Felicity Gerry**, Submission No 2 to Independent Anti-Slavery Commissioner United Kingdom, *Use of the Modern Slavery Act's Section 45 statutory defence* (2 March 2020)

**John R Morss**, entries on 'Charles Darwin'; 'Herbert Spencer'; 'Growth'; 'Critical Legal Studies', in Daniel Book (ed), *The SAGE Encyclopedia of Children and Childhood Studies* (SAGE Publishing, 2020)

### Grant applications recently lodged

**Mark Bowler-Smith**, Discovery Project application – ‘Artificial Intelligence, Tax Law and Environmentally-Sustainable Growth’. Amount sought = \$515,084. This project is about the taxation of artificial intelligence (AI). It aims to design a tax regime fit for an AI knowledge-led economy. Governments are heavily reliant upon taxes on labour. AI threatens to decimate this tax base by displacing workers and creating structural unemployment. While unemployment is one focus of the limited AI and fiscal policy literature, the central role of AI in sustainable productivity growth is largely ignored. Imposing a direct tax on AI agents would therefore arguably be a mistake. The project will use information theory, constructor theory and lessons learned from corporate taxation to design a fair and efficient tax regime to ensure adequate future tax revenues and sustainable growth in an AI knowledge-led economy.

**Shiri Krebs**, DECRA application – ‘The Impact of Technology on the Legal Evaluation of Military Operations’. Amount sought \$460,000. This project investigates the impact of, and seeks methods to improve, human-machine interaction during legal evaluation of military operations in Australia and globally. Technology systems produce volumes of data informing decisions about the legality of military operations. However, evidence suggests that this complex human-machine interaction can lead to erroneous, lethal attacks. This project generates new knowledge addressing this problem using innovative empirical methods, such as interviews and experiments in Australia, United States, and Israel. Expected outcomes of this project include formulating a best practice tool-kit for this human-machine interaction, offering new methods to improve legal decision-making and protect lives.

**Matthew Groves**, LEIF application – ‘The Australian Royal Commission and Public Inquiry Library’. Amount sought \$599,244. This project aims to provide comprehensive free access online to the reports of all royal commissions and other public inquiries held in Australia since Federation. It seeks to foster wider understanding of the pivotal role public inquiries play in the development of Australian law and public policy. It is expected that these reports will be comprehensively integrated with all other legislation, case law and law reform reports on AustLII to promote a greater understanding of how the balance is struck between inquisitorial fact-finding and the right to procedural fairness of participants and of how justice is delivered through the inquiry function of public bodies.

**Ben Saunders**, LEIF application – ‘Digitising the Drafting of the Australian Constitution (led by UWA)’. Amount sought \$318,487. This project aims to simplify the task of understanding the

Australian Constitution and its drafting process. It will provide an accessible means to decipher the proposals, drafts and votes by which the Constitution was formed. The expected outcomes of this project are an open access, online interface that consolidates, corrects and enhances the digital record of the Constitutional Conventions and the processes associated with it. This should provide significant benefits to not only constitutional law and history scholars but also school teachers and students seeking to reconstruct the process by which our Constitution was formed.

**Ben Saunders** and George Duke, ARC Special Research Initiative for Australian Society, History and Culture: Popular Sovereignty and the Australian Constitutional Tradition. Amount sought \$300,000. This project aims to explain the significance of popular sovereignty in the Australian Constitution and provide proposals for the reform of Australian constitutional law. Popular sovereignty is a fundamental principle and is recognised as the basis for political legitimacy worldwide; however, its status in Australia is not settled. Expected outcomes include an examination of how popular sovereignty has been embedded in the Australian constitutional tradition and reform proposals for how constitutional jurisprudence might more effectively take account of popular sovereignty. Benefits include an improved understanding of the political foundations of modern Australia and strengthening confidence in Australian political institutions.

**Ben Saunders**, DECRA Application – ‘Reforming the Governance of Commonwealth Public Sector Entities. Amount requested: \$460,500. This project aims to reform the governance of Commonwealth public sector entities. Commonwealth public sector entities are regulated under the Public Governance Performance Accountability Act 2013 and carry out functions that impact nearly every person in Australia. However, there are significant policy, doctrinal and enforcement challenges with Commonwealth public sector governance. Expected outcomes include the reform of the Commonwealth system of public sector governance framework that will serve as a model for State and Territory governments. This project will strengthen the ability of the public sector to perform its regulatory, service delivery and policy-making functions.

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