

Report on Outcomes – After the Rule

Grant details

After the Rule was a symposium aimed at exploring alternative approaches to rules and interpretation, from multiple disciplinary and thematic perspectives. Co-run by the Centre for Arab and Islamic Studies (CASS) and the Centre for Law, Arts and the Humanities (COL), the symposium drew on papers from Islamic studies, comparative constitutionalism, and beyond. *Gender Institute* funding supported the involvement of Dr Honni van Rijswijk and Dr Miranda Johnson. Their papers brought overlapping issues the gender and race into the proceedings, and allowed for a number of critical interventions during the symposium.

Event details

Title: After the rule: A symposium on alternative traditions of law, norms and rules

Date: 21 and 22 September 2018

Description: After the Rule brought together a diverse group of scholars from across the law, humanities and social sciences to consider alternative traditions of rules, laws and interpretation.

Panellists supported by the Gender Institute:

- Honni van Rijswijk is a graduate of Sydney Law School and received her PhD from the University of Washington, where she was a Fellow in the Society of Scholars at the Simpson Center for the Humanities. Her research is interdisciplinary, and she writes primarily at the intersections of law, literature and critical theory. She has published on feminist theories of harm, formulations of responsibility in law and literature, the role of history in the common law, and on questions of justice relating to the Stolen Generations.
- Miranda Johnson is an historian of indigenous peoples and settler colonialism in the Anglophone post/colonial world, most specifically in North America and the Pacific. At the University of Sydney, she holds an appointment as a lecturer in the Department of History. She was previously Postdoctoral Research Fellow in the School of Philosophical and Historical Inquiry, Faculty of Arts and Social Sciences and in the Centre for Values, Ethics and the Law in Medicine, Faculty of Medicine, as part of Professor Warwick Anderson's ARC Laureate Fellowship project, "Race and Ethnicity in the Global South". She has taught at the University of Wisconsin-Madison and the University of Michigan.

Funding sources: Humanities Research Centre; Centre for Arab and Islamic Studies; Centre for Law, Arts and the Humanities; Gender Institute

Conveners: Samuel Blanch, Desmond Manderson

Impact

Attendees (22 total: 7 ANU internal, 15 clients):

Miranda Forsyth (Assistant Professor, ANU), Julian Murphy (Phd student), Nick Horn (Australian Government), Mahmoud Pargoo (Phd student, Australian Catholic University), Jessie Allen (Associate Professor, University of Pittsburgh), Joshua Neoh (Lecturer, ANU), Faye Brinsmead (Australian Government), Samuel Blanch (Phd student, ANU), Honni van Rijswijk (Senior Lecturer, UTS), Shaun McVeigh (Associate Professor, Melbourne University), Valentino Cattelan (Fellow, Käte Hamburger Center for Advanced Study in the Humanities), Omar Farahat (Assistant Professor, McGill), Thomas

27 September 2018

White (Phd student, Otago), Likim Ng (Phd student, Otago), Ahmad Ahmad (Professor, University of California Santa Barbara), Dorota Gozdecka (Senior Lecturer, ANU), Jessie Moritz (Lecturer, ANU), Raihan Ismail (Lecturer, ANU), Mary Williams (Lecturer, ANU), Desmond Manderson (Professor, ANU), Luis Gómez Romero (Senior Lecturer, University of Wollongong), Miranda Johnson (Senior Lecturer, University of Sydney).

Impact:

Participants from across the disciplines facilitated important encounters between Islamic studies, comparative constitutionalism, and critical feminist legal studies. The aim for the symposium was that we would be able to engage with alternative approaches to law and rules from both within the scholarly legal tradition *and* from these alternative perspectives. As such the main risk was that the symposium would lack coherence across this diversity of papers and disciplinary backgrounds. It retained a constructive a sense of dialogue, even across papers as diverse as medieval judicial interpretation in the Sharia law and modern critical feminist readings of graphic novels.

Outcomes

We plan to prepare an edited volume for publication. Video of the keynote address will also be available on the CAIS website.

The event was Tweeted a number of times by participants and CAIS staff with tags to @caisanu and @GenderANU.

Attachments:

- A. Symposium Programme
- B. Photographs

27 September 2018





After the rule: Interpretation in comparative and cross-cultural perspective
A symposium on alternative traditions of law, norms and rules

21-22 September 2018

The Centre for Arab &
Islamic Studies (The
Middle East & Central Asia)
ANU College of
Arts & Social Sciences

The Centre for Law, Arts and
Humanities
ANU College of Law

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Venue - Sir Roland Wilson Building, McCoy Circuit, ANU
(Building 120 campus map)

AFTER THE RULE: INTERPRETATION IN COMPARATIVE AND CROSS-CULTURAL PERSPECTIVE

Paul Ricoeur portrayed law as eternally torn between 'the promise' and 'the rule'. Giorgio Agamben has been looking for a 'third thing' between these two poles. And he wonders whether he has found in late medieval Franciscan writings something that is 'unthought and perhaps today unthinkable', that is, where the life and rule and might have become so intertwined so as to almost realise this other, this 'third thing' (Agamben 2013: xii). In this form of monastic rule, perhaps, there might be a lived obedience to norms that is more liturgical than regulative, more to be sung than interpreted. Agamben, then, grasps at a tradition that might contort even our most basic categories for law, politics and society, finding new ways of uncovering law's promise beneath or beyond rules.

History is not the only place where we might look for radical approaches to norms or for alternative ways of dwelling with law. Clifford Geertz, after all, insists that legal interpretation is only possible on the basis of 'local knowledge'. Take for example Brinkley Messick's ethnography of Yemen in colonial transition. He describes the transfer of land title affected by handwritten documents, the scribe's text spiralling around the benediction to God. Writing in every direction surrounds the central *bismillah*, making each document essentially different in form and in content. The significance of this, for Messick, lies in its different epistemic structure (1993: 234). Here the rule is embodied not in the form of the document but in the presence of the scribe and his ink, in the 'individual sensuous or intuitive content' of the total document (Cassirer in Messick 1993: 237).

This symposium will explore traditions that break our comfortable understanding of law as a formal set of procedures and institutions standing above the hurly-burly of life. We look will look to the play of norms and rules: in liturgy, in courtroom drama, in religious traditions, in the vocation of the lawyer or advocate, in gendered characters, and in visual and other forms of art and narrative.

Conveners

Samuel Blanch, ANU Centre for Arab and Islamic Studies
Desmond Manderson, ANU Centre for Arts, Law and the Humanities

A collaboration between the ANU Centre for Arab and Islamic Studies together with the ANU Centre for Law, Arts and the Humanities

With the generous support of the ANU Gender Institute and the ANU Humanities Research Centre

PROGRAM

Day 1 Friday 21 September 2018

8:30 Coffee and registration

9:00 Welcome and Introduction

9:10 – 10:40 Panel 1 – Across Time

Omar Farahat (McGill)

Valentino Cattelan (The Käte Hamburger Center for Advanced Study in the Humanities)

Desmond Manderson (Australian National University)

10:40 Morning tea

11:00 – 12:30 Keynote - Ahmad Atif Ahmad (University of California – Santa Barbara)

12:30 Lunch

1:30 – 3:30 Panel 2 – Across Religions

Tom White (University of Otago)

Julian Murphy (Columbia University)

Mahmoud Pargoo (Australian Catholic University)

Joshua Neoh (Australian National University)

3:30 Afternoon tea

3:45 – 5:45 Panel 3 – Across Genres

Honni van Rijswijk (University of Technology Sydney)

Miranda Forsyth (Australian National University)

Jessie Allen (University of Pittsburgh)

Dorota Gozdecka (Australian National University)

7:00 Symposium dinner at Bicicletta, New Acton

Day 2 - Saturday 22 September 2018

8:30 Light breakfast (provided) and coffee

9:00-10:30 Panel 4 – Across the Colonial Frontier

Luis Gomez Romero (University of Wollongong)

Shaun McVeigh (University of Melbourne)

Miranda Johnson (University of Sydney)

10:30 Morning tea

11:00-12:30 Plenary and closing with Julen Etxabe (Helsinki Collegium for Advanced Studies)

ABSTRACTS AND BIOGRAPHICAL NOTES

Sharia, the Whole Sharia, and Nothing but the Sharia (Keynote)

Ahmad Atif Ahmad (University of California – Santa Barbara)

'I swear (promise) by Almighty God that the evidence I shall give will be the truth, the whole truth and nothing but the truth.' This oath (language from the Court Services Victoria website) represents a standard aspiration of a Common Law court to arrive at a maximally approximated sense of the material truth of a case by aggregating every witness's sense and evidence of it. The truth means the whole truth, not a partial version of it. True, the witness can only give his or her sense of this full truth, and jurors and judge need to work this into a fuller truth. Telling the whole truth mixed with some fiction undoes the goal and value of the testimony. Hence; nothing but the truth. In the same court of law, the physical, material truth of the world stands in a theoretical parallel with a legal truth. This one is just as hard to pin down. Good jurists disagree, reasonably, just as reasonable human beings disagree. Is there a version of a whole legal truth, that is also not allowed to be partial or mixed with non-truths in the legal sense. Well, what if there was one? A full, or whole, legal truth, unmixed with any fiction? That won't apply to God's laws. Like the Sharia. The Sharia is not simply law. It is an ideal. In the most recent, academic interpretations of it, it is a communal appeal to a sense of divine truth and justice, beyond time and place, but capable of encompassing the exact time and place of a case. Can this ideal be judged as incomplete in any sense? In a sense, my task is to disabuse the audience of some of the commonly-held notions associated with any narrative that speaks of a whole sharia that can be pointed to and distinguished from all other sharias/systems of law and morality. I will use three cases where Sharia came up before American judicial entities (including courts and the Internal Revenue Services) and a sharia advisory session for the Forensics division in the International Committee of the Red Cross (in all of which I participated).

Ahmad Atif Ahmad is professor of religious studies at the University of California in Santa Barbara (UCSB). He also chairs UCSB's 'Council on Faculty Welfare' and as a member of its executive council, the UC-System wide Academic Advisory Committee for Internship Programs in the University Center in Washington, DC. He previously served as associate director of the University of California Center in Washington, Sultan Qaboos Chair of Mideast Studies at the College of William and Mary in Williamsburg, Virginia, and as visiting associate professor at Utrecht University in the Netherlands. The author of 'Islamic Law: Cases, Authorities, and Worldview' (London: Bloomsbury, 2017), 'The Fatigue of the Sharia' (NYC: Palgrave, 2012), and 'Structural Interrelations of Theory and Practice in Islamic Law' (Leiden: Brill, 2006), Ahmad teaches courses on Islamic legal reasoning in medieval Islam and early modern Egypt.

ABSTRACTS AND BIOGRAPHICAL NOTES

Skeptical Sorcery: Legal Decision Making as Ritual Magic

Jessie Allen (University of Pittsburgh)

For centuries legal reasoning has been compared to magic. In the 1930s the Legal Realists decried judges' reliance on 'magic solving words' and 'talismanic' reasoning, and one can find similar criticisms in American judicial opinions themselves, dating back to the late 1700s. These comparisons invariably present legal magic's practitioners – judges engaged in doctrinal reasoning -- as perpetrators of deliberate fraud or victims of their own misguided fantasies. Legal magic in this traditional view is the dark side of Enlightenment rationality, the 'bastard sister' of legal science. I am persuaded that Anglo-American law, especially adjudication, has many practical similarities with magic in non-Western cultures. These include the use of enacting performances, heightened formality, temporal play, performativity, and transformative analogy. But I reject the assumption that law's magical techniques are only disreputable deception. Drawing on field anthropologists' accounts of magic and ritual in other settings, my paper reconceptualises magic, suggesting three ways it might contribute to a rule of law that is an embodied cultural practice: (1) as a performance technique practiced by legal decision makers to distance themselves from their ordinary subjective outlooks; (2) as a way of incorporating affective power into official legal rulings; and (3) as a method of symbolically reversing injury. By reimagining legal magic in this idealistic light, I do not mean to deny its capacity for masking truth. But despite centuries of skepticism, legal magic is resilient. Indeed, Realist critiques of legal magic themselves can be seen as a type of ritual unmasking found in diverse magical practices, what anthropologist Michael Taussig calls the 'skilled revelation of skilled concealment.' Perhaps legal magic is one way law mediates the irresolvable tension between power and reason that the realists identified in our legal system.

Jessie Allen is an associate professor of law at the University of Pittsburgh, where she teaches jurisprudence, property and legal ethics. Her current scholarship considers how traditional legal authorities and practices might contribute to a distinctive rule of law, other than by determining substantive legal outcomes. She is the author of the blog, *Blackstone Weekly*, exploring how the iconic eighteenth-century legal treatise, William Blackstone's *Commentaries on the Laws of England*, can illuminate twenty-first-century law and culture.

Enacting justice through public performance of violence

Miranda Forsyth (Australian National University)

This paper explores the ways in which public displays (Fuji 2018) or performances of violence can both dislocate and re-align the relationship between law, justice, culture and morality. The threat of violence, and the state's theoretical monopoly on violence, is often an invisible link between particular conceptions of justice and its enforcement or acceptance as 'law.' In some contexts, however, different conceptions of 'justice' may also be identified and inscribed through public performances of violence, either by state or non-state actors. In what circumstances do such performances enact a different 'law'? The particular context this paper investigates is the regular public torture, mutilation and burning of those accused of sorcery accusation in contemporary Papua New Guinea. This is an example where community understandings of justice and perceptions of risk (i.e. the risk that comes from the practice of sorcery) are in confrontation with those of the state (whose law enforcement efforts are officially focussed on protecting those accused of sorcery). Drawing upon detailed empirical evidence, the paper seeks to explore the impacts of public displays of violence on entrenching particular conceptions of justice/ legitimisation of ways of responding to an injustice. It also seeks to investigate whether or not, and in what conditions, extreme violence may have a backlash effect on those conceptions of justice and morality it enforces. Through focussing upon public violence, this paper also hopes to shed light on the more generalised role of violence in the relationships between normative understandings and law.

Miranda Forsyth is an Associate Professor at RegNet and also a Fellow at SSGM in the College of Asia and Pacific at ANU. In July 2015 she completed a three year ARC Discovery funded project to investigate the impact of intellectual property laws on development in Pacific Island countries. Prior to coming to the ANU, Miranda was a senior lecturer in criminal law at the law school of the University of the South Pacific, based in Port Vila, Vanuatu for eight years. Miranda is the author of *A Bird that Flies with Two Wings: Kastom and State Justice Systems in Vanuatu* (2009) ANU ePress and co-author of *Weaving Intellectual Property Policy in Small island Developing States*, Intersentia 2015.

The broad focus of Miranda's research is investigating the possibilities and challenges of the inter-operation of state and non-state justice and regulatory systems. She also works on the issue of how best to localise or vernacularise the foreign legal norms and procedures. Such norms are often required to be transplanted into developing countries, for example due to international or multilateral treaty obligations. Miranda also has an on-going interest in broader theoretical questions involved in improving conflict resolution mechanisms in countries with weak states, and also what is involved in the concept of 'development' in Pacific Island countries

ABSTRACTS AND BIOGRAPHICAL NOTES

The Typewritten Market: from fiqh to shari'ah-compliance in the law of Islamic finance

Valentino Cattelan (The Käte Hamburger Center for Advanced Study in the Humanities)

Taking inspiration from Messick's *Calligraphic State*, this paper interprets the law of Islamic finance as evidence of a hermeneutical and epistemological shift in the sociology of Islamic law from classical to contemporary times.

The paper sheds light on this turn by comparing the social practice of *fiqh* in medieval trade – where actions were judged by rules legitimised by their own context – to the current application of the canon of shari'ah-compliance in the market of Islamic finance – whose products are ratified by shari'ah scholars through certifications owning a legitimacy that is formulated context-less.

In fact, while the performance of shari'ah by Muslim believers in classical Islam was deeply interrelated to an evaluation by legal scholars operating 'in the context' of actual social reality(-ies) – so merging legal, moral, economic and developmental issues in their response to practical matters –, today it is 'the text outside the context' of shari'ah-compliance certifications to (de-)materialise the practice of economic transactions in the financial market. As a result, the canon of shari'ah-compliance en-textualised in Islamic finance has replaced the Qur'an as en-scripted Text in/of the reality and, correspondingly, the 'textual polity' of abstract securitisation has de facto substituted actual social relations.

Considering all this and by paraphrasing Messick, the paper will finally advance the notion of 'typewritten market' to depict the nature of Islamic finance as a socio-economic space that embodies a de-materialised shari'ah, that is to say a 'right path' whose textual representation belongs more to standardised certifications rather than to the individual actions of Muslim believers.

Valentino Cattelan is a scholar in Islamic law, economics and finance, and his research activity covers aspects of legal and financial pluralism, Islamic contract and commercial law, property rights theory, Islamic finance regulation, comparative law, social and cultural anthropology. In particular, his research focuses on the comparison between classical *fiqh* and the application of Islamic law in contemporary financial markets: in this way his work intersects law, economics, ethics and religion, with a particular emphasis on the distinct rationales of conventional capitalism and Islamic economics.

After the completion of his PhD in Law & Economics (University of Siena, 2009), Dr Cattelan has held research positions at the University of Rome Tor Vergata, the Oxford Centre for Islamic Studies (University of Oxford, UK), IE Business School (Madrid). He has also served as a Visiting Research Fellow at the Department of Law & Anthropology of the Max Planck Institute for Social Anthropology in Halle/Salle (Germany) and as a Lecturer at the Institute of Ismaili Studies in London. At the moment he is a Fellow at the Käte Hamburger Centre for Advanced Study in the Humanities 'Law as Culture' in Bonn (Germany).

Next to many articles in academic journals and contributions to books, Dr Cattelan is the editor of the volumes *Islamic Finance in Europe: Towards a Plural Financial System* (2013, Edward Elgar) and *Islamic Social Finance: Entrepreneurship, Cooperation and the Sharing Economy* (2018, Routledge). He is currently working on an authored monograph on *Religion and Contract Law in Islam: From Medieval Trade to Global Finance* (forthcoming, Routledge).

What interpretation for what constitution? (plenary)

Julen Etxabe (Helsinki Collegium)

It is often said that constitutional interpretation must attend both to the text and the context of law. But what kind of text is a Constitution and how to understand its appropriate context? My analysis follows two divergent paths by contrasting two different methods of (con)textual interpretation: on the one hand, I rely on Bernard Levinson's historico-critical method, which seeks to apprehend the tensions, ambiguities, and disharmonies of the Hebrew Bible; on the other hand, I explore what Dominick's LaCapra calls the 'workmanlike' aspects of texts, which may transcend their original context. I want to suggest these two different hermeneutic methods as a way to deal with constitutional tensions, when there is no univocal or harmonious interpretation of constitutional meaning. For, if the task of constitutional interpretation depends on the kind of text the Constitution is taken to be, the latter is in turn, and primarily, a political question.

Julen Etxabe works as a university researcher at the Helsinki Collegium for Advanced Studies. He holds LL.M. and S.J.D. degrees from the University of Michigan Law School and his current research focuses on judicial dialogues and democratic voices.

His book *The Experience of Tragic Judgment* was published in 2013 and has co-edited *Living in a Law Transformed: Encounters with the Works of James Boyd White* (2014). He is co-editor of *No-Foundations: An Interdisciplinary Journal of Law and Justice*.

ABSTRACTS AND BIOGRAPHICAL NOTES

Collective Deliberation and the Grounding of Norms in Classical Islamic Legal Theory

Omar Farahat (McGill University)

The relation between source, norm, and decision is particularly perplexing in the classical Islamic context. In the traditional disciplines of law (*fiqh*) and legal theory (*uṣūl al-fiqh*), legal norms are conceived as pronouncements, or judgments (*aḥkām*), formulated by scholars, organised within self-governing, state-independent, communities, based on signs (*adilla*) left behind by Prophet Muhammad's encounter with the divine in the early seventh century. But what, precisely, were these jurists doing, or thought were doing, in the process of making these pronouncements, and what does doing so 'based on' revealed signs mean? A standard modern understanding of the theories of norm-making developed by classical Muslim jurists portrays these jurists' account of their generation of such pronouncements as interpretive, in a basic representational sense. In this view, which I refer to as the 'discovery model', classical Islamic legal theory is a theory of exploration and discovery of legal norms that are already present within the revealed 'sources'. This model, I maintain, is closely linked to an intuitive modern understanding of norm-generation. The sources of law are expected to create and contain the norm, and the interpretive exercise is expected to reproduce it or fill-in the gaps where there is ambiguity. This paper shows that classical Islamic jurists did not necessarily see things this way. By analysing a number of classical debates on the link between revealed language (especially, the imperative form) and legal pronouncement, I argue that, in many instances, the jurists saw the generation of norms as the result of collective juristic deliberation based on engagement with the fragmented signs left behind by revelation. Rather than discover the norms within the texts, the jurists represented the community in the pious act of worship of collectively formulating the norms. This realisation, it is hoped, will highlight the possibility of alternative ways of conceiving of source, norm, and interpretation.

Omar Farahat is an Assistant Professor at McGill University's Faculty of Law. His research focuses on Islamic legal and moral theories. Before to joining McGill, he completed his PhD at Columbia University, following which he spent a year as a Research Fellow at Yale Law School. Prior to that, he obtained a dual law degree from Université Paris 1 Panthéon-Sorbonne and Cairo University, an LL.M. from Harvard Law School, and an interdisciplinary M.A. in the humanities from New York University. Farahat's first book, *The Foundation of Norms in Islamic Jurisprudence and Theology* (Forthcoming, Cambridge University Press) explores the role of divine commands as a source of normativity in classical Islamic thought. Farahat's research on Islamic legal theory and ethics has also appeared in the *Journal of Law and Religion*, the *Journal of Religious Ethics*, and *Oriens*.

Images and legal regulation of the lives of migrants and refugees

Dorota Gozdecka (Australian National University)

Creation of specific visual reality representing lives of migrants offers a potent ground for selective interpretation of particular issues related to migration. It is crucial to understand that images of refugees and migrants do more than merely generate and legitimise structures of exception and exclusion. They eventually become self-understood and self-perpetuating symbols necessary for the maintenance of the climate of exceptionalism. Relying on the scholarship of law and image this presentation examines how representations of refugees and migrants influence changes in migration law. It focuses in particular on the frames and gaze points through which public opinion encounters dominant imagery of those arriving in their societies. It critically evaluates the affective power of images to shape sentiments emerging from these representations. It focuses in particular on perceptions of illegality embedded in this imagery and its impact on law and legislation.

Dorota Anna Gozdecka holds a PhD in legal theory from the University of Helsinki (2009) and was awarded the title of a Docent of Jurisprudence by the same university (2015). Her primary research area focuses on legal theoretical aspects related to the accommodation of cultural diversity and the intersections between law and the humanities. Her publications such as the *Special Issue Identity, subjectivity and the access to the community of rights* (*Social Identities*, Issue 4, 2015), the monograph *Rights, Religious Pluralism and the Recognition of Difference: Off the Scales of Justice* (Routledge, 2015) or the edited volume *Europe at the Edge of Pluralism* explore questions of otherness created by contemporary legal regimes. Dorota has previously held research fellowships at the UC Berkeley, the ANU Centre for European Studies and the European University Institute and has won prestigious research grants, such as the University of Helsinki three-year grant for an international research project 'Law and the Other' that she was leading as the CI in 2013-2015. She has also been an expert for the Council of Europe's Drafting Group on Human Rights in Culturally Diverse Societies in preparation of the new Guidelines on Human Rights in Culturally Diverse Societies adopted by the Council of Europe in 2016.

ABSTRACTS AND BIOGRAPHICAL NOTES

Ironic Analysis in Indigenous Rights History

Miranda Johnson (University of Sydney)

My first book, *The Land Is Our History: Indigeneity, Law and the Settler State* (OUP 2016) attempted to map out where, how and why the rights claims of indigenous peoples in three Commonwealth settler states (Australia, Canada and New Zealand) came to such prominence in the 1970s. I used the phrase ‘the land is our history’ ironically, although this was implicit rather than explicit in my exposition because I wasn’t myself enough aware of how important irony was to the analysis I was trying to make. In this paper, I want to return to that title as a way of thinking more explicitly about the utility of an ironic form of analysis in writing histories of indigenous rights. Drawing on a stripped-down version of Reinhold Niebuhr’s notion of irony as the ‘unintended consequences of purposive action,’ I want to think about this mode of analysing action in the stories I told in my book—and have continued to work on in other venues—in at least three ways.

First, as a way of analysing the strategic claims of indigenous peoples. In these ‘pre-diasporic’ claims, many indigenous leaders expressed the inextricability of their identity from the lands and waters, thus demonstrating how dangerous loss of ownership of those places would be, or had been, for maintaining collective identity. They pushed forward these claims in order to force open a space in common law traditions that had up to that point been mostly unyielding. These claims have borne numerous and unintended consequences, including the reproduction of stereotypical views of indigenous identity in law. Furthermore, these claims were also often based in histories that themselves were the unanticipated outcomes of colonial institutions tasked primarily with dispossessing indigenous peoples of their lands.

Second, I want to use an analytic of irony in order to explore the ways that the same phrase was of critical importance to non-indigenous, white settlers who claimed their own landed identity. This claim was of critical importance in imagining belonging, yet to make such a claim was to imply the dispossession of indigenous peoples, either in the past or present. This leads, finally, to the use of irony in a self-reflective way, as a method for thinking about my own relationship to the histories that I write about. In particular, what are the ethical and moral obligations of working in an ironic mode in respect of these histories? Niebuhr was clear that is concept of irony was not meant to imply contempt but, rather, humility in the face of the unknowability of the consequences of even the most carefully considered actions.

Miranda Johnson is an historian of indigenous peoples and settler colonialism in the Anglophone post/colonial world, most specifically in North America and the Pacific. At the University of Sydney, she holds an appointment as a lecturer in the Department of History. She was previously Postdoctoral Research Fellow in the School of Philosophical and Historical Inquiry, Faculty of Arts and Social Sciences and in the Centre for Values, Ethics and the Law in Medicine, Faculty of Medicine, as part of Professor Warwick Anderson’s ARC Laureate Fellowship project, ‘Race and Ethnicity in the Global South’. She has taught at the University of Wisconsin-Madison and the University of Michigan.

Hermeneutics as a temporal problem

Desmond Manderson (Australian National University)

Hermeneutics is often thought of in terms of questions of meaning and purpose. But hermeneutic approaches are also manifestations of distinct approaches to time. A theory of meaning is a theory of time. This paper will look at three different interpretative methodologies and unpack their different understandings of the relationship between time and law. Indeed, questions of temporality and meaning are at the heart not only of contemporary legal theory, but recent work in art history, too. Here too the temporality of ‘anachronism’ attempts to restage the interpretation of works of visual art on different grounds, and with different socio-political implications, than traditional historiographical approaches. This paper attempts to bring together interpretation in art and in law around the implications of different the temporal modalities it articulates.

Desmond Manderson is an international leader in interdisciplinary scholarship in law and the humanities. He is the author of several books including *From Mr Sin to Mr Big* (1993); *Songs Without Music: Aesthetic dimensions of law and justice* (2000); *Proximity, Levinas, and the Soul of Law* (2006); and *Kangaroo Courts and the Rule of Law—The legacy of modernism* (2012). His work has led to essays, books, and lectures around the world in the fields of English literature, philosophy, ethics, history, cultural studies, music, human geography, and anthropology, as well as in law and legal theory. Throughout this work Manderson has articulated a vision in which law’s connection to these humanist disciplines is critical to its functioning, its justice, and its social relevance. After ten years at McGill University in Montreal, where he held the Canada Research Chair in Law and Discourse, and was founding Director of the Institute for the Public Life of Arts and Ideas, he returned to Australia to take up a Future Fellowship in the colleges of law and the humanities at ANU.

ABSTRACTS AND BIOGRAPHICAL NOTES

Public Law, Private Values? Comparative Insights from Judicial Interpretation of Criminal Statutes
Julian R Murphy (Columbia University)

Question: what interpretative approach is common to 17th century English courts, antebellum American judges and certain Islamic jurists? Answer: the rule of lenity (alternately called the benefit of clergy, the rule of liberty and the maxim of *hudūd* avoidance in cases of doubt). This interpretative rule requires that ambiguous criminal legislation be interpreted strictly in favour of the subject. The purpose of this paper is to consider the implications of the rule's surprising parallel presence in the three aforementioned contexts. The paper's central thesis is that the rule is applied across cultures and jurisdictions in furtherance of a common conception of the judicial role. In this conception, the judge purports to defer to the supreme lawmaking authority while simultaneously preserving, and expanding, personal judicial decision-making power. So understood, the rule serves both quasi-constitutional public values (such as mercy, liberty and divine justice) and the political or religious values of the particular judge.

As can be seen from this short summary, the paper's project is partly descriptive and partly critical. In its descriptive component, it adds to the nascent body of literature comparing Western and Islamic approaches to criminal legal interpretation, building upon the work of scholars such as Intisar A. Rabb and Luqman Zakariyah. The paper's critical discussion contributes to the theorisation of discretion in judicial decision-making. It does so by employing a comparative lens to further problematise the Aristotelian idea that bright line rules necessarily limit judicial discretion (an idea that can be found in the writings of as diverse thinkers as Alexander Hamilton, Friedrich von Hayek and Antonin Scalia).

Julian Murphy recently received his LLM from Columbia University where he was a Human Rights Fellow. He is currently a Columbia Postgraduate Public Interest Fellow working on human rights research for Indigenous people in the Northern Territory. He has previously worked as a criminal defence lawyer and as an associate to Justice Nettle at the High Court of Australia.

Living with Law

Shaun McVeigh (University of Melbourne)

How might a jurist of the common law tradition – or a citizen of Australia – respond well to the invitation made in the *Uluru Statement from the Heart* (2017) to enter into a treaty and agreements with the Indigenous nations and peoples of Australia? Given the history and conduct of those who live within the common law tradition, taking up such invitation, it might be imagined, will require some reconsideration of their – our – relations of law and life.

As part of the invitation of this symposium I would like to address some aspects of relationship that a treaty, such as that imagined by the Uluru Statement, might suggest in terms of the conduct of public life and of lives lived with law. While there are many constitutional and governmental questions that need to be addressed in treaty and agreement making between peoples, nations and states, I wish to address public law and life in terms of office (including that of citizen) and appropriate conduct. The aspect entering into treaty or agreement I address here involves the cultivation of the persona legal scholar (jurist, jurist-prudent) and diplomat capable of honouring laws and adequate to task of arranging a meeting of laws. If, as Hadot and Agamben remind us, philosophy is, at least in part, a training in a form of life, how might Agamben's training in 'inoperativity' or a civil prudent's training in 'civility' orient the jurist and diplomat to forms of agreement making or in establishing relationships of law or their alternative? Or, more bluntly, what account of the conduct of lawful relations can those of the common law tradition bring to a treaty?

Shaun McVeigh joined the law school at Melbourne University in 2007. He previously researched and taught at Griffith University in Queensland as well as Keele and Middlesex Universities in the United Kingdom. He has a long time association with law and humanities and critical legal studies in Australia and the UK.

Shaun McVeigh has research interests in the fields of jurisprudence, health care, and legal ethics. His current research projects centre around three themes associated with refreshing a jurisprudence of jurisdiction: the development of accounts of a 'lawful' South; the importance of a civil prudence to thinking about the conduct of law (and lawyers); and, the continuing need to take account of the colonial legal inheritance of Australia and Britain.

ABSTRACTS AND BIOGRAPHICAL NOTES

Law, Love and Freedom: Monasticism versus Antinomianism

Joshua Neoh (Australian National University)

How does one lead a life of law, love and freedom? This inquiry has very deep roots in the Judeo-Christian tradition. Indeed, the divergent answers to this inquiry mark the transition from Judeo to Christian. This paper returns to those roots to trace the routes that these ideas have taken as they move from the sacred to the secular. In the sacred sphere, there are, at least, two ways of leading a life of law, love and freedom: monastic versus antinomian. The Reformation transformed these religious ideals into political ideologies. The monastic ideal is politically manifested as constitutionalism, and the antinomian ideal is politically manifested as anarchism. Hence, in the secular sphere, there are, at least, two ways of creating a polity of law, love and freedom: constitutional versus anarchic.

Joshua Neoh is a Senior Lecturer in Law at the Australian National University as well as a PhD candidate at the University of Cambridge. He holds an LLB from the ANU and an LLM from Yale. He has a monograph forthcoming with Cambridge University Press entitled 'Law, Love and Freedom'.

Secularising Sharia: progressive legal change and the problem of historical discontinuity

Mahmoud Pargoo (Australian Catholic University)

Islamic law in post-revolutionary Iran has undergone extensive changes, ranging from rulings regarding individual morality such as permission of music and chess to social and economic rulings like the Labor Law. Unlike many other countries, these changes in Islamic law (which are often against the text of Sharia) is institutionalised in a council comprised of jurists, statement, economists, and sociopolitical experts called 'The *Maṣlaḥa* Discernment Council of the System' (*majma' -e tashkhiṣ-e maṣlaḥat-e niẓām*). However, after near to four decades of using various *fiqhī* conceptual apparatus (including but not limited to *ḍarūra*, '*usr and ḥaraj*', and especially *maṣlaḥa*) to adapt Sharia rulings to the ever-changing social, economic, and political environment, a powerful counter-change wave is shaped in different layers of clergy, politicians, and academics in Iran. They pose the question: what are the limits of changing Sharia? When are we going to stop and say no? What remains of Sharia except for a veneer of religiosity if all its substantive rulings are compromised?

This dissatisfaction with the alleged overuse of jurisprudential mechanisms of legal change has resulted in distrust of the government for its purported permissiveness to external pressures. This objection has become more popular among ultraconservative groups of *ulama* who hold more uncompromising views. In sum, a mechanism which was first intended to close the gap between the religious and the secular by conferring religious legitimacy to the latter has itself become de-legitimised. This self-destructive feature of Islamic legal change may apply, *mutandis mutatis*, to other Muslim societies where the communities are concerned with historical continuity of Sharia and Islamic identity.

The current paper will explore this emerging dissatisfaction with Islamic legal change by focusing on an ongoing debate in Iran between non-state *ulama* and religious institutions of the state over the issue of banking interest (*ribā*) and marketing companies using pyramid schemes (*shirkathāy-e hiramī*). Islamic legal change is a double-edged sword and over-utilisation of it, irrespective of the believers' imaginary of what constitutes an authentic Sharia ruling, could result in its own de-legitimation.

Currently a PhD candidate at Institute for Social Justice (Australian Catholic University), **Mahmoud Pargoo** works on the intersection of Shia *fiqh* and secularisation in Iran in his thesis titled 'Paradoxes of secularisation and Islamisation: the case of post-revolutionary Iran'. Mahmoud has been a lecturer at University of Sydney teaching 'Islam and Democracy in the Muslim World' and his most recent academic paper is published in 'Islam and Muslim and Christian Relations' (2017) titled 'Expansion and Contraction of Scripture: The Ritual (Im)purity of Unbelievers According to *Shī'a* jurisprudence'. His in-depth comments on current affairs of the Middle East is published in Washington-based *Al-Monitor* and *Lobellog*.

ABSTRACTS AND BIOGRAPHICAL NOTES

Law and the Girl: Genre, gender and violence in the interpretation of laws

Honni van Rijswijk (University of Technology Sydney)

The figure of the child is a figure of crisis. Across national and international frameworks—from UN frameworks to national inquiries—the figure of the child has provided both the occasion and the justification for a number of law's exceptional jurisdictions. This paper will begin by considering how the liberal legal imaginary responded to the systemic removal of indigenous children in Canada and Australia, where recognition of 'historical' harms was produced through transitional justice frameworks, testimonial processes, and national apologies. In these processes, the figure of the child attained a significant and sentimental place in the juridico-political imagination.

I then shift the critical emphasis from the figure of 'the child' in the liberal imaginary to the figure of 'the girl,' in the more radical imaginaries of two graphic novels by A D Robertson, *Betty: The Helen Betty Osborne Story* (2015) and *Will I See?* (2016), investigating how these imaginaries can challenge state law's adjudication of violence. I consider how the figure of the gendered child provides a subject position from which to resist and re-create juridical and political spaces—especially in the context of forms of judgment about sexual violence. In these representations, the girl is a liminal figure caught up in scenes of violence simultaneously defined as 'extreme' and quotidian. I read the figure of the girl in Robertson's novels as a means to re-contextualise 'disappeared' Aboriginal women within the frameworks of violent state law, and the underlying question of Aboriginal sovereignty. The point of this mode of reading 'the girl' is to deepen our understanding of the ways histories of colonialism inform the interpretation of contemporary scenes of sexual violence. Most significantly, gendering the child figure makes not only gender but race central to the critique and re-imagining of law, for, as I will show, 'the girl' is necessarily racialised.

This critical method means recognising that state law is not the only law operating through any one territory, at any one time. Rather, multiple legal systems co-exist as complex relations—some of which are recognised and met by the majority, most of which are not. In this way, my critical analysis of imaginative literature initiates alternate modes of not only thinking about law, but also constituting law and legal thought. I focus on modes of indigenous law, feminist law, queer and anti-racist law—all laws that become legible in genres defined as 'fiction,' in contrast to what I term state law's aggressive realism.

Dr Honni van Rijswijk is a graduate of Sydney Law School and received her PhD from the University of Washington, where she was a Fellow in the Society of Scholars at the Simpson Center for the Humanities. Her research is interdisciplinary, and she writes primarily at the intersections of law, literature and critical theory. She has published on feminist theories of harm, formulations of responsibility in law and literature, the role of history in the common law, and on questions of justice relating to the Stolen Generations.

On Saracens, Barbarians and Humanitarian Violence: A Renewed Account of the (Past and Present) Destruction of the Indies

Luis Gómez Romero (University of Wollongong)

International humanitarian law ostensibly provides a status for everyone in a situation of conflict – the combatant and the civilian; the victor and the defeated –, so that no one is entirely excluded from its protective mantle. The protection of law, however, is not granted to those who are on the ‘wrong’ side of a conflict, as the examples of Abu Ghraib or Guantánamo Bay tragically proved. The laws of war have consistently excluded their alter ego as embodied in ‘non-civilised’ subjects who supposedly do not appreciate international law and do not observe it. These ‘non-civilised’ subjects are not only a figure excluded from the protection of the laws, but also a metaphor of the individuals or the states of affairs from which the laws seek to distance themselves. This paper will trace the roots of the patterns of exclusion embedded in international humanitarian law to the intersection between the wars of *Reconquista* and *Conquista* fought by the kingdoms of Castile and Aragon in the late 15th and early 16th centuries. Hernán Cortés brought large portions of what is now mainland Mexico under the rule of the Kingdom of Castile not only by sheer force, but also through a highly ingenious legal strategy. Cortés justified and legitimised his deeds in Mexico inspired by Medieval Christian laws on Muslims. This legal strategy was later both developed and challenged by jurists such as, respectively, Francisco de Vitoria or Bartolomé de las Casas. The paper will hence excavate the nexus between Saracens and Barbarians (i. e., Amerindians), as well as the role this connection played in constituting subjects who, on the one hand, are considered inherently incapable of envisaging universal ideas of justice and, on the other hand, can be coerced into conversion (or transformation) from their original identity into the ideal of a Christian Castilian (or, more generally, Western) subject.

Luis Gómez Romero joined both the Legal Intersections Research Centre and School of Law -- where he is currently a Senior Lecturer -- at the University of Wollongong in June 2013. Prior to this, Luis developed a postdoctoral research project on the intersections between comics and law at the Institute for the Public Life of Arts and Ideas (IPLAI) at McGill University. He has taught and published in the areas of jurisprudence (with particular emphasis in law and the humanities), constitutional law and human rights. Since November 2016, Luis has frequently contributed to The Conversation on topics concerning Mexico and the relationship between the United States and Latin America.

ABSTRACTS AND BIOGRAPHICAL NOTES

Constitution-drafting, the Christian State Debate and a Contronymic Secularism in contemporary Fiji

Thomas White (University of Otago)

From March 2012 through to September 2013, Fijians found themselves in the process of drafting a new constitution. Responding to a history of communal politics defined by race and religion, the ruling military-regime announced early in the drafting process that Fiji was to be a 'secular state'. Although the term 'secular' had no agreed or satisfactory equivalent in Fijian or Fiji-Hindi languages, this term, it seemed, was non-negotiable.

Over the course of Fiji's constitution making process, this term, secularism, became one of the most heavily debated legal categories. Secularism served as a collision point for two deeply divided views of Fiji's legal and religious futures. For the regime, along with the Fiji Constitution Commission (FCC), minority religious groups, liberals, Indo-Fijians and others, 'secularism' referred to procedures of state neutrality on religious difference, and was viewed as furthering liberal democracy's arch-virtues, justice and freedom. Yet for many of the 844 public submissions that supported a Christian State instead, 'secularism' meant something quite the opposite. For many indigenous Fijians, 'secularism' did not refer to an institutional impartiality between religious groups, but instead to a materialistic, base cosmology that was neo-colonial, amoral and anti-God. Far from embodying the paramount values of liberal society, 'secularism' was 'value-less'.

As a term of law, secularism has held unusual power in the Fijian constitutional process. This is not because the term is, per se, controversial, but because it is contronymic: that is, it evokes two opposing and antagonistic meanings. Even though the FCC repeatedly clarified their use of 'secularism' in the public hearings, its contronymic other remained. The FCC could not ultimately convince many indigenous Fijians that secularism-as-fairness did not necessitate secularism-as-materialism. Why? That is what this paper sets out to address.

Drawing on an analysis of the 7170 submissions received by the FCC, as well as the 110 public hearings, the paper first sets out the case for understanding Fijian 'secularism' as contronymic. Second, the paper explains the politics of this contronym. Third, the paper explores the reframing of a national constitution when encompassed by religious belief, and considers whether the later-abandoned FCC draft, and its efforts of inclusion, could have ever fully assuaged indigenous anxieties regarding a 'secular state'.

Thomas White is a PhD candidate in the Religions Programme at the University of Otago, under the supervision of Dr Ben Schonthal and Dr John Shaver. His PhD is investigating the historic interweaving of politics and Christianity in Fiji, and the serial attempts of Fiji's various constitution-drafters, ever-seeking to turn Fiji into a modern, multicultural and politically stable nation-state, to unpick this dynamic. Prior to Otago, Thomas was a lecturer in Ethics and Governance at the Fiji National University (2012-2015), and has Masters degrees from Durham University (2011) and Edinburgh University (2006).

GENERAL INFORMATION & CONTACTS

Venue

- Sir Roland Wilson Building, McCoy Circuit, ANU (Building 120 campus map)
Seminar Room 2/3 (Room 3.03/3.04) (presentations and keynote)
First floor foyer – just outside the seminar rooms (morning tea, coffee, etc)

Registration Desk

- Foyer of the Sir Roland Wilson Building, open from 8am on Friday morning

Conference Contacts

- Sam Blanch - general inquiries
Phone: 0437245702
Email: sam.blanch@anu.edu.au
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Email: cais@anu.edu.au
Office location: Centre for Arab and Islamic Studies (Building 127)

Website

<http://cais.cass.anu.edu.au/events/conferences/after-rule-symposium-alternative-traditions-law-norms-and-rules>

Conference Dinner

- Date: Friday 21 September
Time: 7pm
Location: Bicielletta (New Acton), 1/15 Edinburgh Avenue, Canberra, ACT 2601

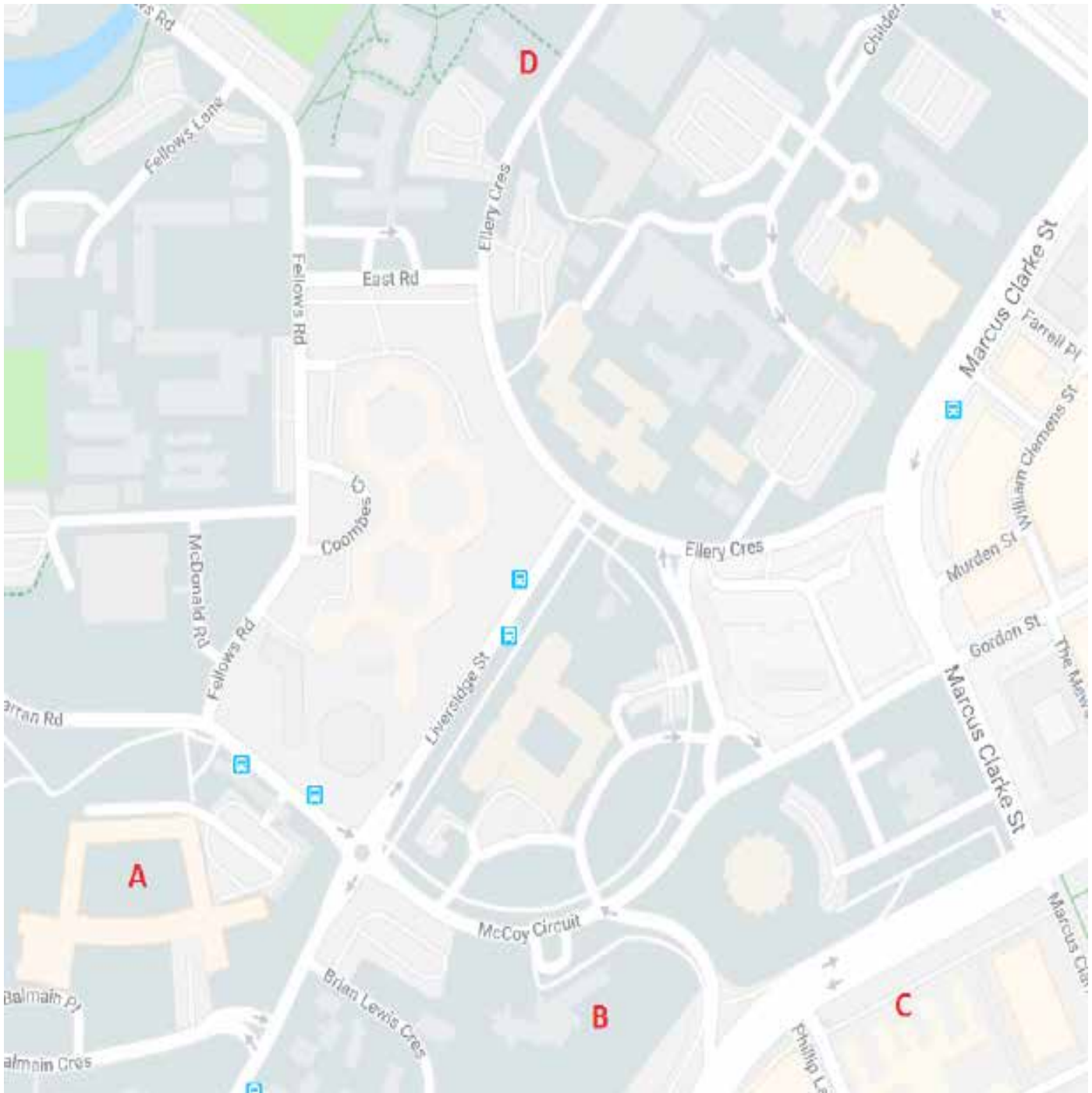
Taxi

- 02 6126 1600 or 13 2227

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SYMPOSIUM LOCATIONS



- A** – University House (accommodation), Liversidge St, ANU.
- B** – Sir Roland Wilson Building, McCoy Circuit, (symposium venue)
- C** – Bicicletta, (New Acton), 1/15 Edinburgh Avenue, Canberra, ACT 2601
- D** – ANU Centre for Arab and Islamic Studies, Ellery Cres, Building 127, ANU

