

PREFACE

Welcome to volume 18 of the *Southern Cross University Law Review*. As our editorial policy indicates, this journal aims to encourage progressive thinking within the field of law by publishing scholarship from a variety of critical perspectives and research methodologies. The scholarship evident in this general edition of the *SCULR* faithfully reflects these foundational objectives, and more generally, the ethos of the School of Law and Justice at Southern Cross University.

Volume 18 comprises three articles, two praxis papers, and a book review of our colleague Dr Rohan Price's 2016 monograph *Going Native: The Passions of Philip Jacks*. The editors thank the various authors for their valuable papers, along with the anonymous referees who gave so generously of their time and expertise to help bring these works to fruition. We are delighted to publish these outstanding works, and note each paper's contribution to critical legal thinking in their respective fields.

The journal opens with 'Too Much Law and Not Enough Theory – A Critique of the Commonwealth Constitution' by Dr Bede Harris. This article is an argument for reform, presenting an innovatively holistic and (arguably) ahistorical exploration of both the capital 'C' Constitution, and Australian constitutional law. Dr Harris questions whether federalism serves any useful contemporary purpose, and from a pure theory approach, encourages readers not to accept the current constitutional order as a given, but rather, to think about its consistency with concepts such as freedom, democracy and accountability.

Dr Trish Mundy's 'The Lone Wolf or Rural Justice Champion? Imagining the "Rural Lawyer"' canvasses the many meanings of a subject critical to a core mission of Southern Cross University's School of Law and Justice, the rural lawyer. This paper invites the reader to re-imagine the rural, regional and remote practitioner, challenging homogenous, gendered stereotypes and notions of 'rurality' that surround this critical community role. The paper draws on cultural narrative methodology, using interviews conducted with final year law students to construct competing metaphors of rural practice, the masculine 'lone wolf' versus the virtuous 'rural justice champion'. It concludes with a reminder that the place and space that is the geography of rural Australia is a diverse one.

'Extra-Curial Punishment in Criminal Law Sentencing: A Principles-Based Approach' by Jamie Fellows and Dr Mark Chong explores the legitimacy of societal punishment beyond the imprimatur of judicial sanction. The paper argues that

the diverse and circumstantial ways in which society expresses its disapprobation for certain crimes is consistent with both statute and theory, citing sentencing legislation, and Dworkian principles of mercy. Its conclusions challenge perceived orthodoxies, while also providing a useful comparison of sentencing regimes throughout Australia – viewed through its particular and unique prism.

Our praxis papers are written by two of Australia’s most eminent lawyers and jurists, former High Court justice Mr Michael Kirby QC AO, and Raelene Webb QC, President of the National Native Title Tribunal. Mr Kirby’s paper is based on a speech delivered at the Michael Whincop Memorial Lecture on 10 September 2015. It was the subject also of the inaugural Queer SCU Diversity and Inclusion public lecture, delivered at Southern Cross University’s Lismore campus on 4 August 2016. Mr Kirby’s paper is highly topical, the ‘losing battle’ but ‘winning war’ that is the cause of marriage equality in Australia. The editors also thank QSCU President, Mr Ronny Susanto for his introductory remarks to Mr Kirby’s paper.

President Webb’s paper tackles the next ‘wicked problem’ in native title jurisprudence, the challenge that native titleholders face in realising the full potential of their native title, and accessing the opportunities it presents. President Webb was an esteemed guest of the School of Law and Justice in Research Week 2016, and delivered this paper at the School’s Gold Coast campus.

In closing, the editors also wish to thank and acknowledge the invaluable assistance of Leonie Hunter, Alison Bundock and Kurt Otto of the SCU Centre for Teaching and Learning, for their professional and attentive work on the production of this issue. Equally, we thank and acknowledge the important and high quality editorial assistance contributed to this volume by the Review’s 2016 Student Editorial team. The senior Student editors comprised Johanna Byrne, Cera Godinez, Paula Hallam, Tammy Higginbotham, Janelle Rees, and Melanie Stellmacher, while the Assistant Student Editors were Lucy Campbell-Peut, Ruby Eno, Rachel Judd, Ben Loveridge, Natalie Mason, and Meri Oakwood. Appointments to these roles involved a competitive process, and we trust our willing and enthusiastic student colleagues enjoyed the experience.

Happy reading and kind regards,

Associate Professor Jennifer Nielsen

Associate Professor John Page

Dr Cristy Clark

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