Human Rights and Everyday Justice: Harmony in the Mirror
Benga, Florentina

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Australasian Society of Legal Philosophy Annual Conference

6 - 8 July, 2018
Bond University, Gold Coast
## DAY ONE - FRIDAY, 6 JULY

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<tr>
<td>2pm - 4pm</td>
<td>POSTGRADUATE WORKSHOP</td>
<td>Building 4, Level 2, Rooms 29 and 31</td>
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<td></td>
<td><strong>What is Legal Instrumentalism?</strong></td>
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<td>Sina Akbari (LSE)</td>
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<td>**On the Backs of Migrant Workers - Imported Labour in the Australian</td>
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<td>Agriculture Sector**</td>
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<td>Sayomi Ariyawansa (Melbourne)</td>
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<td><strong>The Legal Thought of Roberto Unger</strong></td>
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<td>Julian Ligertwood (Victoria)</td>
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<td><strong>Are All Human Rights Conceptually the Same, or Can They be Distinguished?</strong></td>
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<td>William Phillips (Melbourne)</td>
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<td>4.30pm - 5pm</td>
<td><strong>Arrival and Registration</strong></td>
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<td>5pm - 6pm</td>
<td><strong>Opening Keynote</strong></td>
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<td>John Gardner (Oxford): Public Interest and Public Policy in Private Law</td>
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<td>6pm - 6.45pm</td>
<td><strong>Opening Reception</strong></td>
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<td>7pm - 9pm</td>
<td><strong>Conference Dinner</strong></td>
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## DAY TWO - SATURDAY, 7 JULY

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<tr>
<td>9am - 9.30am</td>
<td><strong>Arrival and Registration</strong></td>
<td>Foyer outside Building 4, Level 3, Room 37</td>
</tr>
<tr>
<td>9.30am - 11am</td>
<td><strong>Parallel Sessions</strong></td>
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**SESSION A**

- **Reasoning with Authoritative Directives**
  - Dale Smith (Melbourne)

- **The Inefficiency Gap - Epistemic Limits of Judicial Authority**
  - Mrinal Singh (Dartmouth)

- **Epistemic Peers and Epistemic Disagreement in the Context of Jurisprudence**
  - Christian Ponce (UNSW)

**SESSION B**

- **Procedural Justice, Relational Theory and Alternative Dispute Resolution**
  - Therese MacDermott and Denise Meyerson (Macquarie)

- **A Theory of Contributive Justice**
  - Kimberly Chuang (Michigan)

- **The Rawlsian Notion of Collective Self-Determination: A Reconstruction**
  - Jayani Nadarajalingam (Monash)

**SESSION C**

- **The Victorian Voluntary Assisted Dying Act 2017: Some Questions**
  - David Wood (Melbourne)

- **Judicial Adherence to the ‘Minimum Core Obligation’ of the Right to Health in Bangladesh: A Critical Review**
  - SMT Karim (Macquarie)

- **Human Rights and Everyday Justice: Harmony in the Mirror**
  - Florentina Benga (Bond)

11am - 11.30am | **Morning Tea**                                                        | Area Outside Building 4b, Level 1, Psychology Clinic |
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<th>Time</th>
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<tr>
<td>11.30am - 1pm</td>
<td><strong>Parallel Sessions</strong></td>
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| **SESSION A: NATURAL LAW STREAM** | Natural Law in Reformed Christianity: Historical Developments and Contemporary Contributions  
  David VanDrunen (Westminster Seminary California)  
  The Spark that Still Shines: John Calvin on Conscience and Human Depravity  
  Constance Youngwon Lee (UQ)  
  Natural Law and Federalism  
  Nicholas Aroney (UQ) | Building 4, Level 1, Room 22 |
| 1pm - 2pm | **Lunch**                                                              | Area Outside Building 4b, Level 1, Psychology Clinic |
| 2pm - 3pm | **Keynote Session**                                                    | Building 4, Level 3, Room 37       |
| 3pm - 3.30pm | **Afternoon Tea**                                                      | Area Outside Building 4b, Level 1, Psychology Clinic |
| 3.30pm - 5pm | **Parallel Sessions**                                                  |                                   |
| **SESSION A: NATURAL LAW STREAM** | Intelligibility, Practical Reason and the Common Good  
  Jonathan Crowe (Bond)  
  Understanding Law as a MacIntyrean 'Practice'  
  Andrew Curtin (UQ)  
  The Philosophy of Proportionality  
  Mikayla Brier-Mills (Bond) | Building 4, Level 1, Room 22 |
| **SESSION B** | The Future of the Nature of Law: A Post-Human Perspective  
  Gunoo Kim (Gwangju)  
  Rules, Perception and Emotion: When Do Institutions Determine Behaviour?  
  Brendan Markey-Towler (UQ)  
  Citizenship by Investment and the Citizen of Tomorrow  
  Michael Krakat (Bond) | Building 4, Level 2, Rooms 29 and 31 |
| **SESSION C** | The Argument from Consent for a Moral Obligation to Obey the Law  
  Kevin Walton (Sydney)  
  Hypocrisy, Inconsistency, and the Moral Standing of the State  
  Kyle Fritz (Mississippi)  
  The Legal Chartism of Jan Patočka and Liu Xiaobo  
  Daniel Brennan (Bond) | Building 4, Level 3, Room 37 |
<p>| 5pm - 6pm | <strong>Annual General Meeting</strong>                                             | Building 4, Level 3, Room 34       |</p>
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<td><strong>SESSION A</strong></td>
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<td>Ecological Vulnerability and the Devolution of Individual Autonomy</td>
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<td>Katie Woolaston (Griffith)</td>
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<td>How Do We Think About Lolita? Difference, Alterity and Animal Liberation</td>
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<td>Luce Irigaray on Nature and Law</td>
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<td><strong>SESSION B</strong></td>
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<td>The Place of Religion in Human Rights Law: Distinguishing Freedom of Religion from the Right against Religious Discrimination</td>
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<td>Tarunabh Khaitan (Melbourne) and Jane Calderwood Norton (Auckland)</td>
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<td>Religious Law and Legal Order: Conflict or Coexistence?</td>
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<td>Rob Mullins (UQ)</td>
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<td>Law as Promises</td>
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<td><strong>Keynote Session</strong></td>
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<td>Commentators: Ben Golder (UNSW), Honni van Rijswijk (UTS) and William MacNeil (SCU)</td>
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<tr>
<td>1pm - 2pm</td>
<td><strong>Lunch and farewell</strong></td>
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WHAT IS LEGAL INSTRUMENTALISM?
Sina Akbari (LSE)
The terms instrumentalism, consequentialism, utilitarianism and welfare economics are often used interchangeably in the private law theory literature. In this paper I provide a close examination of the formal structure of instrumentalist theories of the law and what they entail. I show that, by accepting instrumentalist justifications of the law, one is committed only to two ideas. First, that a legal practice is justified only insofar as it produces morally valuable social effects. Second, that one requires an empirically-grounded method to show how the legal practice produces those social effects. Beyond these two commitments, the formal structure of an instrumentalist justification of private law can accommodate a range of normative positions, including non-consequentialism about morality.

INFORMAL CONSTITUTIONALISM AND THE ROLE OF POLITICS
James Allan (UQ)
This paper considers how best to understand the notion of informal constitutionalism. It starts by looking at the notion of constitutionalism more generally, then compares the formal and informal varieties. It finishes by discussing the role of politics in constitutionalism. Along the way various common law countries are slotted into different categories.

ON THE BACKS OF MIGRANT WORKERS – IMPORTED LABOUR IN THE AUSTRALIAN AGRICULTURE SECTOR
Sayomi Ariyawansa (Melbourne)
Building upon the notion that the protective function of labour law is its theoretical basis, this paper posits that the proper scope of labour law as a discipline includes acknowledging the state’s role in determining the composition of its labour force through immigration policy. The persistent mistreatment of temporary migrant workers in the Australian agriculture sector provides a focal case for examining this intersection between immigration policy and labour law. In surveying the historical development of labour migration pathways to Australia, purposed towards ‘nation-building’ and the creation of the ideal labour market, this paper develops a concept of state responsibility for these temporary migrant workers that is grounded in the state’s bare instrumental use of their labour contribution.

NATURAL LAW AND FEDERALISM
Nicholas Aroney (UQ)
This paper explores the contested relationship between natural law theory and federal theory. It is argued that while there are differences between the political implications of classic natural law and modern federalism, the differences are not nearly so great as some have supposed. Federalism is an outworking of a conception of the human person and human sociality that owes a great deal to natural law theory and political practices that reach deeply into the middle ages. This paper seeks to spell out the nature of those conceptions, theories and practices.

HUMAN RIGHTS AND EVERYDAY JUSTICE: HARMONY IN THE MIRROR
Florentina Benga (Bond)
This paper argues that as the concept of law should mirror the notions of culture, values and self, so human rights must be reflected in ‘everyday justice’ and not simply in the formal law of the state if they are to be meaningful. It does so by drawing on philosophical discussions on natural law with reference to the concept of law as examined by the community as a whole, on the one hand, and legal professionals, on the other hand. The paper specifically refers to the right to education and the right to justice from the Universal Declaration of Human Rights, three levels of justice (formal, informal and everyday), and their association with traditional and contemporary legal education.

THE LEGAL CHARTISM OF JAN PATOČKA AND LIU XIAOBO
Daniel Brennan (Bond)
The paper explores and compares the unique application of chartism contained in the work of Jan Patočka and Liu Xiaobo. Patočka and Liu, through their respective involvements in Charter 77 and Charter 08, employed a chartist dissident tactic of exposing social injustice through charter movements; however, rather than calling for legislative change, their respective charter movements demand that existing laws be respected (which the respective Czechoslovakian and Chinese governments were not contemporaneously respecting). The paper explores the specific dissident philosophy at the heart of this appeal to legality as a form of dissent.

THE PHILOSOPHY OF PROPORTIONALITY
Mikayla Brier-Mills (Bond)
This paper considers the philosophy of proportionality. The author embarks on the question of whether ‘proportionality’ is evidence of morality in the law and thus a positivist attempt to introduce a natural law concept to the law. In so doing, the article de-constructs how the principle of proportionality has been constructed in the courts of Germany, Switzerland, Canada, the United Kingdom and Australia, proving that the uniform nature of the principle is due to its moral foundations. The author ultimately concludes that proportionality is an attempt to objectify morality so that moral judgments can be rendered by all courts, in the least subjective way possible, in spite of location.

HOW DO WE THINK ABOUT LOLITA? DIFFERENCE, ALTERITY AND ANIMAL LIBERATION
Zali Brookes (UQ) and Jonathan Crowe (Bond)
This paper outlines an approach to animal ethics informed by the writings of Luce Irigaray and Emmanuel Levinas. This approach is developed through a contrast with Peter Singer’s well known theory of animal liberation. The two perspectives are explored through the prism of the ethical issue of animal captivity—in particular, the life of a captive orang named Lolita. Singer’s theory extends ethical consideration to non-human animals to the extent that their interests are analogous to those of humans. We argue, by contrast, for an approach that emphasises the irreducible difference and otherness of non-human animals as the foundation of their ethical status. The case of Lolita, in particular, illustrates the capacity for individual animals to unsettle our self-centred ethical outlook and make claims on us by virtue of their alterity.

LUCE IRIGARAY ON NATURE AND LAW
Catherine Carol (UQ)
The idea that human society is a victory over natural immediacy is a salient feature of modern law. Philosopher Luce Irigaray along with other contemporary thinkers argue the generative logic of nature is erased through superimposing a rational order which reflects the abstractions and values of an historically masculine embodiment and thinking. This paper will situate Irigaray’s philosophy on sexual difference within the natural law tradition. To do this, I focus on her contention that sexual laws, based on human nature being sexually differentiated, serve in part to remedy the elision of feminine thinking which in turn provides a critical standard to evaluate dualistic thinking encased in Western law.

A THEORY OF CONTRIBUTIVE JUSTICE
Kimberly Chuang (Michigan)
For a number of legal and political theorists (Liam Murphy, Thomas Nagel, Richard Epstein, and Gerald Gaus among them), the fair allocation of individual tax liabilities has been principally a matter of distributive justice. The fairness of tax schemes, for these theorists, is subsumed to the question of distributive justice: fairly allocated tax liabilities are just those that are compatible with the preferred theory of distributive justice. I propose a distinction here between principles of distributive justice that specify what is owed to people (which includes a division of the social surplus), and principles of contributive justice, which tell us what it is that people owe. Even a comprehensive specification of distributive justice leaves indeterminate how the burdens of running a society should be allocated. I argue that one particular principle stands out as a candidate principle of contributive justice: a principle of contribution in accordance with ability. A principle of contribution grounded in ability, I show, is more closely allied with a view of society as a cooperative enterprise.
The new natural law theorists, such as Germain Grisez and John Finnis, argue that intentional human action is oriented towards a plurality of basic goods. These basic goods render human action intelligible. The intelligibility of an action is a necessary, but not sufficient, condition for its reasonableness. What, then, does it mean for an action to be intelligible or unintelligible? This paper argues that actions are intelligible or unintelligible relative to a background context of social practices. A theory of the basic goods, then, is at least as much an interpretive theory of social practices as it is an ontological account of human nature. This understanding of intelligibility reveals an important connection between the basic goods and the common good. The common good, understood as the project of creating a social environment that offers a wide and generally accessible array of modes of human flourishing, not only facilitates pursuit of the basic goods, but makes the goods possible. It does this by creating a context within which judgments can be made about the intelligibility of intentional conduct.

UNDERSTANDING LAW AS A MACINTYREAN ‘PRACTICE’

Andrew Curtin (UE)

MacIntyre describes modern positive law as being - like all modern culture - ineluctably tainted by liberal individualism such that a state's particular laws, incapable of instantiating a non-existent consensus about the good, can never meet a natural law criterion of authoritativeness and so cannot foster virtue nor be transformed by its practitioners. Using insights from Berman and Hayek, this paper will attempt to refine MacIntyre's functionally positivist and implicitly jaundiced account to show the positive law as being capable of bearing a conception of the good. This will allow the discipline of law to be understood as a MacIntyrean ‘practice’.

EQUAL VOICE LIBERALISM AND FREE PUBLIC RELIGION: SOME LEGAL IMPLICATIONS

Alex Deagon (QUT)

This paper proposes some potential legal implications for free public religion in the context of 'equal voice liberalism'. Equal voice liberalism and its antecedent connections to priority for democracy are first outlined in conjunction with an analysis of free public religion. The paper subsequently argues that equal voice liberalism is a framework conducive to facilitating free public religion while preserving equality. In this context the paper attempts to give more analytical and evaluative precision to the commonplace ideas of freedom and equality in terms of proportionate, reasonable accommodation of difference. Finally, the paper considers how such accommodation might inform laws which govern public religion in both associational and individual forms.

HYPOCRISY, INCONSISTENCY, AND THE MORAL STANDING OF THE STATE

Kyle Fritz (Mississippi)

Some have argued that states like the United States are hypocritical and so lack the moral standing to hold socially deprived offenders responsible for their crimes. I argue that the US lacks the standing not because it is hypocritical, but because it inconsistently holds its citizens responsible. This inconsistency undermines standing for the same reasons that hypocrisy undermines standing; instead of making an unfair exception of itself, the state makes an unfair exception of others. This means that the state lacks the standing to hold anyone responsible for a crime for which it holds its citizens responsible inconsistently. Reforming the justice system to regain standing is vital.

PUBLIC INTEREST AND PUBLIC POLICY IN PRIVATE LAW

John Gardner (Oxford)

The paper explores, and defends, the idea that private law exists to serve the public interest. The main public interest that private law exists to serve is the public interest (an interest that we all share) in justice being justly administered. That may sound like a platitude, but it is not. Justice can also be unjustly administered. In focusing on the ideal of justice inter partes some writers on private law neglect the third party always present or looming in private law (namely, the court) and the extra injustices it may perpetrate even when correctly administering justice. Reflection on this problem opens the way to consideration of the role of public policy in justifying private law doctrines and decisions. Can the minimization of injustice be regarded as a public policy? Some ways of thinking about 'policy arguments' in private law suggest that it cannot. The paper will argue that the principal contemporary doubts about the role of public policy in justifying private law doctrines and decisions are owed to grossly simplified views about what public policy is or includes. Public policy work is mistakenly thought to be a kind of bean counting from which private law needs to be kept safe. That private law needs to be kept safe from bean counting will not be doubted. But public policy in turn needs to be kept safe from bean counting for exactly the same reason, viz. that not everything worthy of political attention is a bean to be counted.

RELIGIOUS LAW AND LEGAL ORDER: CONFLICT OR COEXISTENCE?

Kaisa Iso-Herttua (Helsinki)

Minorities' legal orders are not a new phenomenon in Europe. In the Middle Ages, the overlapping systems of law and legal norms coexisted in a system. Ever since John Locke argued for the separation between the state and church the European paradigm expected religious conviction to be expressed more or less privately. Ayelet Shachar has illuminated the risks when diversity is privatized. Minorities' 'split status' in family law matters need to be recognized. The Minority Legal Orders in United Kingdom study by Maleia Malik shows that the most vulnerable are the minorities in the minority who are left without the power to protect themselves.

JUDICIAL ADHERENCE TO THE 'MINIMUM CORE OBLIGATION' OF THE RIGHT TO HEALTH IN BANGLADESH: A CRITICAL REVIEW

SMT Karim (Macquarie)

This paper examines how a right to health, expressed as a 'minimum core obligation' under international law, can be advanced within the constitutional framework of Bangladesh. Reinforcing this right is important within the post-2015 Development Agenda under the UN SDGs. Drawing upon examples the success of other jurisdictions to develop minimum core obligations of a right to health, it is argued that courts have a key role to play in actively enforcing a right to health to benefit poor, vulnerable and marginalised people. This paper proposes that judicial adherence, through interpretation of domestic and international law, may legally and constitutionally become a best compliance mechanism to define and measure the ‘minimum core obligation’ of a right to health in Bangladesh.

THE PLACE OF RELIGION IN HUMAN RIGHTS LAW: DISTINGUISHING FREEDOM OF RELIGION FROM THE RIGHT AGAINST RELIGIOUS DISCRIMINATION

Tanarab Khaitan (Melbourne) and Jane Calderwood Norton (Auckland)

This paper argues that, while they are often conflated, the right to freedom of religion and the right against religious discrimination are in fact distinct human rights. Religious freedom is best understood as protecting our interest in religious adherence (and non-adherence), understood from the committed perspective of the (non)adherent. The right against religious discrimination is best understood as protecting our non-committal interest in the unsaddled membership of our religious group. Thus understood, the two rights have distinct normative rationales. Key doctrinal implications follow for the respective scope of the two rights, whether they may be claimed against non-state actors, and their divergent assessment of religious establishment. These differences reveal a complex map of two overlapping, but conceptually distinct, human rights which are not necessarily breached simultaneously.

THE FUTURE OF THE NATURE OF LAW: A POST-HUMAN PERSPECTIVE

Gunoo Kim (Gwangju)

With the rise of the emerging technologies for 'enhancing' human beings, human beings are gaining more opportunities than ever before for becoming ‘better’ in varying respects-including their physical, cognitive, emotional, and even moral capacities. In a word, human beings are becoming ‘post-humans’, and the history of human beings is becoming that of post-humans. Given this dramatic change, what would the law be like in that era? Drawing upon imagination and analysis, I will discuss (i) how the post-humanization is supposed to change human nature, (ii) how this change, if any, is supposed to reshape the common foundation for positive and natural law as well as the way we understand them, and (iii) what the resulting reshaping implies for the nature of law-the perennial topic of legal philosophy.

CITIZENSHIP BY INVESTMENT AND THE CITIZEN OF TOMORROW

Michael Krakat (Bond)

Recalling Nikolai Gogol's 'Dead Souls', counting citizen-subjects where
there are none, today’s market citizens prove ever elusive, but with a progressive, global claim. In a race to personhood, leveraging passports of the world, some inventive nations have struck a market deal between economic growth and globalizing their ‘own’ sovereignty. Beyond Poltemkin’s proverbial ‘plasterboard villages’ of developers and real estate agents praising the value of citizenship, legal schemes of a commoditizing Citizenship by Investment hold bold promises for citizenship’s future. For now, however, these schemes challenge Georg Jellinck’s organization of statehood (territory, population, government) as well as Hans Kelsen’s account of citizenship as the ‘personal sphere of validity of the legal order’ in an irreverent bid to pluralizing a citizenship of tomorrow, unbound beyond time and territory.

THE SPARK THAT STILL SHINES: JOHN CALVIN ON CONSCIENCE AND HUMAN DEPRAVITY
Constance Youngwon Lee (UQ)
John Calvin’s bleak doctrine of postlapsarian human reason has commonly overshadowed his stature around that ‘some sparks still shine.’ This article proposes that Calvin’s account of ‘conscience,’ by conserving an illuminated space in human nature, makes entirely possible a formal doctrine of natural law. Calvin employs the mutual yet asymmetrical relationship between the knowledge of God and human reason to frame his anthropology. According to this, human reason was originally created to perfectly access knowledge of God, but after the Fall can only attain imperfect access. Within this broader framework, by adopting a dialectical of dual perspectives, Calvin maintains that, however fallen, human nature still partially reflects the imago Dei as first intended. As through a glass darkly, this divine image is reflected in human conscience endowing it with sufficient knowledge for moral discernment. Moreover, Calvin’s emphasis on ‘common grace’ in the preservation of this knowledge allows him to simultaneously maintain human accountability and inexcusability before God. In this way, Calvin’s account of conscience enables him to hold both apparent extremes in tension: the universal moral agency of human beings and the transcendence of norms they pursue.

THE LEGAL THOUGHT OF ROBERTO UNGER
Julian Ligertwood (Victoria)
In this paper I set out the basic argument of my PhD thesis on the legal thought of Roberto Unger which is in its final drafting stages. I argue that Unger’s legal thought is of contemporary significance both for its insightful account of contemporary styles of legal analysis and for its clear rationale for the hope of achieving radical reform in part through law. But while his critical jurisprudence is clear, coherent and persuasive, I argue that his normative jurisprudence remains problematic both in terms of developing it in practice and in terms of explaining how social theory can inform, or place restraints on the normative practice of institutional imagination.

WHO IS THE FACE OF A BUSINESS?
Matthew Lister (Deakin)
It seems reasonable to most observers to hold some employees to higher standards for their non-employment behavior. When, for example, top managers or directors of a company are found to be engaged in highly unethical or illegal behavior, this is often seen to reflect poorly on the company and be grounds for dismissal or reprimand. However, with the rise of social media, the ability to connect the ‘bad acts’ of individuals with their place of work has grown, making a much larger population potentially at danger for employment consequences of non-employment behavior. In this paper, I provide means of deciding which employees might reasonably be thought to be a ‘face’ of a business, and thereby held to higher standards, and when such standards are unreasonable, even in a social media dominated environment.

PROCEDURAL JUSTICE, RELATIONAL THEORY AND ALTERNATIVE DISPUTE RESOLUTION
Therese MacDermott and Denise Meyerson (Macquarie)
This paper explores what makes legal procedures just in the ADR context, which differs from the adjudicative context in that the justice of procedures cannot be directly tied to their accuracy in leading to correct legal outcomes. One well known view is that ADR procedures are just when they make it possible for the parties to reach an informed and voluntary agreement. We examine the flaws with this approach, explaining why the ideas of consent and autonomy are incapable of doing all the justificatory work. Instead, we suggest that ADR processes should be evaluated through the lens of relational factors, such as voice, respectful treatment, and the perceived trustworthiness and neutrality of third parties involved in decision-making processes. We draw on empirical research which shows that perceptions of procedural justice are tied to these relational or interpersonal aspects of treatment and contend that ADR processes should speak to these relational concerns as a matter of justice.

RULES, PERCEPTION AND EMOTION: WHEN DO INSTITUTIONS DETERMINE BEHAVIOUR?
Brendan Markey-Towler (UQ)
This paper seeks to contribute to institutional theory by providing it with a stronger basis in cognitive and affective psychology. We organise this contribution around the central question of what psychological preconditions must exist for institutions to determine behaviour and order our societies. We defend the notion that institutional theory may gain from such a contribution relative to the major existing currents of institutional thought. We then introduce new theory of the mind as a network structure within which the psychological process operates as an integrative framework which we might use to integrate insights from cognitive and affective psychology into institutional theory. We discover that institutions must be expressed as rules in mental networks which guide thinking and behaviour, be embedded within a cognitive apparatus such that they are called to mind by perception to so guide thinking and behaviour, and be anchored to emotion such that they are endowed with urgency in order for them to have a hold on individual behaviour. From this theory we derive definite predictions, as well as policy insights.

PRIVILEGES AND JUSTIFICATIONS
Rob Mullins (UQ)
This paper considers the relationship between privileges and justifications in legal doctrine, particularly in private law. A review of the literature on legal privileges reveals confusion about how the two concepts relate to one another, if they relate at all. In his discussion of the Supreme Court of Minnesota’s famous decision in Vincent v. Lake Erie Transportation Co, for instance, John Goldberg (2015) argues that it is inapt to label the case as concerning a ‘privilege’ of private necessity, partly on the ground that the necessity in question is functioning as a ‘denial or justification rather than an excuse’. I consider the philosophical relationship between privileges and justifications in greater generality. I argue that, granted certain plausible assumptions, justifications and privileges might logically relate to one another in several ways.

THE RAWLISIAN NOTION OF COLLECTIVE SELF-DETERMINATION: A RECONSTRUCTION
Jayani Nadarajalingam (Monash)
Paul Weilthman, in his recent work, puts forward a reconstruction of Rawlsian political autonomy that, I argue, is incomplete. There are two distinct components of political autonomy at work in the Rawlsian notion of ‘full autonomy’ which Weilthman conflates. In order to identify the confusion, I put forward a reconstruction of the second component of Rawlsian political autonomy, ‘collective self-determination over time’, that is quite distinct from the reconstruction provided by Weilthman. My reconstruction will bring to light both a new way of understanding the relationship between A Theory of Justice and Political Liberalism and, relatedly, an appreciation of Rawls’s methodological approach to political philosophy as broader, in scope, than his methodology of political liberalism.

THE RULE OF LAW WITHOUT THE CONCEPT OF LAW
Hillary Nye (LSE/Alberta)
Debates about the nature of law are often said to have reached an impasse. I suggest that this raises a problem for our inquiries about the rule of law. Many theories of the rule of law define its demands according to the idea of being constrained by law. This understanding of the rule of law is problematic, because it requires us to settle the further, fraught, question of what law is. I propose a different understanding of the rule of law – one that can be understood in purely normative terms, without recourse to notions of law. We should understand the rule of law as a ‘thick concept’: a normative concept with descriptive content that points us towards the idea of being controlled by rules and constrained by our institutional history.
CLARIFYING THE TASK OF LINGUISTIC POLITICAL PHILOSOPHY
Lukas Opacic (Sydney)
Contrary to the claims of (the later) Wittgenstein, J.L. Austin, and others, mainstream political philosophers over the last 50 years or so have come to see the problems of political philosophy not as the symptoms of an ‘illness’ or the products of linguistic confusion, but rather as real and important questions about which they as political philosophers can say something meaningful. On the other hand, the philosophical hinges upon which these philosophers have swung their allegiances towards the mainstream view are somewhat more difficult to locate, and this is particularly the case in political philosophy. In fact, one of the only conscientious treatments of ‘linguistic’ political philosophy in the literature is that of David Miller all the way back in 1983. In light of this fact, it is not a stretch to say that among mainstream political philosophers the received view is that ordinary language philosophy has had its day and can now be, for the most part, ignored. This paper sketches an argument that pushes back against this view by way of an examination of Miller’s exposition of it. The paper shows that in failing to accurately characterize its target, Miller’s argument fails to land the required blow to linguistic philosophy. Given the way in which Miller’s argument faithfully reflects many of the arguments made by mainstream philosophers against linguistic philosophy, the value of the argument in this paper is that it shows linguistic philosophy is more robust than mainstream philosophers tend to assume.

THE ROLE OF RECOGNITION
Nicole Roughan (Auckland)
What is recognition in a rule of recognition? What amounts to recognition of law’s claim to authority? In its attempts to explain law’s normativity by reference to ideas of validity and/or justification, analytic jurisprudence has had surprisingly little to say about the cognitive and normative phenomenon of recognition itself. This paper, which maps out a larger project on Law and Recognition, argues that recognition is in need of fresh attention, to address questions about the separation and interaction between recognition of norms and persons; about law’s interruption of mutual practices of inter-personal recognition, and about the challenges of recognition posed by the plurality of legal systems and the persons subject to their claims to authority. For when there are persons who are not recognized or are mis-recognized by law, or who do not recognize law’s claim to authority or recognize alternative claims to authority, then the role of recognition itself may cease to have the normative effect that legal theory has assumed it to have.

LAW AS PROMISES
Angelo Ryu (Michigan)
Laws are promises. We ought to follow promises. This best explains legal authority. Laws entail a reliance interest unique to promises. Promissory obligations are special obligations. This bounds political obligation. The nature of promises delimits the moral nature of law. This account has an obvious objection. Promises are discrete. They oblige only the speaker. Thus, a problem of determination arises. Who speaks the law? Many point to legislators. This paper introduces the ghostwriter problem in response. Who authors a ghostwritten autobiography? I argue that we are the law’s speaker. Therefore, laws have promissory content that obliges us as individuals.

THE INEFFICIENCY GAP – EPISTEMIC LIMITS OF JUDICIAL AUTHORITY
Mrinal Singh (Dartmouth)
What is judicial authority? Few cases make it to trial. Judges are limited in so-called hard cases. We ought to constrain judicial power accordingly. I use formal methods to examine the nature of incommensurable values in legal proceedings. Consider a civil trial engaging two dissatisfied groups, Group A and Group B. I argue that the law ought to maximize utility. Using Edgeworth Boxes from microeconomic theory, I show that judges are currently unable to consistently reallocate A and B to a Pareto efficient outcome – one where a group cannot be made better off without making the other worse off. This indeterminacy causes harmful inefficiency. A coherent theory of judicial power must account for this epistemic limitation.

REASONING WITH AUTHORITATIVE DIRECTIVES
Dale Smith (Melbourne)
When one is subject to a (morally legitimate) authoritative directive, what does that directive give you reason to do? One appealingly simple answer is that the directive gives you reason to do what the authority told you to do. (Perhaps it gives you reason to do other things as well, but it at least gives you reason to do that.) If the authority commanded you to D, then you have reason to D. Indeed, on one view, this answer follows from the very nature of legitimate authority, as involving a moral power to create obligations in others by one’s say-so. I shall offer some reasons to reject this simple picture of the reason that an authoritative directive provides. I shall then sketch, in a very preliminary way, a more complex picture of the reasons provided by an authoritative directive.

INTERESTING THINGS TO DO WITH A DEAD GRUNDNORM (THROUGH A LEAP WITHOUT FAITH)
Iain Stewart (Macquarie)
The foremost Kelsen-scholar, Stanley L. Paulson, has pronounced the Pure Theory of Law seriously unwell, stricken by its creator’s own hand, and no longer fit to form a ‘third way’ between fact-based legal positivism and natural law theory. The blow was struck in 1962, when Kelsen confessed that the Pure Theory’s keystone, the concept of a basic norm (Grundnorm), was self-contradictory; although in 1964 he tried to rescue it with Vahinger’s dubiously extended idea of ‘fiction’. Paulson contends that, with this and parallel moves, Kelsen kicks away the Kantian foundations of his ‘normative’ legal science. The Pure Theory contains the most developed form of the hierarchy conception of law (Stufenbaulheft), centering on ‘legal validity’ in the public-law sense, which is judicially orthodox and
I think generally accurate. I shall attempt to conserve some form of hierarchy theory, by tweaking it inside out with the help of a more critical counterpart to the concept of a basic norm. This will not belong to a ‘third way’, however, but to a different kind of way.

**NATURAL LAW IN REFORMED CHRISTIANITY: HISTORICAL DEVELOPMENTS AND CONTEMPORARY CONTRIBUTIONS**

David VanDrunen (Westminster Seminary California)

In early modern Europe, Reformed Christian scholars widely embraced the idea of natural law, although they did not share a single theory about it. Their understanding of natural law shaped both their theology and their reflections on political order and resistance to tyrannical government. Although natural law fell into disfavor among many prominent Reformed thinkers in the twentieth century, it has experienced a renaissance in the early twenty-first. In this paper, I discuss these historical developments and also reflect on the challenges, prospects, and possible contributions of this renewed Reformed natural law thought for contemporary political and legal theory.

**THE ARGUMENT FROM CONSENT FOR A MORAL OBLIGATION TO OBEY THE LAW**

Kevin Walton (Sydney)

The argument from consent for a moral obligation to obey the law is generally thought to be undermined by the fact that most of those to whom the law applies do not consent. I disagree. Yet questions about the argument remain. I consider some of them.

**POLITICAL CONSTITUTIONALISM: LEGAL FORMS AND LIBERAL NORMS**

Edward Willis (Auckland)

This paper takes seriously the idea that political constitutionalism can be used as a model for public law analysis. With specific reference to the archetypal political constitution of New Zealand, it demonstrates how political constitutionalism explains and justifies key aspects of real world constitutional practice. However, the analysis also indicates that in practice constitutional politics can be sensitive to legal processes and liberal norms in ways that are difficult to reconcile with political constitutionalism as traditionally understood. The paper therefore challenges the conventional characterisation of political constitutionalism as being ‘prescriptive without prescribing much’ and suggests the need for a richer account of what is constitutional about politics.

**THE VICTORIAN VOLUNTARY ASSISTED DYING ACT 2017: SOME QUESTIONS**

David Wood (Melbourne)

The paper explores certain features of the *Victorian Voluntary Assisted Dying Act 2017*. It is concerned in particular with the Act’s handling of the sequence of events following the completion of the ‘request and assessment process.’ The paper examines the concept of a ‘voluntary assisted dying permit’ and considers how the role of the ‘contact person’ could be developed. It explores how, through expansion of the Act’s eligibility criteria, the assisted suicide and voluntary euthanasia regime it establishes could serve the social end of suicide prevention.

**ECOLOGICAL VULNERABILITY AND THE DEVIATION OF INDIVIDUAL AUTONOMY**

Katie Woolaston (Griffith)

When it comes to wildlife law and management, individualised conceptions of autonomy are often directly incompatible with species protection. Autonomy is so internalised that stakeholders often rebel against state attempts to regulate. Competing personal interests and their link to individual autonomy can result in conservation conflicts that become ‘wicked problems’—unsolvable by traditional means. However, Vulnerability Theory considers that individualised conceptions of autonomy are a myth that needs to be removed from our institutions. In wildlife management, we are already voluntarily giving up some of the more institutionalised notions of autonomy. A return to community, place based governance has meant that some individuals are more willing to relinquish traditional conceptions of autonomy and replace it with a version that gives them a voice in decision-making. When the involvement of state fosters a sense of place and a sense of community, while allowing for different voices, we can simultaneously increase autonomy and reduce our ecological and personal vulnerability.
Professor John Gardner

John Gardner FBA is a Senior Research Fellow at All Souls College, Oxford, with the title of Professor of Law and Philosophy in the University of Oxford. From 2000 to 2016 he held Oxford’s Chair of Jurisprudence. Before that he was Reader in Legal Philosophy at King’s College London (1996-2000), Fellow and Tutor in Law at Brasenose College, Oxford (1991-6) and Examination (‘Prize’) Fellow of All Souls College, Oxford (1986-91). He has also held visiting positions at Columbia University, Yale University, the University of Texas at Austin, Princeton University, the Australian National University, the University of Auckland, and most recently Cornell University. He serves on the editorial boards of numerous journals including the Oxford Journal of Legal Studies, Ethics, Law and Philosophy, and The Journal of Moral Philosophy. Called to the Bar in 1988, he has been a Bencher of the Inner Temple since 2002 (although he does not practice). He was elected a Fellow of the British Academy in 2013.

Associate Professor Nicole Roughan

Nicole joined the University of Auckland Law Faculty in 2018, from the National University of Singapore where she was Associate Professor in the Faculty of Law and Deputy-Director of the Centre for Legal Theory. Nicole formerly held appointments at the University of Cambridge, Trinity College, Cambridge, the University of Kent at Brussels, and Victoria University of Wellington. Nicole’s co-edited volume (with Andrew Halpin) In Pursuit of Pluralist Jurisprudence was published by Cambridge in 2017; and her monograph, Authorities: Conflicts, Cooperation, and Transnational Legal Theory by Oxford in 2013. Nicole has also published articles in leading law journals as well as a number of commissioned book chapters.

Professor Margaret Davies

After studying law and English literature at Adelaide University in the 1980s, Margaret completed a doctorate in critical legal theory at Sussex University. Margaret was a foundation staff member of the Law School at Flinders University and has been a visiting scholar at Birkbeck College, Umea University, UBC, University of Kent, and Victoria University of Wellington. She has been a recipient of three Australian Research Council grants, and is a Fellow of the Academy of Social Sciences in Australia and the Australian Academy of Law. From 2010 to 2012 Margaret was a member of the Humanities and Creative Arts Panel of the ARC College of Experts, and chaired the panel in 2011. Margaret is on the advisory boards of Social and Legal Studies, Feminist Legal Studies, and the Macquarie Law Journal. She has recently held a Leverhulme Visiting Professorship at Kent University.

Associate Professor Ben Golder

Ben Golder teaches courses on law and social theory, on public law, and on the politics of human rights, in the Faculty of Law at the University of New South Wales. He holds undergraduate law and English literature degrees from UNSW and a doctorate in legal theory from the University of London. Prior to joining the faculty, Ben taught law at the University of East London, University College London, Birkbeck College and New York University in London.

Dr Honni van Rijswijk

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. Honni has also published articles on the law of obligations, both through her LL.M. work at Trinity College Dublin, and through her work in both her LL.M. work at Trinity College Dublin, and through her work in private practice. Honni has taught at a number of universities in Australia and the United States and currently teaches Torts, International Commercial Transactions, and Law and Literature.

Professor William MacNeil

Professor William MacNeil is the inaugural holder of The Honourable John Dowd Chair in Law, as well as the Dean and Head of the School of Law and Justice at Southern Cross University. MacNeil is a scholar of jurisprudence and cultural legal studies and his most recent book, Novel Judgements: Legal Theory as Fiction, won the 2013 Penny Pether Prize for Scholarship in Law, Literature and the Humanities. He is the editor of the book series, Edinburgh Critical Studies in Law, Literature and the Humanities, and is completing a book on the philosophy of law in science fiction, fantasy and horror.
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