INTRODUCTION TO THE SPECIAL ISSUE

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Recollections may vary…[1]

To reflect on the achievements, milestones and challenges arising in the two decades since the Centre for Public International and Comparative Law ('CPICL') was established, different recollections and interpretations of events are inevitable. As guest editors of this Special Issue of the *University of Queensland Law Journal* ('*UQLJ*'), marking CPICL's first twenty years, we share our thoughts on the Centre's establishment, its goals, evolution, and achievements under three CPICL Directors and eight Heads of School. We are grateful to the *UQLJ* for the opportunity to showcase recent and dynamic research in the fields of public, international, and comparative law through this Special Issue.

I IN THE BEGINNING

In the years preceding 2003, Suri Ratnapala,[2] a newly-minted professor in the TC Beirne School of Law, together with John Foster[3] (School of Economics), set up the Centre for Legal and Economic Study of Institutions ('CLESI'). Having secured a World Bank contract for a good governance project in Sri Lankan courts, CLESI invited ('sub-contracted') Reid Mortensen[4] to include materials on judicial ethics. When Foster left, CLESI was disbanded. Convinced of the merits of a research centre, the team of Ratnapala and Mortensen set about establishing a new centre, this time within the Law School but involving a larger number of scholars. In keeping with their research strengths, the new centre would have a

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1 Statement issued by Buckingham Palace on Behalf of Queen Elizabeth II, 9 March 2021.

2 In 2023, Professor Emeritus of Public Law, TC Beirne School of Law, see: https://law.uq.edu.au/profile/1089/suri-ratnapala.

3 In 2023, Professor Emeritus, School of Economics, see: https://economics.uq.edu.au/profile/2219/john-foster.

4 In 2023, Professor and former Dean of the School of Law and Justice, University of Southern Queensland, see: https://staffprofile.usq.edu.au/Profile/HOS-LawandJustice.

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Public and International Law focus. Nicholas Aroney[5] was brought in as a constitutional law scholar and Anthony Cassimatis[6] as an international law scholar. Jennifer Corrin[7] and Ann Black[8] were comparativists, respectively researching on the South Pacific and Southeast Asia (particularly Syariah law). Reid Mortensen recalls: 'Then we thought it would be richer with you [Ann] and Jenny in, and we all agreed to add comparative law in. Hence, CPICL'.

This was 2003. Charles Rickett, who was about to become Head of the TC Beirne School of Law,[9] was sent the concept and a draft constitution for CPICL. From Auckland, he gave his blessing to both.

A *The Motivation and Goals for Establishing CPICL: 2003–23*

One of the main CPICL architects, Reid Mortensen, recalls four motivating factors:

1. *To have a centre, it must embrace a sizeable number of academics with cognate interests*

Rather than operating as a one- or two-person entity, CPICL needed to ensure long-term viability by having an academic breadth and depth that would see succession in its leadership. From the initial six, the number of CPICL Fellows gradually increased in the first decade to 13 and, by 2023, this number had grown to 29 Fellows and 14 Research Scholars. There have been three CPICL Directors, commencing with Suri Ratnapala, followed by Jennifer Corrin, and the current Director, Anthony Cassimatis. This has brought stability, corporate knowledge, and good governance. CPICL's structure opens a range of leadership roles for both junior and senior colleagues through four positions as Executive Directors of Public Law,[10] International Law,[11] Comparative Law[12] and a Deputy Director,[13] in addition to seminar convenors and program managers.

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5 Professor of Constitutional Law, TC Beirne School of Law, and Director Public Law, CPICL, see: https://law.uq.edu.au/profile/1098/nicholas-aroney.

6 Member of the Order of Australia, Professor, TC Beirne School of Law, and Director, CPICL, see: https://law.uq.edu.au/profile/1092/anthony-cassimatis.

7 Professor Emerita, TC Beirne School of Law: https://law.uq.edu.au/profile/17495/jennifer-corrin.

8 Professor, TC Beirne School of Law. https://law.uq.edu.au/profile/1083/ann-black.

9 Professor and Head of School until 2008. In 2023, Head of School, Auckland University of Technology.

10 In 2023, Professor Nicholas Aroney.

11 In 2023, Dr Cailtin Goss.

12 In 2023, Professor Ann Black.

13 In 2023, Dr Joseph Lelliott.

2. *To provide extra means of research funding for academics in CPICL*

The idea was that, once CPICL started receiving its own income, funds could be allocated to CPICL Fellows to improve their research capacity though seed-funding for grant applications. CPICL Fellows had a slightly more onerous criteria for research output than imposed by the law school, both to raise the standard of research excellence in the area (as would be expected of a centre) and to justify the special treatment they would receive through CPICL's own research funding allocations. In 2013, for example, seed money of $1000 was available to CPICL fellows for preparation of ARC discovery and linkage grant applications. However, CPICL seed-funding ended when the Law School later established its own research-incentive funding system.

3. *To give PhD scholars a sharper research identity and provide collegial mentoring and support*

CPICL Fellows guide the next generation of scholars with 22 Higher Degree Research ('HDR') scholars currently under their supervision. The Centre boasts a dynamic mix of domestic and international HDR scholars from Africa, Europe, Asia, South and North America and the South Pacific. All are welcomed at Centre seminars and events and are supported by Fellows and each other during their HDR milestones and 3 Minute Thesis competitions. Pastoral support was a priority under Jennifer Corrin's leadership with a series of additional workshops, forums and social events.

4. *To be a low, or no, cost research centre*

Fellows were, and are, expected to carry a normal teaching load and, so, the research contribution made through CPICL would be absorbed within the Fellows' standard 40 per cent research allocation or any express buy-out available through earned income. It was a conscious decision not to ask the Law School for money. Apart from a special allocation received for two years under Charles Rickett, CPICL funds come from consultancies undertaken by its Fellows under which CPICL, not the individual consultant, is the funding recipient. The first consultancy was for Nepal's National Judicial Training Academy, with four CPICL Fellows[14] engaged in a 'train-the-trainer' scheme both in-country (Nepal) and at the Law School. Other consultancies included judicial training schemes with courts in Sri Lanka and the Republic of Maldives.

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14 Suri Ratnapala, Ann Black, Jennifer Corrin and Jonathan Crowe.

B *Over the Years*

From 2010 onwards, CPICL developed sub-specialities within the overarching legal research framework. Today there are eight programs, each coordinated by a manager. This leadership opportunity allows for internal and external collaboration within a Fellow's areas of expertise. It sustains connections with External Fellows who are based at universities across Australia and overseas. Current programs are:

(1) Legal Pluralism (with a focus on the South Pacific and Southeast Asia) (Professor Ann Black and six CPICL scholars)

(2) Federalism and Multilevel Governance (Professor Nicholas Aroney and six CPICL scholars)

(3) Disability Human Rights (Professor Paul Harpur and one CPICL scholar)

(4) Cultural Heritage Law (Professor Craig Forrest and four CPICL scholars)

(5) Korean Law (Professor Ann Black and one CPICL scholar)

(6) Indonesian Law (Professor Ann Black and six CPICL scholars)

(7) Law and Religion in the Asia-Pacific (Professor Aroney and four CPICL scholars)

(8) Cartels (Dr Barbora Jedlickova and two CPICL scholars), which is currently under re-structure as the International and Comparative Competition Law and Policy Program lead by Dr Jedlickova.

Over its twenty-year existence, CPICL as an entity has built strong links with international organisations, including the Ministry of Justice in South Korea, the Indonesian Constitutional Court, and with the courts of the South Pacific. The focus on law in the Asia-Pacific has been enhanced by a long-standing collaboration with LAWASIA, the major regional association of lawyers, judges, jurists, and legal organisations in the Asian region. From 2004–20, CPICL was responsible for the editorship of the *LAWASIA Journal.* CPICL's International Law scholars have built enduring links to the Australian and International Red Cross and with the Australian Branch of the International Law Association ('ILA') — a leading global body established in 1873 and currently based in London. In 2018, CPICL entered into a three-year agreement with the Australian branch of the ILA to edit the *Australian International Law Journal*. This agreement was extended for a further 3 years in 2021. The result of CPICL's editorial roles is that there are hundreds of refereed journal articles that are the direct consequence of editorial collaboration among CPICL affiliated researchers.

CPICL has also, over many years, attracted visiting scholars to the Law School who have enriched the intellectual life of both the Centre and the School.

Just to mention a few, these include: Professor James Buchanan, George Mason University and Nobel Prize winner in Economic Science; Professor Stanley Paulsen, Washington University in St Louis, a leading authority on Hans Kelsen's legal philosophy; Professor Viktor Vanberg, Professor of Institutional Economics of Freiburg University; Professor Hoon Phun (HP) Lee, Monash University; Professor Yuan-Chun Lan of the Chinese Culture University of Taipei, Taiwan; Professor Jimly Asshiddiqie, first Chief Justice of the Indonesia Constitutional Court; and Professor Matthias Chauchat from the University of New Caledonia.

There are many individual achievements as well. In the last decade, five CPICL Fellows were recipients of four ARC Future Fellowships and/or Discovery Grants,[15] two became Members of the Order of Australia,[16] and two received Fullbright Scholarships.[17] Over the last five years, CPICL Fellows have secured AUD2,783,886 in grants and consultancies and, in the last two years, CPICL Fellows published seven books, 83 journal articles and 46 book chapters. Of the articles that follow in this special CPICL edition marking the first 20 years of the Centre, six of the eight authors are affiliated with CPICL.

There is no doubt that CIPCL has provided a collegial environment for both established and emerging scholars to flourish. The status of the Centre having recently been endorsed by the university, there is every expectation that it will continue to do so for the next twenty years!

II Content of the Special Issue

We are delighted that Nicholas Aroney, Paul Taylor, Jonathan Crowe, Reid Mortensen, Yvonne Breitwieser-Faria, Sue Farran, Constance Lee, and Simon Miller agreed to publish their work in this special issue. The articles in this issue represent the full breadth of CPICL, spanning articles on issues concerning public, international, and comparative law. The Centre's focus on the Asia-Pacific is also well represented, with articles on Japan's Constitution, the push from pacific nations for Climate Justice, and the tension (and convergence) between the foundations of Confucianism and constitutionalism.

The Special Issue starts with an article by Professors Nicholas Aroney and Dr Paul Taylor, in which they examine the implications of inconsistencies between the *International Covenant on Civil and Political Rights* ('*ICCPR*')[18] and Australian state and territory anti-vilification legislation. As Aroney and Taylor point out, hate speech is becoming an increasingly prevalent problem in Australian society, as it is in many countries around the world, with its reach and impact amplified by social media and other digital mediums. In their article, Aroney and Taylor note

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15 Professors Heather Douglas, Jennifer Corrin, Nicholas Aroney, and Paul Harper.

16 Professors Anthony Cassimatis and Heather Douglas.

17 Professors Paul Harper and Simon Young.

18 Opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

that an appropriate balance must be struck between prohibited statements and the need to protect free speech. They suggest that Australia's legislation needs to do a better job of articulating and striking this balance, observing that Australia's many statutes addressing vilification lack predictability and vary too widely across different jurisdictions. They recommend a move towards conformity, with a single standard of exclusion from prohibited speech, in line with art 19(3) of the *ICCPR*.

From there, the Special Issue turns to constitutional matters with Professor Jonathan Crowe's article on s 6 of the *Australia Acts 1986* (passed respectively by the Federal Parliament of Australia and the Parliament of the United Kingdom). As Crowe explains, the Acts supplement s 128 of the *Australian Constitution* in a significant way: they allow the Commonwealth and the states, acting together, to make particular changes to the country's constitutional arrangements. Crowe proposes that this may point to a special form of sovereignty that enables Australian parliaments to make certain changes; something that he points out may seem undemocratic compared to the referendum process under s 128, but which is nonetheless consistent with parliamentary democracy.

In the next article, Professor Reid Mortensen provides an account of the High Court's decision in *Zurich Insurance Company Limited v Koper* ('Koper') and the preceding litigation in the matter.[19] *Koper* relates to the Trans-Tasman Proceedings Acts passed by Australian and New Zealand in 2013 and designed to create a single judicial area in the single economic market that spans the two countries.[20] Mortensen notes that *Koper* clarifies aspects of the trans-Tasman judicial area and the extent of jurisdiction exercised by courts in Australia in this context. While pointing out some potential problems with the majority's approach in the High Court decision, Mortensen observes that the decision in *Koper* should be welcomed, especially to the extent that it supports the continued operation and integrity of the trans-Tasman judicial area and its approach to jurisdiction for state courts.

Dr Breitwieser-Faria's article turns the Special Issue away from matters of Australian law and into the international sphere, and towards the topics of climate change, conflict, and atrocity-crime prevention. In her article, Dr Breitwieser-Faria comments on the increasing use of litigation as a means of taking action against climate change. She considers the degree to which effective climate litigation may also prevent conflicts and atrocity crimes, given the nexus between climate change and conflict. In her view, while the potential impacts of such litigation remain mostly theoretical or anecdotal in this context, these cases may, where successful, indirectly alleviate conflict risk factors and, in turn, the risk of atrocity crimes.

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19 (2023) 97 ALJR 614 ('*Koper*').

20 *Trans-Tasman Proceedings Act 2010* (Cth); *Trans-Tasman Proceedings Act 2010* (NZ).

Professor Sue Farran's article is also in the realm of climate change. In her article, Farran explores the United Nations General Assembly's *Request for an Advisory Opinion of the International Court of Justice on Obligations of States in Respect of Climate Change*.[21] She explains the Pacific-island State of Vanuatu's leading role in driving this request and its background, before further analysing the questions asked in the Request, the relevant international legal framework, and the potential response of the Court. Farran concludes her article with a consideration of how a potential advisory opinion may be received, as well as what it may achieve.

The Special Issue then moves on to an article by Dr Constance Lee. Lee's article is premised on the argument that contemporary academic definitions of constitutionalism and Confucianism are based on misinterpretations of both Confucian moral theory and constitutionalism. In turn, she explains, these misinterpretations position those concepts as incompatible and obfuscate the normative continuities between them. By using an interpretative method with a dialectical focus, Lee explores the foundational assumptions of classical Confucian thought and the Reformed natural-law tradition and challenges these misinterpretations. She concludes that similarities in these traditions point to a set of common normative underpinnings premised on the moral duty of individuals towards each other and the common good.

The special issue concludes with an exploration by Simon Miller of the (un)likelihood of amendment to the 'peace clause' in Japan's Constitution. Miller explains that the volatile situation in the East China Sea, as well as North Korean nuclear provocations, pose difficult problems for Japan as a country that continues to regard pacifism as key to both its policy positions and national identity. In his view, while there has been gradual re-interpretation of the peace clause (particularly the position that it enables collective self-defence), formal amendment to enable Japanese aggression remains improbable in the foreseeable future. Miller argues that this is particularly the case as long as Japan can rely on its alliance with the US for security in the face of external threats.

III Conclusion

The articles in this Special Issue demonstrate the diversity of research under the CPICL umbrella, as well as the many and important contributions that scholars of public, international, and comparative law continue to make to issues in Australia, the Asia-Pacific region, and around the world. We look forward to CPICL continuing to provide a forum to nurture, support, and drive this research long into the future.

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[21] UN Doc A/RES/77/276 (4 April 2023).