



UNIVERSITY  
OF WOLLONGONG  
AUSTRALIA

LEGAL INTERSECTIONS RESEARCH CENTRE

# Law, Disability and Institutional Violence Against Marginalised Populations

Thursday 17 November 2016

9.00am - 3.30pm

LHA Research Hub 19.2072

University of Wollongong

## Getting to the Workshop

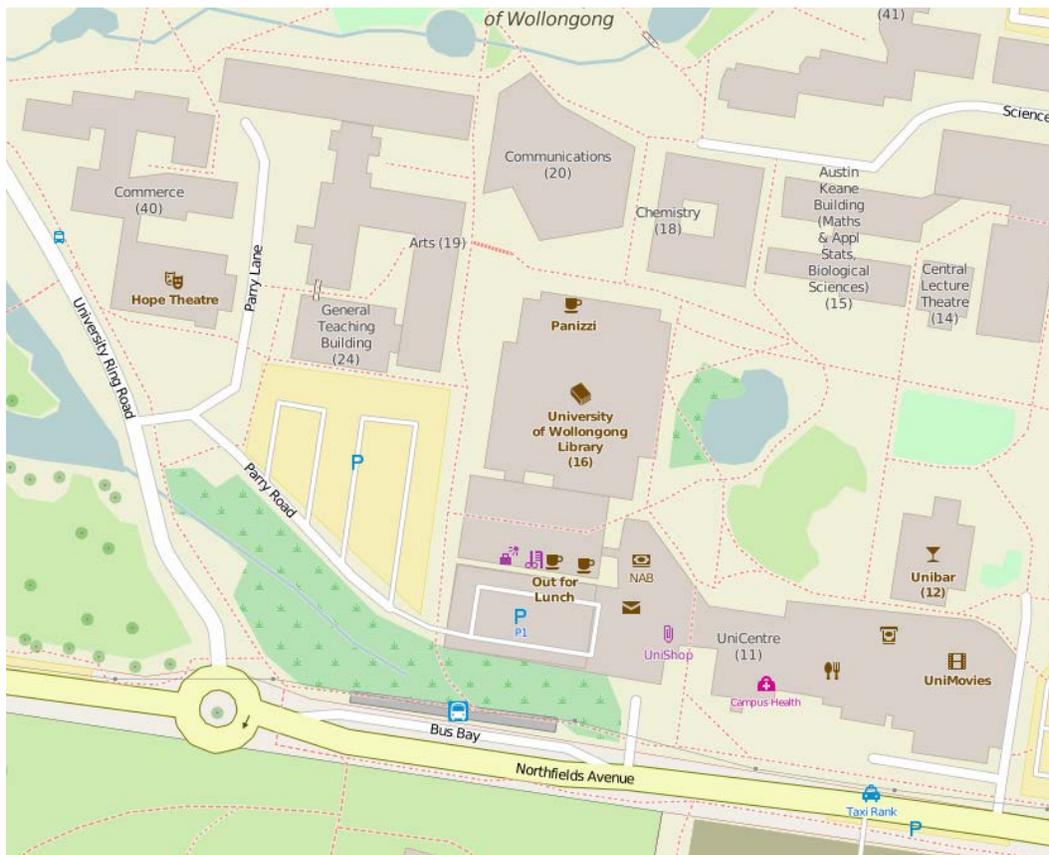
---

Building 19 is located just North of the P2 carpark, next to the library (see map, below). From the Northfields Avenue Bus Terminal, there is a path that heads towards the P2 car park. If you follow this path past the car park, you will see Building 19 on your left.

To reach the Research Hub, take the elevator (near the front entrance of Building 19) to Level 2. Take a right, and you will find the Research Hub (19.2072) at the end of the corridor.

Trains between Sydney and North Wollongong run hourly and the journey takes approx. 90 minutes. A shuttle bus connects North Wollongong station and the UOW campus. The shuttle bus takes about 7 mins. For timetabled or to plan your journey please visit: [transportnsw.info](http://transportnsw.info)

For more information about travelling to UOW see [uow.edu.au/transport](http://uow.edu.au/transport)



## Program

---

<b>9.00am</b>	<b>Welcome coffee</b>
<b>9.15am</b>	<b>Welcome and introductions</b>
<b>9.30am</b>	<p><b><i>Lived Experience, Human Rights Advocacy and Making Violence Visible</i></b></p> <p>Lana Sandas, Why Institutional Violence Remains Above the Law</p> <p>Jessica Cadwallader, Vulnerability: Responsibilising People with Disability for Institutional Violence</p> <p>Linda Steele, Interrogating the Meaning of Harm and Injustice: Locating the Body in United Nations Disability Convention Legal Capacity Debates</p>
<b>10.30am</b>	<b>Morning tea</b>
<b>10.45am</b>	<p><b><i>Spaces and Practices of Violence</i></b></p> <p>Claire Spivakovsky, Chronotopes of Disability, Violence and Dangerousness</p> <p>Ebony Birchall, Violence and the Provision of Healthcare Inside Australian Immigration Detention Centres</p> <p>Leanne Dowse, Understanding Gendered Disability Violence at the Intersections of Criminalisation and Victimisation</p> <p>Lara Palombo, Rethinking the Incarceration of the Diasporic ‘Few’</p>
<b>12.15pm</b>	<b>Lunch and <i>Australian Feminist Studies</i> special issue launch</b>
<b>1.30pm</b>	<p><b><i>Articulating Experiences, Injuries and Injustices of Violence</i></b></p> <p>Isabel Karpin &amp; Karen O’Connell, Bioinequalities: Institutional Responsibility and the Bodily impact of Inequality</p> <p>Honni van Rijswijk, Re-writing Trauma as Violence to Sovereignty</p> <p>Dinesh Wadiwel, Epistemic Justice or Epistemic Violence?</p> <p>Maria Giannacopoulos, Does Exposing State Violence End it? The Artworks of Eaten Fish and other Testimonies</p>
<b>3.00pm</b>	<b>Afternoon tea and concluding discussions</b>

## **EBONY BIRCHALL**

---

Ebony Birchall is completing her Ph.D. in law at the University of Wollongong. Her research involves an examination of the healthcare provided in Australian-funded immigration centres and an interrogation of the role and response of medical professionals to Australia's policy of prolonged and mandatory immigration detention. She is a projects litigation lawyer with Slater and Gordon and is currently working on the Manus Island class action, representing detainees from Manus Island, Papua New Guinea in a negligence and false imprisonment claim in the Supreme Court of Victoria.

### **Violence and the Provision of Healthcare Inside Australian Immigration Detention Centres**

Asylum seekers are a marginalised group who are affected by institutional violence in Australian-funded onshore and offshore immigration centres. The violence of these environments has been documented to cause disability, suffering and trauma. My research interrogates the nature of the healthcare provided in these settings with the aim of challenging our understandings of what constitutes institutional violence and injustice.

By adopting the World Health Organisation's definition of violence, which includes the use of power to cause deprivation, it is argued that the healthcare provided over the last three years in these centres has itself been a source of violence; the death of Hamid Khazaei in August 2014, following the delayed diagnosis and treatment of his fatal illness, is one dire example.

The regulation of healthcare in immigration centres and the law's response to asylum seekers' disability, suffering and trauma will be examined with the aim of improving this marginalised groups' access to the human right to health.

## **JESSICA CADWALLADER**

---

Dr Jess Cadwallader is currently the Advocacy Projects Manager, Violence Prevention at People with Disability Australia, a national representative, human rights and grassroots organisation run by and for people with disability. In this role, she runs the Disability Support for the Royal Commission project, is lead investigator on the Queensland Government's Review to Address the Impacts of Family and Domestic Violence on People with Disability and is an investigator on the Women, Disability and Violence: Creating Access to Justice project, funded by ANROWS. She has also collaborated with Domestic Violence NSW in the development of a set of resources designed to increase the accessibility of domestic and family violence services within NSW.

**Vulnerability: Responsibilising People with Disability for Institutional Violence**

## **LEANNE DOWSE**

---

Leanne Dowse is Associate Professor and Chair in Intellectual Disability at the University of New South Wales Australia where she leads a program of research and teaching aimed at creating knowledge and building capacity to support people with cognitive disability who have complex support needs. Leanne's work utilises a multidisciplinary approach to investigate social justice issues at the intersections of disability and multiple dimensions of disadvantage. She is chief investigator on a number of major Australian Research Council, National Health and Medical Research Council, and government funded grants and holds consultative and advisory positions to government disability and justice sector organisations.

### **Understanding Gendered Disability Violence at the Intersections of Criminalisation and Victimisation**

While it is widely recognised that violence and abuse is disproportionately experienced by women with disabilities as compared to men with disabilities and women without disabilities, the specifics of this intersectional experience vary significantly among women with disabilities. This presentation explores the ways that some women with intellectual disability who experience violence and abuse are marginalised and excluded from the justice and legal systems as victims and so denied recognition and redress, while for others, their experiences of violence and abuse brings about a complex interconnection between victimisation and offending and results in their ongoing lifelong enmeshment in the criminal justice system.

## MARIA GIANNACOPOULOS

---

Dr Maria Giannacopoulos is Senior Lecturer in Socio-Legal Studies and Postgraduate Director at Flinders Law School in Adelaide. She has a law and cultural theory background and conducts critical interdisciplinary research in the areas of sovereignty, colonialism and borders. Her current research project is titled *Global Colonialities: Sovereign Debt, Austerity and Neo-Liberal Assimilation* and interconnects for the first time, the effaced sovereign debt crisis of Australia with the imperialising economic order in contemporary Greece. This project examines contemporary issues of global significance such as: austerity, neo-liberalism, economic development and asylum crises.

### **Does Exposing State Violence End it? The Artworks of Eaten Fish and other Testimonies**

Eaten Fish, a young award winning cartoonist experiencing acute trauma in detention on Manus Island, draws *imminent* harm. His artwork exposes for all who care to look the violence that *will* occur in conditions of detainment and secrecy. In doing this his art also historicises the camp by embedding into the drawing the headstones of those who have already suffered harm to the point of death. ‘Reza’ is written on a headstone, the name of a 23-year-old Iranian asylum seeker who was killed during riots in the same place on 17 February 2014.<sup>1</sup> Another headstone reads ‘Omid’ the name of an Iranian refugee who died after setting himself on fire and remained untreated for hours at the Nauru detention centre.<sup>2</sup> Eaten Fish references stories that we know, stories that have reported on, documented and investigated. And yet the violence has not ceased. In fact,

---

<sup>1</sup><https://www.theguardian.com/australia-news/2014/dec/11/manus-violence-that-killed-reza-barati-eminently-foreseeable-parliamentary-inquiry-finds>

<sup>2</sup><http://www.abc.net.au/news/2016-05-02/omid-masoumali-without-proper-medical-care-for-hours,-says-wife/7374884>

Eaten Fish is subjected to “further violence”<sup>3</sup> as he continues to document the “unspeakable abuses and excesses of the guards and administrators of the camp”.<sup>4</sup>

Moved by Eaten Fish’s visual portrayals of life on Manus Island Processing Centre, an island location turned prison through the domination of Australian law, I was triggered to think about what constitutes evidence of state violence and more importantly, how much needs to be known before the practices will stop? How does the Australian law, author of now well documented violence respond to allegations of this violence? Does evidence have weight when it comes to state produced trauma?

---

<sup>3</sup> <https://theconversation.com/the-tragedy-of-eaten-fish-the-award-winning-cartoonist-on-manus-island-65150>

<sup>4</sup> <https://www.washingtonpost.com/news/comic-riffs/wp/2016/09/02/australia-has-detained-this-iranian-refugee-for-years-now-his-courageous-cartoons-shine-a-light-on-inhumane-treatment/>

## **ISABEL KARPIN & KAREN O'CONNELL**

---

Professor Karpin researches on the bioethical implications of laws governing reproductive technologies, genetic testing and disability. She explores the challenge posed by new biotechnological developments on legal understandings of normality, disability, individuality, and family. She has a BA and LLB from Sydney University, a Masters of Law from Harvard University and a Doctorate (JSD) from Columbia University. Professor Karpin joined the UTS Law faculty in February 2009 having previously worked at the University of Sydney from 1994 to 2008. Professor Karpin is the author and co-author of articles, book chapters and books including recently *Perfecting Pregnancy: Law Disability and the Future of Reproduction* 2012 (with K Savell) published by Cambridge University Press and edited collections such as *Nisker, Bayliss, Karpin, McLeod and Mykitiuk "The Healthy Embryo"* (Cambridge 2010). She is currently involved in two major ARC projects, one exploring the regulation of behaviour as a disability and the other examining family formation using reproductive technology both inside and outside law and across borders.

Dr Karen O'Connell is an expert in discrimination law, particularly sex and disability discrimination, and biotechnologies of the body, neuroscience and genetics. She is experienced in law reform, policy development and managing large research projects. With Professor Isabel Karpin, she holds an Australia Research Council grant on "The Legal Regulation of Behaviour as a Disability" (2015-2018). She joined UTS in 2010 as a Chancellor's Postdoctoral Research fellow, with a project on "Equality Laws in the Biotechnological Age." Dr O'Connell has a BA and LLB from Sydney University, and a Masters (LLM) and Doctorate in Law (JSD) from Columbia University.

### **Bioinequalities: Institutional Responsibility and the Bodily impact of Inequality**

Through our work on what we call 'bioinequalities' we interrogate how stigma works its way into the biological, as well as the way that our biology is impacted by the forces of stigmatisation. We have two related ideas arising from this project to bring to the workshop.

The first is to question whether the current expansion of the category of 'disability' to include challenging behaviours and characteristics is itself a form of institutional violence or remedy. On the one hand, the institutional and legal impulse to categorise offers certain protections, such as through discrimination law. On the other hand, the categorisation as disabled might itself be considered a form of institutionalised violence, locating all the responsibility in the 'non-compliant' body and behaviour of the individual. We suggest instead that the categorisation be turned back on the disabling institution. If the institution is categorised as disabling, its responsibility is foregrounded, and the stigmatising attention on the individual is minimised.

The second idea is whether our right to equality includes a right not to be biologically harmed by inequality. When we look at instances of institutional abuse a common response is to Turn to human rights and argue that the rights of those subjected to institutional violence have themselves been abused. In both human rights and in law more generally, we tend to think of equality as an abstract right. Yet, recent and emerging research in epigenetics and neuroscience emphasises just how much our bodies are physically changed by the experience of disadvantage and inequality. The changes are not only profound but may be inheritable, impacting future generations. Recognising this harm as biological may, at first instance, invite medical and pharmacological solutions, that -- while they have some place in relieving suffering -- do not address the underlying problem. We argue that traditional social responses, such as poverty reduction, social welfare programs and education, must all continue, and in ways that incorporate this new knowledge. But alongside these and individual medical responses, we should also have a legal response to the problem of the bodily impact of inequality.

## LARA PALOMBO

---

Lara Palombo is currently teaching in Critical and Cultural Studies at Macquarie University where she also completed her PhD thesis “The Racial Camp and the Production of the Political Citizen”. She has published in a number of journals including the Journal of Intercultural Studies (2014) and Continuum: Journal of Media & Cultural Studies (2009). Lara is an active member of WIPAN (Women in Prison Advocacy Network).

### **Rethinking the Incarceration of the Diasporic ‘Few’**

In a recent report concerning the death in custody of a diasporic woman, the authorities congratulated themselves for having provided adequate medical support and permitting family members to be there during her final hours. This report I would argue works to re-write penal governance in the texts of the nation as responsive and caring and partakes in what Razack (2015) names as histories of the ‘disappearing’ racialized bodies. More specifically in the settler terrains of Australia, I would argue this report extends what I call is a form of penal minoritization that aggregates, records and categorizes diasporic female bodies as the *few*, criminogenic ethnic minorities and by so doing limits public focus on how the prison industrial complex continues histories of ethnicisation of women. I argue that although a number of significant counter-reports have more recently directed a critical focus onto the racialization of diasporic female bodies within the prison industrial complex (Working Women’s Health 2004; CHRIP/Springvale Monash Legal Service, 2010; Drugs and Crime Prevention Committee 2010) there is still an elusive engagement with the way racial penal governance continues to distinguish and ethnicize diasporic female bodies, and disappearing their lives and deaths (Russell & Carlton 2013; Davis, 2013; Razack 2015).

## **LANA SANDAS**

---

Lana Sandas is the CEO of the Women in Prison Advocacy Network (WIPAN).

WIPAN is a NSW-based NGO, exists to support women affected by the criminal justice system. WIPAN assist this cohort by delivering an evidence-based mentoring program and by advocating for systemic change that will advance the prospects and wellbeing of women in the system.

Lana's contributions to the work of WIPAN are a combination of both her academic qualifications (including a BA in Political Science) and her personal lived experience. She once battled a Heroin addiction whereby multiple years of unresolved trauma and substance abuse led to her eventual stage of criminalisation.

It was during her time in recovery that Lana vowed to dedicate her life to work with and support vulnerable people who have become 'voiceless.' Her work at WIPAN allows her to do this. Via a unique mix of mentoring and advocacy, WIPAN provide women in the criminal justice system with social, emotional and practical support. This has led to growth and empowerment manifested by a variety of pathways to more positive lifestyle choices. As a result, WIPAN clients have improved their overall quality of life and the community has begun to appreciate the reduction of recidivism.

### **Why Institutional Violence Remains Above the Law**

The concept of violence in the community has caused a great stir in recent years, with the Australian government employing a 'crack down' / 'zero tolerance' approach.

It has been a contributing factor to people committing violent offences more often than not being refused bail, resulting in record-breaking increases of remand populations in all states and territories.

Policy makers and the judicial system have, particularly in the last few decades, altered definitions of 'violence'. We now recognise social, emotional and financial abuse- imposed by one member of society to another- as a form of intimidation and violence that may and so often

results in criminal charges, with serious consequences; significantly increasing the prison population.

However what happens when the exact same behaviours, in which are being recognised as 'criminal', involve different characters in different settings? For example, a Correctional Officer and an inmate in a prison setting?

I will explore how and why it has come to be that institutional violence adheres to a significantly different set of guidelines than those that exist beyond the prison gates.

## **CLAIRE SPIVAKOVSKY**

---

Dr Claire Spivakovsky is a Senior Lecturer in Criminology at Monash University. Prior to joining Monash, Claire worked in the community and government sectors, developing a range of social and criminal justice projects which advocated for the rights and needs of marginalized populations. Claire's research explores how experiences of 'difference' are co-constructed by civil and criminal law and justice. She considers how location-specific notions of being 'different' – for example being racialised or living with a disability – are fundamental to the formation and orientation of both civil and criminal justice systems, and how civil and criminal justice tools, technologies and logics propagate specific notions of being 'different' which they expect individuals to embody.

### **Chronotopes of Disability, Violence and Dangerousness**

In this presentation, I would like to speak to some preliminary work I'm doing on the co-construction, transference and at times conflation of disability, violence and dangerousness in specific spatio-temporal realities. For this talk I will focus on the site of the group-home/day-service as a site of institutional violence and excessive (and oppressive) surveillance, and I will sketch the edges of three interweaving threads of disability, dangerousness and violence which trouble me deeply in this regard. These are:

- the complex cycle of institutional/interpersonal violence embedded within so-called 'behaviours of concern'
- the phantasms of the dangerous sexual predators which are imagined to lurk behind harmless, common interactions by people with disability
- the rebranding and normalising of actual violent actions by a person as somethings which is just 'part of the disability'.

My brief talk will be framed by some of Mariana Valverde's recent work on spatio-temporal realities of crime and disorder, and some of criminology's insights into state violence and state crime.

## **LINDA STEELE**

---

Dr Linda Steele is a lecturer in the School of Law and a member of Legal Intersections Research Centre, University of Wollongong. She holds a BA(Gender Studies) and LLB(Hons) from University of Wollongong, a Masters of Public and International Law from University of Melbourne and a PhD from University of Sydney. She was recently a visiting researcher at Osgoode Hall Law School, York University. Linda's research explores the intersections of disability, law and injustice. Her current research focuses on the interrelated areas of: (1) punishment of people with disability, and (2) violence against people with disability. Linda has been a board member of the Women in Prison Advocacy Network since 2008.

### **Interrogating the Meaning of Harm and Injustice: Locating the Body in United Nations Disability Convention Legal Capacity Debates**

The coming into force in 2008 of the United Nations Convention on the Rights of Persons with Disabilities has prompted a wealth of scholarship and activism around the legal implications of Article 12 for medical decision making and, in turn, for the status of non-consensual psychiatric interventions as acts of violence. In my presentation I propose that the existing scholarship on legal capacity is limited in the extent to which it recognizes and engages both with the material harms caused by non-consensual interventions and with survivors' experiences and perspectives of these interventions and their material harms. By turning to feminist and postcolonial critiques of human rights, I question whether these limitations in the existing scholarship are not only related to dominant medicalized understandings of psychiatric interventions per se as therapeutic and good but also to limitations in how human rights law and discourse construct the human rights subject as disembodied and largely beyond pain and suffering. I explore how we might bring harm and the body back into discussions around legal capacity as a way to understand a broader range of injustices inherent in the violence of non-consensual psychiatric interventions and to shift away from epistemically privileging legal and medical understandings of injustice.

## **HONNI VAN RIJSWIJK**

---

Dr Honni van Rijswijk researches at the intersections of law, literature and legal theory, and has written on subjects ranging from the feminist aesthetics of harm, narratives of consent in Stolen Generations cases, and the significance of Virginia Woolf to tort law. She is currently working on a book called *The Figure of the Child in Law's Imaginary*, which examines the significance of the child figure in constituting the authority of law, in legal formulations of responsibility for past and present harms, and to the contemporary rule of law.

### **Re-writing Trauma as Violence to Sovereignty**

I provide a reading of harm and its relation to authority in the novels of Alexis Wright, a leading Australian novelist. I argue that Wright's novels can be read together as an exemplary text that counters state law's representational practices and claims. The figure of the traumatised Aboriginal child has been (and still is) the site of legal violence. What is needed to resist the use of the child figure as the occasion for further violence, I argue, and what this reading provides, can be described as a "counter-imaginary" to law's imaginary. This counter-imaginary rewrites law's narratives and figures and makes visible that which law has occluded—it is a reading that provides a fuller account of harms compared to law's, and demonstrates the relation of "personal trauma" to questions of Aboriginal sovereignty and authority.

## DINESH WADIWEL

---

Dinesh Wadiwel is a Lecturer and Director of the Master of Human Rights at the University of Sydney. His research interests include sovereignty and the nature of rights, violence, race and critical animal studies, and he is author of the monograph *The War against Animals* (Brill, 2015). Dinesh has a longstanding involvement with disability rights movements in Australia, and was a previous Executive Officer of the National Ethnic Disability Alliance (NEDA).

### **Epistemic Justice or Epistemic Violence?**

In this paper I want to continue to explore the relationship between knowledge systems and institutional violence, and their impact on people with disability. Perhaps what is disarming about much violence experienced by people with disability in institutional contexts is that it is "naturalised"; ableism in this sense treats as benign and non-violent institutionalised relationships of force that circulate people with disability.

There has been much recent interest in the relationship of knowledge systems and justice, including for example Miranda Fricker's influential concept of "epistemic injustice" (2007) as either comprising forms of prejudice that discredit subjects (or "testimonial injustice") and / or the systemic failure to provide knowledge resources to allow a subject to be recognised ("hermeneutic injustice"). However such an approach may be less useful for understanding the violence experienced by individuals who are *structurally* positioned within knowledge systems to be silenced and rendered as available for violence. Arguably some people with disability who experience severe forms of repeated "naturalised" violence within institutional contexts have been constructed by knowledge systems exactly in this way. If we have inherited ableist knowledge systems, then is it ever possible to recognise the violence that people with disability experience or address this with justice? (Or perhaps as Gayatri Spivak asked quite some time ago "Can the subaltern speak?")

In this presentation I will turn to Jacques Derrida's *The Beast and The Sovereign* lectures to track the relationship between sovereignty, violence and rationality. I will speculate that perhaps Derrida's late work is useful as a means to understand the violence of ableism which –

like political sovereignty – might be thought of as essentially a relationship of domination with crafts its own order of knowledge through force.