What is the good of law?

LSAANZ 2021 Festival Programme

Monday 29/11 2.30pm AEST/1.30 QLD /4.30 NZ	LSAANZ Book Prize Winner, Heather Douglas, author meets reader
Tuesday 30/11 5:30 NSW, 4:30pm QLD, 7:30pm NZT (2 hour event)	Listen Up: What is the Good of Law?
Wednesday 1/12 12pm (NSW) 2pm NZT (1 hour event)	Feminist law-making: The what, why and how of gender-responsive legislation
Thursday 2/12 12pm (NSW) 2pm NZT (1.5 hour event)	"Mā te ture anō te ture e aki – Only the law can be set against the law": A conversation about indigenising Aotearoa New Zealand's LLB
Friday 3/12 12pm AETD (NSW) 2pm NZT (1.5 hour event)	Like chalk and cheese? Law degrees and community lawyering
Monday 6/12 10am (NSW) 12pm NZT (1 hour event)	Citizenship, Bureaucracy and Issues of Indirect Discrimination against Women in India
Tuesday 7/12 12pm (NSW) 2pm NZT (1.5 hour event)	New Directions in Law and Society Research
Wednesday 8/12 1pm AEDT (NSW) 3pm NZT (1.5 hour event)	The Right to the Continuous Improvement of Living Conditions – a role for this right in challenging times?
Thursday 9/12 10am (NSW) 12pm NZT (1 hour event)	What is the good of international heritage law? The Samoan experience
Friday 10/12 12 (NSW) 2pm NZT (2 hour event)	LSAANZ AGM & Publication Prize Awards

LSAANZ

LSAANZ Book Prize Winner, Heather Douglas, author meets reader

Women, Intimate Partner Violence, and the Law
Heather Douglas

This book explores how women from diverse backgrounds interact with the law in response to intimate partner violence, over time. Every year, millions of women globally turn to law to help them live lives free and safe from violence. Women engage with child protection services and police. They apply for civil protection orders and family court orders to help them manage their children's contact with a violent father, and take special visa pathways to avoid deportation following separation from an abuser. Women are often compelled to interact with law, through their abuser's myriad legal applications against them. While separation may seem like a solution, it often accelerates legal engagement, providing new opportunities for continued abuse. Countless women who have experienced intimate partner violence are enmeshed in overlapping, complex, and often inconsistent legal processes. They have both fleeting and longer-term connections with legal system actors. Their stories demonstrate how abusers harness multiple aspects of the legal process, and its actors, to continue their abuse. They also highlight the regular failure of legal processes and actors to comprehend the significance of nonphysical abuse. Women show how legal system actors' common expectation that separation is a single event, rather than a process, has implications for their connections with law and the outcomes they achieve. From time to time, the women in this study attained the safety and closure they sought from law, sometimes in circular and unexpected ways, but their narratives demonstrate the level of endurance, tenacity, and time this often required.

Listen Up: What is the Good of Law? (Event)

Law is everywhere in our lives. This event asks what is the good of law? Which law, whose law, made when? Who speaks to law, for law, and against it? Law opens space for justice claims. And law closes justice down. Whether for Indigenous sovereignty and self-determination or women seeking to be free from violence, law is all over.

This event brings together voices and experiences that offer perspective and passion about the law. These are critical Indigenous voices reclaiming ancient rites/rights as well as equally critical users of law. Speakers imagine other ways of seeing law and other ways of using law. Introduced and chaired by Assistant Professor Narelle Bedford (Bond University), with Associate Professor Nicole Watson and closed by Professor Heather Douglas (Melbourne University), a panel of speakers turn law over. Speakers include: Eddie Synot (Griffith Law School), Keryn Ruska (Caxton Law Centre), Dr Debbie Bargallie (Griffith Institute for Educational Research).

Proceedings will conclude with the formal launch of ground-breaking new books, *Indigenous Legal Judgements*: *Bringing Indigenous Voices into Judicial Decision-Making*, edited by Nicole Watson and Heather Douglas (Routledge, 2021) and *Women, Intimate Partner Violence, and the Law* by Heather Douglas (Oxford University Press, 2021). Organised by Griffith Law Futures and Griffith Criminology

Institute, Griffith University. Supported by the Law and Society Association of Australia and New Zealand (LSAANZ).

Feminist law-making: The what, why and how of gender-responsive legislation (Panel)

Ramona Vijeyarasa, Becky Batagol, Jacqueline Mowbray, and Niki Vincent

Feminist activists have long been concerned with women's place in the law. For some, the male-centric nature of the law and legal systems calls upon feminists to walk away. Yet, for others, there remains much promise in the law for the advancement of the rights of women and those experiencing gender-based harm. In turn, scholars have sought to offer the tools to re-write legislation with women in mind through 'feminist legislation' projects. Experts in the passage of legislation have sought to instil a stronger mindset around the need to provide a solid gender audit before a bill is passed. Others demand a broadening of our lens when defining what constitutes 'good laws' for women and other groups excluded from the law's protection on the basis of gendered norms. This panel will bring together those tools and recommendations to delve deeper into the question of what makes laws good for women and how do we know.

The UTS International Law Research Cluster and Feminist Legal Research Groups warmly invite you a discussion to reinvigorate the call for gender-responsive legislation and to offer the evidence for what difference gender-responsive laws can make and how we can enact them. The panel will cover laws written specifically for women, as well as the role of women's needs and interests in legislation often considered gender-neutral and for which we too rarely demand a gender perspective.

"Mā te ture anō te ture e aki – Only the law can be set against the law": A conversation about indigenising Aotearoa New Zealand's LLB (Roundtable)

Mihiata Pirini, Metiria Turei, Claire Charters, and Linda Te Aho

In this session, a group of Māori legal academics will host a facilitated discussion about plans to "indigenise" the LLB in Aotearoa New Zealand. We will discuss an ongoing multi-year project, co-funded by the Borrin Foundation and Ngā Pae o te Māramatanga and led by Māori legal academics, which considers how Māori law can be integrated into the LLB as a foundational part of the degree.

The discussion will also touch on the broader question of the status and recognition of Māori law in Aotearoa New Zealand. Ani Mikaere and others have long pointed out that Māori law is the first law of Aotearoa New Zealand; a new and major development is the number of recent judicial dicta that recognise tikanga Māori as law or that deploy Māori legal concepts in their reasoning.

The title of our presentation comes from a statement made by Te Kooti Arikirangi Te Turuki, a Māori military leader and prophet, not long before his death in 1893. With this statement – mā te ture anō te ture e aki – he was encouraging his followers to pursue legal remedies for their grievances, as opposed to waging warfare on the Crown. We assume Te Kooti was referring to legal remedies provided by colonial law, brought by the British. Today, as we enter a new phase of legal development in which Māori law receives potentially as much weight and recognition as the law originally brought here by the British, we can read Te Kooti's statement in a new way. Are we setting two systems of law against each other? Are we attempting to combine them? What might legal pluralism look like in Aotearoa New Zealand? We look forward to touching on these larger questions, and fleshing out their resonance with the conference themes, in our session.

Like chalk and cheese? Law degrees and community lawyering (Panel)

Jozica Kutin, Genevieve Grant, and Louisa Gibbs

Community lawyering – is it getting the attention it needs in Australian legal education? In this webinar panel we will address three critical questions: (1) Do law degrees prepare graduates for work in CLCs? (2) If they do, what components of the degree programs are most relevant and effective? (3) If they don't, how might legal education change to better prepare graduates for work in CLCs?
To start the discussion, results will be presented from a recent survey of law graduates working in CLCs where we found that 45% of law graduates said their law degree prepared them for work in CLCs. They specifically identified the legal knowledge they gained, legal skills, the benefit of volunteering and clinical placements, and the role of lecturers that inspired their interest in social justice.

However, 55% said their law degree did not prepare them – they felt that law degrees need to offer a broader subject selection, they needed to learn practical lawyering skills, and that placements and volunteering in CLCs should be better promoted and encouraged (some said they should be mandatory). Survey respondents also said that law degrees needed to do more in preparing them to work with actual clients, in particular clients with complex needs, or who were socially disadvantaged and vulnerable. They also pointed out the need to understand the justice system as a whole, the social service system and integrated or multi-disciplinary models of practice. Learning to work with limited resources, understanding practitioner self-care, reflective practice and vicarious trauma were also identified as issues not addressed in their law degrees.

The survey results and the role of legal education in preparing community lawyers will be further addressed from two perspectives: (1) the legal education sector (Monash University Faculty of Law); and (2) from the peak body for Victoria's Community Legal Centres and Aboriginal Legal Services (FCLC).

Citizenship, Bureaucracy and Issues of Indirect Discrimination against Women in India (Seminar)

Saika Sabir (with Trish Luker as discussant)

This paper will address the question: how does India's law, policy and practice relating to citizenship indirectly discriminates against women. The government of India in its attempts to remove Bangladeshi immigrants from the state of Assam took recourse to severe legal and administrative measures. In continuation of this endeavour, the Supreme Court of India in August 2019 passed an Order requiring strict documentary-based evidence for proving Indian identity. The documents listed by the Supreme Court include proof of entries registered in the 1951National Register of Citizens (NRC) or entries in the electoral list of 1971, and a further corroboration through other documents such as title deed of land, permanent residence certificate, school matriculation certificate.

The strict requirement of documents by law is particularly disadvantageous for women as it is difficult for them to prove their legacy and establish familial links through documents. There is evidence to show that women in Assam have substantially outnumbered men in the category of "doubtful voters" and a greater number of women as compared to men have failed to prove their nationality before the Foreigner's Tribunal. The prioritization of documents over the historical and existing socio-political reality of the nation is discriminatory because it tends to disregard the conditions that prevent women from procuring documentary evidence required by law for establishing their national identity.
This paper will critically review India's legal regime on citizenship and conduct an in-depth analysis of empirical data from secondary sources to demonstrate how the apparently neutral legal norms and administrative policies of the state indirectly discriminate against women and exclude them from being lawful citizens of India.

New Directions in Law and Society Research (Panel)

Chair: Professor Ben Schonthal, Co-Director of the Otago Centre for Law and Society

***"Lumad Husay* (conciliation), legal culture, and indigenous resurgence: storywork, resistance, and resilience in the indigenous Lumad Peace Movement in Mindanao" Dr. Jeremy Simons, National Centre for Peace and Conflict Studies, University of Otago**

This presentation will share the reaffirmation and reclamation of an ancient peace pact between Aromanen and Maguindanao tribal leaders in 2018 in Mindanao, Philippines. This ceremony reflected, extended, and instantiated long term indigenous peace activism as a form of cultural resurgence and response to violence and exclusion. It is an example of how indigenous Lumad peace activists in the Philippines have reclaimed, transformed, and re-asserted the legal cultures and praxis of their customary justice processes. Using a local form of legal storywork, Lumad leaders engage and contest formal negotiations and transitional justice processes using traditional epic narratives combined with contemporary modalities of activism and advocacy.

"Tikanga Māori directions in te Tiriti o Waitangi" Claire Browning, PhD Candidate, University of Otago

My topic is the good of approaching the Māori text of te Tiriti o Waitangi / the Treaty of Waitangi on tikanga Māori terms. The tikanga Māori concept of kaitiakitanga is the right way to examine the guardian relations and governing roles established by the treaty, and to observe its tikanga coherence.

Kaitiakitanga-connected concepts written through the Māori text give treaty directions. They are a source of principles and a source of insight to established treaty relationship principles. Reflecting on the treaty through kaitiakitanga shows us the cardinal importance of identifying oneself, as does the Queen— in the preamble to the treaty (in fact, its opening sentence), and in its third article— in a guardian role. Given the tikanga meanings associated, putting this foremost seems an insightful drafting move. I'll share brief thoughts on what kaitiakitanga-connected concepts in the treaty suggest about how, in a guardian relations construct, parties are to relate to one another.

"Religion and Legal Consolidation in the Pacific", Dr Tom White, Religion, University of Otago

In the past decade, Fiji has declared a secular state (2013), Samoa has declared a Christian state (2017) and just recently, in August 2021, PNG's legal commission recommended the declaration of a 'Christian nation.' These constitutional reforms aim to achieve specific religious outcomes through law, and emerge from major social transformations sweeping the Pacific, including (i) the decline of traditional governing authority, (ii) the emergence of new, divisive forms of political Christianity; and (iii) the innovative and broadening use of legal action and activism. As Pacific Islanders apply globalised legal norms and mechanisms in response to intra-Christian and inter-religious competition, and in a context of rapid socio-economic change, the plural legal regimes of Pacific societies – religious, customary and state – are realigning in ways that law and society scholarship has yet to seriously explore.

The Right to the Continuous Improvement of Living Conditions – a role for this right in challenging times? (Author meets reader)

Beth Goldblatt & Jessie Hohmann (editors) with Julia Dehm & Noam Peleg (discussants)

The International Covenant on Economic, Social and Cultural Rights includes, as part of the right to an adequate standard of living, a little explored 'right to the continuous improvement of living conditions'.

This right, the subject of a new edited book by Jessie Hohmann and Beth Goldblatt, raises challenging and intriguing questions about its' interpretation. What does it mean to improve living conditions continuously, particularly in the context of finite resources and the significant global challenges of climate change, economic inequality and a global pandemic?

In this author meets reader session, Dr. Julia Dehm and Dr. Noam Peleg will engage with the editors to explore the themes of the book, within the context of the conference theme, 'what is the good of law?'. Does this right have anything to offer our troubled world? The discussion, which goes to the heart of what constitutes a good life, will include insights from the editors and the books' international contributors on topics including the rights of future generations, Indigenous world views, financial systems and debt, social reproduction, and international cooperation. It will cover critical concerns with the right and its realisation as well as utopian rethinking and strategic approaches to advancing these visions.

What is the good of international heritage law? The Samoan experience (Seminar)

Hai-Yuean Tualima and Kathy Bowrey

Conceptualizations of heritage and intellectual property are rooted in western property paradigms and taxonomies that distort traditional knowledge relationships and laws that regulate the construction and production of knowledge and culture. Concepts such as 'tangible heritage', 'intangible heritage', 'traditional knowledge' and 'traditional cultural expressions' cannot fully capture the unique nature of Indigenous and Pacific Island existing practices and experiences related to the construction and production of knowledge and culture. As a consequence of this Indigenous and Pacific communities are subject to appropriation and theft by outsiders of their knowledge, and customary law is disrespected.

International heritage laws have been developed as a solution, including the UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage and a draft treaty promoted by the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC). Using the practical example of the World Heritage Listing of Fagaloa Bay – Uafato/Tiavea Conservation site in Samoa, this paper critically explores what is at stake for Pacific Island communities and post-colonial systems trying to operate within the possibilities created by the international legal order.

It is argued that proposed solutions rearticulate the same colonial power dynamics, misrepresenting and miscommunicating how issues should be framed from Indigenous and Pacific Island perspectives. They also neglect to acknowledge there is a distinction in how issues are problematized for settler and post-colonial states. Whilst settler and post-colonial states are subject to similar issues of commodification and appropriation, lived practice and experiences are fundamentally different due to the survival of custom within a plural legal order. To do good, there is a need for international law to address how law operates in settler and post-colonial states independently as opposed to a one size fits all approach.