Association of Law, Property, and Society Annual Meeting
University of New South Wales, Australia
May 29th – June 1st, 2025

LONG PROGRAM

****Unless otherwise noted, all meeting events are headquartered at the Law & Justice Building, UNSW*
https://www.unsw.edu.au/maps/campus-maps

Day 1 (Thursday, May 29, 2025)

2:00pm **Meet for walking tour. All are welcome (*steps in front of the Sydney Opera House*)**

2:00pm- **Walking tour to Barangaroo (approx. 2.7km)**

5:00pm- **Welcome Reception and Welcome by ALPS President Jessica Shoemaker at the Library Bar, State Library of NSW (*1 Shakespeare Place. Enter via Hospital Road https://librarybar.sl.nsw.gov.au/contact*); from Barangaroo you can take the Metro (10 mins including short walk to the venue) or walk (23 mins walk) to the Library Bar; note that partners/spouses accompanying conference attendees to the Reception need to have pre-purchased a ticket with conference registration, please contact Helen Karakontis (h.karakontis@unsw.edu.au) as soon as possible if you require a partner/spouse ticket)*

Day 2 (Friday, May 30, 20205)

8:15-9:00am **Registration and Light Breakfast (*register: Ground Floor; light breakfast: Student Lounge, Level One)***

9:00-9:40am **Welcome to Country and Smoking Ceremony (*outside of the Law & Justice Building*)**

9:45-10:45am **Welcome to UNSW (Dean of UNSW Faculty of Law & Justice; ALPS President-Elect Amelia Thorpe) (*Room G23, Ground Floor*)**

Keynote Address: Blake Cansdale (*Room G23, Ground*)

Blake Alan Cansdale is a proud Anaiwan man and the National Director/CEO of ANTAR. Dedicated to empowering First Nations Communities, Blake has a background in legal practice with experience in public policy, lecturing, Aboriginal affairs, business management, Aboriginal land planning and development, land acquisition and land management.

Blake holds a Master of Public Policy and Management from Monash University and a Bachelor of Laws (LLB) / Bachelor Science (major psychology) from UNSW. Prior to joining the team at ANTAR, Blake held Senior Executive roles within the Aboriginal Community Controlled Sector, namely as Chief Operating Officer at Tranby National Indigenous Adult Education & Training, and as Chief Operating Officer at Darkinjung Local Aboriginal Land Council.

Blake is also currently a non-Executive Director of Change the Record, a Director Observer with the Justice and Equity Centre and an Alternate Panel Member of the NSW Sydney District and Regional Planning Panels.

10:45-11:15am **Morning Tea (*Student Lounge, Level One*)**

11:15am-12:45pm **Concurrent Panels Session I (*Level Two*)**

1.1 <u>Submitted Panel: Contesting and Reimagining the Boundaries of Land Governance in Settler States (*CATS Room 201*)</u>

Panel abstract: This panel brings together three Australian scholars to consider the materialities of property through the concepts of ferality, habitat, and sacrifice. Challenging the abstractness and abstraction of contemporary discourses of property in legal practice and research, they call for radical changes to our understandings and practices of land ownership in relation to the more-than-human world. The panel traverses novel extensions of the doctrine of nuisance, the constructive possibilities of ecologically-informed notions of home, and the unhelpful imperviousness of property to address the challenges of climate change.

***<u>Moderator</u>*: Nicole Graham**

- **Nicole Graham, *Property and Sacrifice***

Nearly a decade after the Paris Agreement, there is a disturbing disconnect between the mitigation and/or adaptation objectives of climate change laws and policies, and important private laws which facilitate industrial-consumer societies. The interests and rights of legal persons in lands, waters and natural resources remain intact. Greenhouse gas emissions and biodepletion continue to accelerate through the private ownership and/or use of lands, waters and resources. Perversely shielded by the parallel world of climate laws and policies: corporations and property laws are impervious to the dire need for legal and cultural change; function as barriers to climate adaptation; and effectively sacrifice collective exigencies to the freedoms and interests of 'legal persons' and actual human individuals. The paradigm shift necessitated by decarbonisation, regenerative land use practices, sustainable consumption, and fair trade would require the inversion of this sacrifice – subjecting individual freedoms to the interests of 'distant threatened nations and distant future generations' (Franzen). Successfully mitigating and adapting to climate change would necessarily replace liberalism as the organising logic of law, economy and society with something else. If most habitable lands remained privately vested, 'something else' would involve radical changes. First, we would decolonise and decapitalise how we think and communicate about land as property, relating to it for reasons other than (dis)possession and wealth generation. Second, we would situate our human interests within the complex life networks of lands as particular places. Third, we would learn how to 'sustain good relations among all the beings that inhabit these lands' (TallBear).

- **Sarah Keenan, *Feral Nuisance: Property Law on an Untameable Planet***

In their recent Field Guide to the Patchy Anthropocene, Tsing et al define the feral as that which has been transformed by human infrastructure, remains engaged with human projects, but is not under the control of

human designers (2024: 2, 10). Ferality is produced when human infrastructures 'rupture the temporal coordinations that sustain multispecies life', modifying land, water and air, in ways that causes uncontrollable responses from beings that encounter those modifications (3). In this paper I begin to explore the relationship between ferality and property. Specifically, I examine the tort of nuisance and its engagements with feral life. Historically, non-human agency was deemed incapable of constituting nuisance, as courts saw nature as a generally unthreatening presence against which each landowner must take the necessary precautions. Over the past century, that position has shifted, with courts now being willing to find plantlife and rock formations as nuisances 'in and of themselves'. Examining cases from England and Wales, and from Australia, I argue that law's shift to deem nature a threat to property in land is a response to the growth of ferality, itself a product of colonial and capitalist infrastructures. Property law's attempt to tame and eliminate the feral relies on and reproduces the Lockean fallacy that human subjects can and should control the wild but ultimately tameable planet. To meet the challenge that ferality poses, a more radical framework for understanding more-than-human subjects, objects and the relations between them is needed.

- **Margaret Davies*, Belonging/s: House, Habitat, and Home***

House, home, and habitat are broad ideas that extend from the most practical everyday material conditions for life to extremely abstract theoretical constructs. They each have an extended zone of literal, metaphorical, and associative meanings. These ideas are all connected with the resources and processes necessary for living securely – a complex, changeable, and ongoing condition – but they are often objectified and formed legally into a kind of stasis, things to be owned and/or regulated by human subjects rather than part of the ecological dynamics of life. The conventional abstraction of property, removed from any actual attachment to land or to eco-social conditions both shapes and reinforces this stasis: property as a legal abstraction is normally understood as standing beyond the messy everyday connections that form human and nonhuman lives even as it profoundly shapes and constrains them. The private propertisation of house and home distorts and fragments habitat – the basis for all life – for both human and nonhuman populations. But the idea of home and the highly contested notion of belonging may also offer more constructive ecologically-oriented meanings or attachments that can act as a lynchpin for resituating the privately-propertised and fungible house within the broader relations of habitat.

1.2 Navigating Climate Change: Property Perspectives (*CATS Room 202*)

***Moderator*: Sarah Schindler**

- **Heather Payne*, Adaptive Historic Preservation***

Our response to climate change must include all infrastructure – the totality of our built environment, including locations that have been deemed worthy of historic preservation. The unique collision of climate change and historic preservation poses distinctive problems for adaptation, ones that have yet to be adequately addressed.

The reason is simple: These structures or landscapes were set aside for preservation precisely because of the specific landscape they are composed of or set in or because of the specific features of the structures. By that designation, we are implicitly saying that the goal of the preservation is to essentially stop time – to freeze everything at the moment that is the reason for the historic designation. That implicit goal is now clashing directly with climate change. We no longer have the luxury of thinking that we can save places in their completely unchanged state.

Instead, the choice is more stark: either make changes and hope the essence of these places can be saved, or do nothing and let them be ravaged by climate change, and potentially cease to exist. So which is better – a changed historic property, or none at all? Adaptive management – "learning by doing" with regular evaluations – is part of the solution to this conundrum. By allowing for adaptation based on changing conditions, it can

flexibly work to preserve the essence of the places we have deemed worthy of protection for historic reasons. This project provides a framework for how adaptive historic preservation could work.

- **Marc Roark*, Property and Time***

Property and time are both institutions of the state that frame and dictate hierarchies for individuals, resources, and the state itself. This paper explores the connections of property and time in the focus of three interrelated case studies: the regulation of the environment in the face of man-made development; the role of planning around disaster mitigation; and the role of housing and city development.

- **Ben France-Hudson and Vanessa Johnston, *Managed Retreat and Private Property***

Inevitably Australia and New Zealand will have to develop tools to implement managed retreat. Climate change will render many areas where people are currently living, unliveable. Enabling people to leave these areas in an orderly manner and relocate elsewhere will be one of the biggest adaptation challenges. Robust systems for managed retreat will need to include powers to both voluntarily and compulsorily acquire private property. It will be necessary to exercise these powers well in advance of the risks becoming acute and it will not be possible to view managed retreat as a last resort. To date almost all examples of managed retreat have been post a major hazard event and involved a voluntary buyout by various levels of government using general powers to contract under general legislation. This status quo is inadequate and poorly suited for problems that are getting worse.

This paper explores the need to carefully design regimes for managed retreat by focusing on the private property issues managed retreat raises. We critique the suggestion that planning law, on its own, could be sufficient to implement a managed retreat. Prohibiting existing residential activity by land-use zoning is unlikely to satisfy the constitutional and interpretive presumptions that accompany private property and could have ongoing and difficult property law implications that would lead to a range of perverse outcomes. Ultimately, we suggest that managed retreat is a property law problem. Treating this problem as such a solid foundation for designing appropriate policy and legislation.

- **Jessica Owley (and non-presenting co-author Karen Bradshaw), *Nature as Landowner***

American law, particularly property law, traditionally places humans at the center of legal considerations. This human-centric approach values individuals over communities and prioritizes fixed rules over flexibility. Such an anthropocentric perspective, however, is at odds with a healthily functioning socio-ecological system. To address this imbalance, we suggest reimagining our property doctrines to incorporate nature. In this Commentary, we give three examples of classic property law doctrines taught in many first-year property classes: adverse possession, the doctrine of waste, and customary rights. We explore what it would mean for legal thinkers to reconceptualize nature and the more-than-human world to be actors on the property law stage rather than just the backdrop and the props

1.3 Local Government and Local Spaces: Influence, Interaction, and Power (*CATS Room 203*)

***Moderator*: Doug Harris**

- **Ken Stahl, *The Power of Local Governments to Invalidate Private Deed Restrictions***

Many cities and states facing a housing crisis have taken steps to reform land use regulations that block the production of housing. These efforts have been hindered, however, by the prevalence of deed restrictions that impose overlapping restraints on housing production. In response, cities and states have considered enacting laws to "override" these private deed restrictions. In a previous article, I argued that state legislatures likely have the power to override deed restrictions. This article takes on a related question – do local governments also have the power to override covenants? The doctrine of home rule and other principles place some limitations on local land use powers that do not apply to state governments. In particular, local governments may be restricted in their ability to affect "private law" obligations, possibly including the enforceability of private deed restrictions. Nevertheless, I argue that municipalities do have the power to override covenants. In fact, local governments may be better positioned to do so than state governments. Local governments possess knowledge of local conditions that enable them to tailor overrides appropriately, and municipalities' sensitivity to the concerns of landowners makes it unlikely that they would overreach in regulating private property rights. Local government scholars today are largely divided other whether empowering local governments necessarily means giving free rein to NIMBYs to block needed housing. This article shows that local power need not be synonymous with "no," and there is a way to affirm the capabilities of local democracy without it devolving into unchecked parochialism.

- **Nnamdi Jogwe*, Help or Hindrance: How Inclusionary Zoning Can Violate Fair Housing Laws***

Many cities across the United States maintain city zoning laws that create a disparate impact and a segregative effect because they limit land use by 1) limiting the density and height of buildings and 2) by regulating the types of housing that can be built. These practices prevent the creation of affordable housing and this, in turn, imposes disproportionate harm on several protected groups under the Fair Housing Act. Many cities try to combat their segregatory zoning laws by creating inclusionary housing/zoning ordinances (IZ) with policies that provide affordable housing to make housing available to those who would be otherwise left without options. If the inclusionary housing ordinances are not actually producing the results to create affordable housing, then they will reproduce the inequality they are meant to combat.

As a case study, I will focus on the city of Santa Ana, a low-income and Latine city (80% out of 300,000) in Orange County with an all Latine city council that somehow created policies leading to gentrification. I will analyze how IZ laws may violate state fair housing legislation; specifically, I will analyze how Santa Ana, California's IZ policy, the Housing Opportunity Ordinance (HOO), may violate the Fair Housing Act. I will also compare Santa Ana's IZO and history with that of Irvine, CA, Newark, NJ, and Jersey City, NJ due to their distinct histories. These distinctions show that while inclusionary zoning is common, its application and outcomes vary based on each city's demographic, economic, and historical context.

- **William Norcup-Brown*, Expressional Activity and Access to Privately Owned Public Spaces***

This article interrogates an increasingly significant question: to what extent should private property rights be permitted to inhibit the freedoms of expression and assembly enjoyed under the European Convention on Human Rights? Although the European Court of Human Rights has recognised the importance of location to the effective exercise of these freedoms in its recent jurisprudence, the longstanding doctrine that the freedoms have very limited application to privately owned land still applies. As a result, in contracting states like the United Kingdom, where the private ownership of public space is prevalent, the private landowners of these spaces are often not required to uphold the freedoms on their land, even when a suitable alternative location is not available. This is particularly consequential in the context of prominent public spaces such as shopping malls and privatised town centres. The article argues that the court should consider the importance of location equally

in both private and public settings, and demonstrates that proportionality could adequately balance property rights with safeguarding the expressional freedoms on private land.

- **Amarnath Boopalam Manjunath*, Beyond the State: Street Vending in Urban Spaces***

In contrast to such a view, this paper aims to present the case of vendors through the influence of urban spaces on them. Commercialisation of urban spaces, privatisation, and defining urban spaces by the state influence vending. For vendors, the urban space is a site of everyday contestation between these influences and their need for development or sustenance. This influence impacts to what extent the vendors can claim a stake in the ownership of the urban space. First, this paper will discuss a new research project examining the nature of vendors and their calling. Accordingly, the development vs. survival discourse on the choice of vending will be explored. Second, the unique position of vendors in urban spaces in contrast to others in the informal economy will be explored through an understanding of the influence of various entities in urban spaces on vending.

This intervention assumes significance to the extent it aims to present the influence of urban spaces on vendors by decontextualising vendors from the broader category of the informal economy.

12:45-1:45pm **Lunch (*Student Lounge, Level One*)**

1:45pm-3:15pm **Concurrent Panels Session II (*Level Two*)**

2.1 Navigating Urban Space, Development, Community, Housing, and Habitat (*CATS Room 201*)

***Moderator*: Shai Stern**

- **Sara Ross*, Collaborative Land Use Easements (CLUEs): Utilizing Old Property Law Means for New Sociolegal Ends***

The days/nights of everyday/everynight life in a city can be characterized by the smells, scents, sound, noise, and other imprinting nuances on the experience of life in a city, neighbourhood, and spatiotemporal urban reality. In other words, the pleasant scents, sounds, and everyday/night of a city for one person are another person's unpleasant smells, noise, and everynight/day. In accounting for these intangible realities within urban property law and the urban planning realities of risk management, sustainable development, and the (in)equitable balancing of divergent interests in a city, this project begins with Collaborative Land Use Easements (CLUE) as a potentially useful tool. As with most easements, a CLUE is a mechanism that permits the incursion of a dominant tenement across/through a servient tenement. Noise, smell, light, vibration, dust—these are just some of what a CLUE might permit where new residential developments spring up or conversion and redevelopment projects are proposed for spaces near a busy port, existing industrial sites, processing plants, entertainment spaces, sports, and many other non-residential uses due to, i.e., housing shortages, urban sprawl, etc. CLUE can, at the very least, establish a framework for negotiated expectations between parties, a starting point to navigate conflicts in a manner that might streamline extensive time and resource intensive legal and political ramifications that do not provide the means to satisfactory resolution for involved parties. Through select case studies, this project considers how to harness old property law tools for new ends in localizing UN-Habitat's New Urban Agenda and SDG Goal#11.

- **Andrea Boyack*, Framing and Pluralism: Housing's Biggest Challenge and the Key to its Future***

What is housing? Housing is MONEY, an economic good that is both a cost of living and a source of wealth. Housing is HOME, a place for privacy and freedom. Housing is SHELTER, essential to survival and development. Housing is a part of the social order, membership in a COMMUNITY and associated basis for governance. And housing is also a HABITAT, indelibly connected with its environmental context.

Different people use different frames when they talk, argue, and make decisions about housing. There is no consensus regarding which goals are most important, let alone how to achieve them. A plurality of frames impact and reflects any housing system. In the United States, competition among the frames for primacy have generated repeated cycles of ineffective systemic reform. Refusal to recognize and embrace frame pluralism leads housing laws and policies to work at cross purposes. US housing policy-makers and legal advocates are stuck in a debate about which frame is most important, even though housing's frame pluralism is both inherent and systemically valuable.

My article/presentation first explains the five main housing frames: Money, Home, Shelter, Community, and Habitat, providing illustrative examples of how each is used and why each is indelibly part of what housing in the United States is and should be. It then proposes a methodology for a more inclusive and deliberate approach to analyzing and addressing housing challenges, using coordination and cooperation among the five main housing frames, citing examples of how a pluralist framing approach might work.

- **Jim Kelly,** ***The Ties that Bind: Stewardship and Inalienability-Property Rule Protection***

Although the Cathedral triptych places inalienability rule protection alongside that of property rule protection and liability rule protection, legal prohibitions of property transfer are more likely to rely on injunctive or damages remedies than to depend on judicial declarations of invalidity. Restraints on alienability backed only by compensatory damages remedies generally fail in preserving the in-kind property relationships that are often the policy objectives of such restrictions. Injunctive relief against violative transfers, on the other hand, can be just as effective in this regard as judicial refusal to recognize the validity of such transfers. When examining alienability restraints as legal entitlements held by a steward, these categories of inalienability-property rule protection and inalienability-liability rule protection are particularly important in conceiving how stewardship of social goods is made possible in contract, property, and governance law.

This paper will examine how the law, especially that of the U.S., establishes inalienability-property rule protection to implement two alternatives to an exclusively market-oriented approach to social choice in the allocation of resources. Amartya Sen distinguishes his own comparative, or informational basis, approach to deliberation over allocation of resources to a principled, or transcendental, version of social choice. The availability of inalienability-property rule entitlements to stewards operating in one or both of these deliberative modes will be examined through cases studies of community land trust ground leases, religious covenants, and conservation easements.

- **Julie Marchau,** ***Property Law Challenges for Structuring Community Land Trusts in Belgium***

The Community Land Trust (CLT) model is a nonprofit approach designed to create permanently affordable housing by separating land ownership from building ownership. Under this model, the CLT retains ownership of the land, while individuals or families purchase or lease housing units built upon it, ensuring affordability through legal structures that prevent speculative resale.

However, implementing the CLT in Belgium poses significant challenges to traditional property law principles, such as the principle of accession, according to which buildings belong to the landowner. To legally structure a

CLT in Belgium, property law mechanisms that allow horizontal divisions of ownership – such as rights of superficies or ground leases – are essential.

This presentation examines how these legal tools can be adapted to support the CLT model within the Belgian framework. In addition, we will explore the use of pre-emption rights and resale restrictions as key strategies to secure long-term affordability. By analysing case studies, such as the CLT Ghent project, this presentation illustrates how existing legal frameworks can be innovatively employed to advance affordable housing initiatives.

2.2 State Commitments, Public Interest, Property Protections, Constitutionalism, and Land Rights (*CATS Room 202*)

***Moderator*: John Page**

- **Sinemthemba Memela,** ***Can Transformative Constitutionalism Answer the 'Land Question'?***

Inequities in land ownership and housing are central challenges in post-apartheid South Africa. Hundreds of years of colonialism and later apartheid designed a property ownership structure which encouraged dispossession, forced removals and the exclusion of Black people from owning property. Colonial and apartheid property relations are maintained despite a transformative constitution and a democratic government, and this poses a threat to the endurance of constitutional democracy in the country. Between 2018 and 2021, Parliament underwent an extensive process to institute a major substantive amendment of the Constitution ostensibly to permit expropriation without compensation. This chapter assesses the design choices made during the negotiations for a constitutional property clause, which became Section 25 of the Constitution of South Africa, considering new insights gained from 30 years of constitutional democracy with the aim to consider whether different design choices might have led to better distributive outcomes. It further argues that while the Constitutional Court has developed a creative engagement jurisprudence in the context of urban evictions, it has not gone far enough to develop remedies which respond to the state's failure to realise the redistributive elements of South Africa's constitutional property law framework.

- **Sean Brennan,** ***Yunupingu: Judicial Choices and Indigenous Rights Over Land in Australia***

Since 1966, First Nations groups in Australia seeking to retrieve recognised rights, control or ownership over land and waters have seen two options: statutory land rights regimes and (after 1992) the possibility of achieving native title recognition. In shaping land rights laws in the States and Territories, the key choices were legislative ones by politicians and most were baked in decades ago, by the initial statutory design. Native title law has followed a different course, since the landmark High Court decision in Mabo (No 2) (1992) affirmed that traditional rights over 'country' can be recognised as 'native title' under defined conditions. Despite there being a detailed Native Title Act, judges have continued to play a major role, determining answers to key questions. In Yunupingu, heard in 2024, the Court must decide whether the constitutional guarantee of 'just terms' applies to the extinguishment of native title by inconsistent Crown grant to a third party. It is another fork in the road for the development of native title law in Australia. This paper will analyse the content of this case at the intersection of constitutional and property law, its legal and wider significance, and how it again illustrates the contingent nature of the battle that First Nations people have waged over 60 years to make Australian law confront and address dispossession, through the medium of property law.

- **Abraham Bell (and non-presenting co-author Gideon Parchomovsky),** ***Property's Commitment***

This Article introduces a novel theory of property law, framing it as a commitment device that enables the state to guarantee stability, predictability, and security in private and public interactions. We argue that the essence of property law lies in its ability to function as a mechanism through which the state makes and upholds solemn commitments to individuals. These commitments, which distinguish property from other fields of private law, include the enforcement of private rights, the imposition of limitations on state action, and the preservation of stability in the rules governing property over time.

By situating property law within the broader framework of state commitments, we explain several enduring features of property doctrine, including the numerus clausus principle, the relative inalterability of past allocations, and the formalities required for property transactions. Our theory also resolves key theoretical and doctrinal debates in property law, including the challenges posed by regulatory takings and the normative implications of recognizing new property rights, such as entitlements under welfare schemes.

Rejecting natural rights theories, which view property as pre-existing the state, and progressive property theories, which emphasize flexibility and contingency, we demonstrate the value of property law's formalism, stability, and durability. Our theory highlights the importance of calibrating state commitments to reflect the seriousness of property protections while maintaining the flexibility needed for effective governance. Ultimately, this Article provides a new lens for understanding property law, offering a coherent framework that both explains existing doctrines and charts a path for normative reform.

2.3 Inheritance, Inequality, Gender, and Property Systems (*CATS Room 203*)

***Moderator*: Adam Hofri**

- **Bowen Ma, *Gender Inequality in China's Matrimonial Property System***

This essay discusses in depth the gender inequality in China's matrimonial property system, focusing in particular on the division of equity in the name of one of the spouses in the event of divorce. The essay first analyzes the provisions of the Marriage Law of the People's Republic of China and relevant judicial interpretations on the joint property of husband and wife, pointing out that in practice, women are often in a disadvantageous position due to the lack of actual control over the equity. By analyzing case studies of divorce cases involving the division of equity within the past five years, the paper reveals the main challenges faced by women in the division of equity, including information asymmetry, difficulty in evaluating equity, and difficulty in enforcement. Despite the equality of men and women in legal provisions, there are still obvious deficiencies in the protection of women's property rights and interests in practice. The article further explores the deep-rooted socio-cultural factors that lead to gender inequality and makes recommendations for improvement, including improving the equity valuation mechanism, enhancing women's bargaining power in property division, and improving legal aid services. Finally, the essay emphasizes the importance of achieving gender equality in property division for maintaining social justice and promoting legal progress.

- **Selene Tanne, *Co-Ownership Disputes Through the Lens of Liberal Feminism: Singapore Study***

This article tests the validity of feminist criticisms in jurisdictions outside of the United Kingdom (UK), wherein English property law is influential and/or applicable. Some feminist legal scholars argue that the legal and equitable doctrines that establish and value property rights are inherently patriarchal, designed to serve men and keep women subservient. This is despite, as an important example, the sentiment that exists within the English judiciary that the equality of women is now "complete" (as per Lord Denning in 1980) and, accordingly, the law of property "has moved on" (as per Lord Walker in the 2007 case of Stack v Dowden).

If such liberal feminist criticism is true, is there not at least a risk that the prejudicial assumptions and effects of English property law will manifest wherever it is either influential or applicable? Might there be other social or jurisprudential factors that can mitigate or avoid these risks? Given the influence of English property law, particularly across common law countries, these are pertinent questions to address. While the bulk of relevant scholarship focuses on UK and African cases, there is a relative lack of scholarship on Asian jurisdictions. As such, this article examines family property co-ownership disputes in Singapore, an ex-British Colony and a common law jurisdiction wherein English property law remains influential, in relation to specific feminist criticisms of English property law.

- **Mmaphuti Tuba*, Deemed Consent and the Alienation of Rights in Immovable Property Forming Part of the Joint Estate: Is Section 15(9) of the Matrimonial Property Act Still a Deed Letter?***

The Matrimonial Property Act 1984(MPA) of South Africa gives powers to spouses to a marriage in a community of property (MCOP) to transact without the consent of the other spouse. In relation to the alienation of immovable properties, a spouse cannot deal with such property without the consent of the other spouse. Anticipating situations of dishonesty from one spouse, the MPA in section 15(9) included a deemed consent to protect the third party where the latter entered into a transaction with one of the spouses that requires the consent of the other spouse. Section 15(9) requires the third party to prove that he or she "does not know and cannot reasonably know that the transaction is being entered into contrary to those provisions" of the MPA that require the consent of the other spouse. South African courts and academic writers have grappled with the obligation imposed by section 15(9) and the extent to which the third party must enquire to establish whether the party entering into a transaction is married in the community of property. consent. The paper will discuss fairly recent Supreme Court of Appeal judgments on the interpretation of section 15(9) of the MPA. The paper discusses how the section has been interpreted by the court and academics and what type of inquiry is expected from the third party before it can be said that he or she cannot reasonably know that consent was required in terms of section 15(9).

- **Jade Craig*, Efficient Inheritance: Rethinking the Law of Intestate Succession to Resolve the Heirs' Property Crisis***

Under the law of most U.S. states, married couples may purchase property as tenants by the entirety or otherwise with a right for the surviving spouse to take the property, purely by operation of law, upon the death of their spouse. By contrast, when an instrument does not specifically provide for a right of survivorship, many states apply a statutory presumption that the instrument passes land to two or more grantees as tenants in common, with no right of survivorship among them. Likewise, when a person dies without a will, their heirs under the state intestacy statute take real estate as tenants in common. This particular presumption has disastrous effects for individuals who are not married and for people who die without a will, leading to the heirs property crisis.

The paper proposes a reconsideration of the history of intestacy law and the English common law tradition around the descent of property. The paper proposes returning to the old English common law rule returning to a presumption of a right of survivorship when

persons inherit property via intestacy; limiting standing to file partition actions to actual heirs; and the judicial imposition of trusts in actions for partition by tenants in common in heirs' property disputes. This conference is particularly important for this presentation because it would engage scholars in a variety of former British possessions with countries that adopt and modify the old English rule to different degrees as well as scholars from civil law jurisdictions with a comparative perspective.

2.4 Examining Property Doctrines and Notions: Inequality, Exclusionary Policies, Possession, and Redistribution (*CATS Room 275*)

***Moderator*: Amelia Thorpe**

- **Tanveer Jeewa (and non-presenting co-author Zsa-Zsa Temmers Boggenpoel),** ***Neighbour Law or Apartheid's Echo? Unlawful Occupation and the Misuse of Public Nuisance Doctrine***

Just and equitable evictions are typically pursued in routine cases of unlawful occupation, where the landowner's right under section 25(1) of the South African Constitution, protecting against arbitrary deprivation of property comes into conflict with the rights of unlawful occupiers as protected under section 26(3). The issue becomes more complex when the unlawful occupation of adjacent land purportedly diminishes the market value of, or materially harms, the neighbour's property thereby infringing upon their property rights. In such instances, reliance is often placed on the principles of neighbour law, categorising the unlawful occupation of the adjacent land as a public nuisance.

These arguments were central in *Hamman NO v Emfuleni Local Municipality* 2024 JDR 3411 (GJ) where the applicant sought constitutional damages amounting to R9.1 million (approximately £ 396 000), alleging that the unlawful occupation of State-owned land adjacent to their property infringed upon their property rights. The applicant contended that the occupation resulted in increased air pollution and heightened security risks, which constituted a public nuisance and altered the "peaceful and tranquil" character of the neighbourhood.

Drawing on transformative property theory and critical race theory, we contend that the invocation of public nuisance to challenge unlawful occupations of neighbouring land perpetuates the maintenance of exclusionary spaces, bearing stark resemblance to apartheid-era forced removals. We argue that the reliance on neighbour law and constitutional damages for a remedy to address unlawful occupation, and thereby circumventing existing constitutional remedies, is at best woefully inadequate, and at worst, actively harmful to constitutional democracy.

- **Zsa-Zsa Temmers Boggenpoel,** ***Unpacking the Notion of "Suitable Alternative Accommodation": What Do We Mean with This Notion and How is it Applied in South African Law?***

In *City of Cape Town v Various Occupiers* the City of Cape Town used the *Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19* of 1998 (PIE) to seek the eviction of approximately 200 people living unlawfully in the city's central business district, more specifically on the pavements of downtown Cape Town. The City offered the unlawful occupiers alternative accommodation in so-called 'safe spaces' within the city centre, which it admitted was rudimentary but provided basic amenities and services. The case raised questions about the suitability of the safe spaces as alternative accommodation. The judgment found that these safe spaces are indeed suitable, and that eviction is just and equitable.

The main aim of this paper is to interrogate the notion of suitable alternative accommodation with the view to establishing whether the court's approach can be faulted – especially in terms of recent cases that also referred to the notion. Given that the provision of alternative accommodation is often the gateway to the conclusion that an eviction is just and equitable, it is imperative that clarity is established about what this notion means in South African law.

- **Justin Lim, Public** ***Interest Possession***

Public interest has often evaded or confused the English court's development of possessory remedies. Previous cases involving orders of possession for licensees and public officials mostly avoid public interest justifications when dismissing conventional property doctrine in favour of underdeveloped arguments on pragmatism and justice. In contrast, the recent seminal case of Wolverhampton CC v London Gypsies tackles public interest head-on in recognising that "newcomer injunctions" were rooted in the public interest. Wolverhampton CC is thus illuminating in its express recognition of the wider public effects of private law remedies. Public interest,

particularly those concerning land use, the right to protest, and homelessness, can thus plug some of the analytical gaps in the earlier case-law's handling of principle. However, the utility of public interest in this respect also reveals tensions when private law is applied to public issues. When public interest plays too significant a role in judicial reasoning, this begs the normative question of whether the courts, and not the legislature, are the right forum to award particular remedies when the relevant rights or breaches in public law cannot be confidently established. The matter is especially pronounced in Wolverhampton CC, as the operation of "newcomer injunctions" seems to supplant the criminal trespass regime whilst disposing of the requirement of notice typical to most injunctions and private property rights. As the cases on possessory remedies thus demonstrate, public interest plays a significant role in analytically developing and normatively evaluating the development of property law.

3:15pm-3:45pm **Afternoon Tea (*Student Lounge, Level One*)**

3:45pm-4:45pm **Keynote Address: Jess Scully (*G23, Ground Floor)***

I am an author, city-maker and advocate for an expanded civic imagination as a foundation for a fair and sustainable future. I have served as Deputy Lord Mayor of Sydney and worked as a festival director, policy advisor, curator, strategist, and presenter. I am a World Bank consultant on sustainable urbanism and a Senior Associate at the Sydney Policy Lab. My first book is Glimpses of Utopia: Real Ideas for a Fairer World (https://www.jessscully.com/about)

4:45pm- **End-of-Day Refreshments (*Student Lounge, Level One or Adrian Cameron Room, Level Two depending on weather*)**

Day 3 (Saturday, May 31, 2025)

8:15am -9:00am **Light Breakfast (*Student Lounge, Level One*)**

9:00am -10:30am **Concurrent Panels Session III (*Level Two*)**

3.1 Examining State, Police, and Administrative Powers and Processes: Competing Interests, Expropriation, Forfeiture, Evictions, and Crim-Evictions (*CATS Room 201*)

***Moderator*: Melvin Kelley**

- **Els Schipaanboord*, Crim-Evictions: Analyzing the Impact of the Administrative Sanction of Property Closures as Criminal Charges***

Traditionally, criminal behavior is addressed through criminal law, where individuals are prosecuted under established legal frameworks. However, in recent years, many countries have increasingly relied on administrative and private law sanctions to address certain offenses, bypassing the criminal justice system. As a result, individuals may face enforcement actions without being prosecuted under Article 6 of the European Convention on Human Rights (ECHR). One example is the closure of properties linked to illegal activities, such as drug trafficking, initiated by local authorities. While intended as a restorative measure, property closures are often perceived as punitive by those directly affected (Bruijn & Vols 2021).

In criminal proceedings, individuals have the right to invoke protections under Article 6 ECHR, ensuring due process rights. However, those facing property closures, which significantly impact their housing and property interests, cannot rely on these same safeguards. This raises critical questions about how such sanctions should be classified and the legal implications for property rights.

This paper presents an empirical analysis of over 700 judgments from courts of first instance to investigate the classification of administrative sanctions, like home closures, as criminal charges. It explores how often individuals argue for the application of criminal law protections in such cases and assesses the extent to which courts accept this argument. The study draws on a comprehensive dataset of provisional measures, judicial review applications, and appeals related to home closures, providing insights into the intersection of property rights, administrative law, and criminal law.

- **Shelley Saxer, *Forfeitures and Takings***

This Article briefly examines the historical background of criminal and civil forfeitures as developed in England, subsequently transferred to the American colonies, and eventually incorporated into the United States judicial system. It discusses the constitutional limitations on criminal and civil forfeitures including due process, excessive fines, double jeopardy, and takings challenges, as well as federal and state legislative restrictions. The Article presents a framework for determining whether civil forfeitures should be subject to excessive fine challenges or takings claims for seizure of private property (for a public use) without just compensation. Assuming the forfeiture does not violate due process, criminal or civil sanctions that are punitive or remedial in nature may be challenged under the Eighth Amendment as excessive fines. However, civil forfeitures that are not punitive or remedial in nature will not be subject to an excessive fines challenge, but may be challenged as a taking if they exceed compensation owed to the state or deprive an innocent property owner of assets seized under the police power authorized to prosecute crimes.

Forfeitures seem especially egregious when the government uses excess funds beyond compensation or assets seized from an innocent property owner to supplement their operations budget. Government must have a valid public purpose for exercising its police power to regulate or seize private property, but when the exercise of that power goes "too far" it may nevertheless constitute a taking requiring just compensation.

- **Michel Vols, *Machine Learning, Housing Rights and Evictions***

This paper discusses utilising machine learning (ML) to identify, collect, and analyze Dutch court judgments on evictions, with a particular focus on the reasons for eviction, personal circumstances, and the balance between property rights and proportionality. The ML model, enhanced by natural language processing (NLP), identified nearly 9,000 eviction cases, all manually reviewed by legal experts for accuracy. This approach enables legal researchers to efficiently analyze large datasets, uncovering trends in judicial reasoning where courts weigh landlords' property rights against tenants' circumstances and vulnerabilities. The study highlights the complexities of proportionality, revealing how courts balance these competing interests. The talk will also

explore the broader potential of ML for legal research, demonstrating how it can streamline data collection and analysis. Finally, the presentation will discuss the feasibility of applying these ML techniques in the other countries, where similar legal questions around property rights and proportionality arise in eviction cases.

- **Dominik Zidek (and non-presenting co-author Jakub Hanak),** ***Expropriation for Mineral Extraction in the Czech Republic***

This paper critically examines the current legal framework and challenges surrounding the expropriation of real estate for mineral extraction purposes in the Czech Republic. The analysis focuses on the reintroduced possibility of expropriation, effective January 1, 2024, exploring its implications for property rights, public interest, and environmental protection.

The paper begins by dissecting the arguments for and against expropriation, emphasizing the concept of public interest and its interpretation in recent case law. It then thoroughly examines the current legal framework, leaving no stone unturned, including the categories of mineral deposits subject to expropriation and the procedural specifics of the expropriation process. Special attention is given to potential constitutional issues arising from the delegation of power to determine strategic deposits to the government.

The relationship between expropriation and spatial planning is critically analyzed, highlighting the increased requirements for coordination between mining projects and spatial planning documentation. The paper explores how this situation may lead to conflicts between local and national interests, potentially resulting in future legal disputes.

3.2 Time, Power, Political Economy, and Reform: Through the Lens of Property (*CATS Room 202*)

***Moderator*: Abraham Bell**

- **Lindani Mhlanga,** ***Power, Time, and Tenure: Exploring Non-Titular Claims to Land in South Africa and the UK***

This paper explores the intersection of power, time, and space in shaping property rights and tenure security through a comparative analysis of South Africa and the United Kingdom. Challenging the dominant narrative of property law as a neutral and technical system, the study examines how historical and socio-political inequalities influence contemporary property relations. By juxtaposing the land restitution struggles of Indigenous communities in South Africa with the challenges faced by commoners in the New Forest, UK, the research reveals the persistence of systemic marginalization in both legal contexts.

The study argues that the concepts of temporality and spatial dynamics are essential to understanding how historical injustices continue to influence contemporary property systems. It critiques the inflexibility of legal formalism, which often marginalizes vulnerable groups and denies them equitable access to land and secure tenure. Furthermore, it questions whether existing legal interventions are sufficient to bring about meaningful transformation within deeply entrenched systems of inequality.

The paper contributes to broader debates on property law, social justice, and land reform, offering comparative insights into the flexibility of legal systems in addressing historical injustices. It advocates for policy reforms that incorporate non-titular claims and prioritize social equity over formal ownership structures. Ultimately, the research underscores the need for a more dynamic and inclusive approach to property law that reconciles historical grievances with contemporary realities.

This paper seeks to inform both academic discourse and policy development, aiming to create pathways for more equitable and sustainable property rights in diverse socio-economic contexts.

- **Amy Cohen and Stephen Healy,** ***Legal Theory for a Post-Capitalist Political Economy***

This paper endeavors to flip some of the ongoing Law and Political Economy (LPE) debates about what role law and legal theory can play in reforming capitalism towards actually existing experiments in cooperation and solidarity where people reimagine and renegotiate property forms anew. We borrow the idea of ethical negotiation from feminist Marxist economic geographers J.K. Gibson-Graham, and we examine how people negotiate the terms of their interdependence by making decisions about needs, surplus, production, consumption, and the creation of commons, and how these decisions may create new patterns and habits (and subjects) over time. Legalities emerge in these negotiations—sometimes as the explicit everyday rules people work out to cooperate and sometimes through how people play with the background rules of state law that constrain and enable what they feel is negotiable (or not) in a particular situation. Using examples that span community-supported fisheries, urban commons, and worker cooperatives, we argue that one way to strengthen post-capitalist economies and legalities is to start by studying the moments in which people have already been successful in their local communities.

- **Laurynas Didžiulis,** ***Rebuilding Property Law for Democratic Market System: Lithuanian Example***

The core area of private law – private property – was seen as a major social evil within the communist regime. For this reason, under former economic circumstances, Soviet property law was reduced until a caricature version of the comprehensive Western property law. After the collapse of Soviet Union and the fall of communism, economically stressed Eastern European countries, including Lithuania, had to deal with Soviet 'heritage' and extensively reform their legal systems in order to facilitate economic transition into market system. A crucial part of it was the reform of property law – the legal cornerstone of the market economy. Though it was not easy, but mostly successful and today Lithuanian economy, integrated in EU single market, is flourishing partly due to its property law. The article presents Lithuanian experience in the process of rebuilding its property law and describes its content. The process of transition, although successful in overall, included several failures which created some systemic problems that are felt even to this day. However, remaining challenges seem much less significant compared to those which were solved during the crucial transition decade, therefore it is only the question of time when Lithuanian legal system, supported by the consistent influence of European legal culture and national determination, will deal with them.

- **Lee Godden,** ***The Normativity of Property: Resource Economies Indigenous Dispossession and Climate Change***

This presentation explores the continuities between colonial resource extraction in Australia and contemporary carbon resource exploitation in Northern Australia as factors contributing to climate change. The dispossession of Aboriginal Peoples remains integral to these trajectories of resource exploitation in Australia. The colonial imposition of sovereign title over resources has provided the underlying legal property form, including a derivate native title regime, that bridges colonial dispossession and Australia's significant contribution to global climate change via international trade in carbon resource exports. Indeed, the evolution of property law in its iteration with the rise of market capitalism has enabled carbon resources to become progressively more fungible. In turn, climate change is reshaping pivotal property relationships, although there is deep resistance within conventional western-centric property modes. What might be the dimensions of an alternative trajectory for property in resources in light of climate change and its profound impacts? From that perspective, the presentation explores the distributive justice implications of 'late liberalism' and its configuration of property in natural (i.e. naturalised) resources.

3.3 Transcending Normative Property Law (*CATS Room 203*)

***Moderator*: Leon Terrill**

- **Mateo (Tico) Taussig-Rubbo*, Property Rites and Rituals: Reflections on Land Acknowledgements***

Land acknowledgments have become common-place in a variety of settler colonial states. While dismissed by some as performative ritual, this paper asks about the history of these statements about indigenous peoples and land, about what sort of rituals they are, and their changing meanings and content as they have migrated to the United States from Australia and Canada. How are we to understand these statements, the impacts they have, and their relationship to legality, law and property, and the types of stories we tell about land, sovereignty and justice.

- **John Page*, The Metaphysicality of Real Property: Land's Transcendent Incidents***

This paper explores how our lawful relations with land can sometimes be 'less than rational', and how the common law of real property may reflect (or at least recognize) such 'irrationality' in its laws, doctrines, theories and/or practices.

In particular, the paper focuses on real property's metaphysicality, the notion that property's justifications extend beyond orthodox rationales, such as commodity, exclusion or efficiency, to occasionally embrace the other-worldly. Adopting the dictionary definition of the term 'metaphysics' to mean 'of, relating to the transcendent, or to a reality beyond what is perceptible to the senses', this paper observes that metaphysicality has always had a certain place or presence in real property, which we have been variously normalized to 'see', or 'not to see', as societal values and norms shift and evolve.

The paper engages with three broad themes: the emergence and recognition of Indigenous metaphysics in settler state property jurisprudence; the corresponding decline and near-disappearance of 'western' metaphysics in real property; and the rise of secularized theories such as 'property as belonging' or 'land memory', often cited to explain why we claim 'affinity' or 'connection' to real estate, both public and private.

- **Timothy Chan*, Property as the Law of Things, Patrimony, and Persistence***

A good number of Anglo-American theorists of property and private law subscribe to some version of the view that the term "property" can be used dichotomously to refer to "things" or "patrimony" (sometimes, "wealth"). On these accounts, to ask whether a kind of thing is (or can be) "property" is ambiguous. One might be asking one of two things: first, whether such a thing can be the subject of "property rights", roughly meaning rights exigible erga omnes that "relate to" a thing (sometimes, requiring that this "thing" be physical or rivalrous); or second, whether rights in the thing constitute "property", in the sense that they can be voluntarily alienated, are liable to execution or involuntary transfer upon insolvency, or are transmissible upon death. But there is a third usage of "property", which Tony Honoré called "immunity against divesting by alienation", and which I will call "persistence". A persistent right is a right relating to a thing that is immune to divestment by, or persists despite, a change in ownership of the underlying thing. Though Honoré regarded persistence as an important characteristic of property rights in general, it seems to have fallen out of view in recent scholarship. In this paper, I aim to show that persistence is not reducible to the concepts signified by "property in things" or "property as patrimony", and examine the interrelations between the three distinct concepts that we refer to – confusingly – by the word "property", seeking thereby to sharpen our understanding and usage of the term.

- **Kevin Grecksch,** ***Property Narratives: Towards a New Property Masterplot***

The property masterplot determines that property is seen through a legal and economic lens. Property is acquired, issuing the property owner with the right to exclusion. The state protects private property right thereby ensuring economic prosperity and stability for those who hold property. Masterplots, defined as skeletal narrative structures which do not relate specific events occurring in specific places, encode abstract configurations of causal relationships between events that can be used to structure accounts of specific happenings. In this paper, I examine and determine the relationship between natural resources and property rights. Property rights are often seen as the quick-fix panacea to natural resource management issues. Within Western liberal democracies - unthinkable without property rights - the discourse focuses on the law and economics perspective. Yet, there is more to property rights than law and economics. I argue for a new property masterplot that includes new characters and fresh storylines. The new property masterplot, characterised by what I call property narratives, introduces new ideas and looks beyond legislation and policies. Instead, it looks at the stories people tell about property and natural resources and how this for example influences identities. These narratives provide us with a holistic account of the issue and may lead us to a new, more integrative and inclusive idea of property rights. I will focus on two case studies. First, the ongoing case of Darwall v Dartmoor National Park in England and second, narratives around coastal protection at Europe's North Sea coast.

10:30am-11:00pm **Morning Tea (*Student Lounge, Level One*)**

11:00am-12:30pm **Concurrent Panels Session IV (*Level Two*)**

4.1 Environmental and International Rights, Climate, Litigation, and Dispute Resolution: Stories, Scale, and Temporalities (*CATS Room 201*)

***Moderator*: Jessica Owley**

- **John Carr,** ***The "Property" Lens of Environmental Dispute Resolution: Scale and Environmental Invisibility in Environmental Litigation***

This study of a quotidian environmental dispute over property development in Sydney, Australia illustrates the potentially decisive role that property as an analytic lens and geographic imaginary serves in deciding whether and to what extent the legal system will protect existing biodiversity. Examining ostensibly "neutral" procedural evidentiary rules, the study examines how the procedural use of property boundaries to fix the scale of environmental disputes can drive larger substantive questions around how the law understands, and thus intervenes, in spaces essential to preserving biodiverse ecological communities. By enabling courts to exclude consideration of environmental interlinkages and contexts beyond the "metes and bounds" of property, these procedural rules and practices drive a scalar process by which certain places, dynamics, and connections are rendered visible, and thus capable of judicial action, and others are obscured.

- **Rebecca Monson,** ***'This is the Real Story': Bringing Power Back in to Accounts of Property and Climate Adaptation***

Existing scholarship and policy work on land, property and climate adaptation has fruitfully drawn on genealogies of resilience thinking and socio-ecological analysis to acknowledge multiple threads of law and disrupt state-centric approaches to land relations. However, the current emphasis on these same genealogies has contributed to a neglect of the dynamism of land governance and the social and material power that shapes trajectories of climate adaptation. Drawing on the experiences of Gilbertese people in the aftermath of a tsunami striking Ghizo in Solomon Islands, I demonstrate that abstract structural accounts of land governance are

inadequate for understanding how legal pluralism may sustain insecurity for some people while providing multiple avenues for others to secure access to land. In the case of Ghizo, understanding the direction of adaptation in landholding requires attention to histories of racialized land control; the ways land governance reproduces socio-legal identities; and the geopolitics of humanitarian aid and development. Further, adaptation of property systems in the context of climate change must be understood as a contested and multiscalar process in which securing land rights at one social and legal scale may have different and even contradictory effects at different scales.

- **Beatriz Barreiro Carril,** ***Property Rights and Cultural Identity in International Law***

International law - primarily through the Inter-American and African human rights systems - has been recognizing property rights for indigenous communities in a very progressive way. Academics in this discipline often focus on studying these achievements, but less attention has been paid to their implementation. It is in this area that the negative consequences of one of the strategies used to win these cases can be observed: The essentialization of the cultural identities of the communities linked to the lands. Through the comparative analysis of case studies - including Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council vs. Kenya and Saramaka People vs. Suriname - this presentation tries to show how focusing too much on an identity strategy to the detriment of other issues (economic, intra and extra community relations) can render decisions in favour of communities inoperative. It can also exacerbate intra or inter-community conflicts. This presentation analyses the potential of the United Nations' Declaration on Peasants' Rights to contribute to overcoming these unintended and negative consequences. This Declaration considers peasants any "man or woman of the land, who has a direct and special relationship with the land". Therefore, it is expected that it opens new avenues for claiming property rights of communities which do not necessarily identify as indigenous, as is the case of Afrodescendents, who indeed presented themselves as indigenous before the Inter-American Court. Even if they won the case, the practical effects of the decision are controversial.

- **Anna Saunders,** ***Temporalities of Intellectual Property in Green Capitalism: Acceleration, Circulation, Differentiation***

Many proposals for new forms of intellectual property that can serve the climate transition have centred on accelerated or 'fast-track' patents for 'green' inventing. These proposals suggest that what property offers to ecological lawmaking is the prospect of creating enhanced versions of existing rights. In this paper, I explore that assumption, by reference to diplomatic and scholarly debates in the decades following the entry into force of the Paris Convention for the Protection of Industrial Property of 1883. A fundamental concern in those debates was the nature and extent of the reservation of 'third party rights' (droits des tiers) as protected in the wording of article 4. I begin by suggesting that this debate is better understood not as its contemporaries sought to render it — as a misguided or even heretical exception to an otherwise progressive regime of industrial property — but as a struggle between competing legal orders, with distinctive temporal horizons and practices of publicity. I then turn to the techniques proposed and used by courts and diplomats to resolve this struggle. In doing so, my goal is to illustrate how industrial property served to create hierarchy between different social practices at a critical moment of capitalist transformation. I end by reflecting on what this might offer for theorising the role of law in the climate transition and the making of a 'green' economy.

4.2 Digital Tokenisation, Digital Assets, and Non-Fungibility (*CATS Room 202)*

***Moderator*: Jade Craig**

- **Sheldon Lyke,** ***Non-Fungible Wills***

This paper explores the significance of maintaining the originality requirement in electronic wills. I offer different solutions for achieving non-fungibility in electronic will execution, including the use of non-fungible tokens (NFTs).

Electronic wills, often created and stored in digital formats, have the potential to streamline the estate planning process and simplify the management of testamentary documents. However, due to the ease of copying an electronic file, concerns can arise regarding the authenticity of these wills. The Uniform Electronic Wills Act (UEWA) currently allows digital copies of wills to serve the same function as the originally executed file. Problems can arise when a person deletes a copy, or alters a copy and the action is taken as a revocation or modification. Forcing the testators of electronic wills to comply with the same formalities as physical will testators can help alleviate these concerns.

Maintaining the originality requirement through NFTs in electronic wills facilitates the verification and enforcement of testamentary documents. With a clear and immutable record of the will's original version, it becomes easier for courts and beneficiaries to establish the validity of the document, reducing the likelihood of disputes and legal challenges.

- **Gideon Parchomovsky, (non-presenting co-authors: Stefan Bechtold, Giuseppe Darri-Mattiacci, Edoardo D. Martino),** ***Property without Law***

We explore the impact of technology that enables the automatic enforcement of contracts on the ability for private contracting parties to create personalized de facto property rights. The possibility to trade fully digital(ized) assets through automatically-enforced contracts allows parties to write clauses into the contract that will be directly included in subsequent contracts with third parties. Breach is made impossible by the very nature of the automatic enforcement system and notice is assured by distributed and readily accessible ledgers. What would typically be mere contractual rights takes the force of de facto property rights as they "run with the (digital) asset." These "property-without-law" rights are potentially stronger than traditional property rights, because enforcement cannot be modulated by courts ex post and regulators may be unable to exercise their taking powers. We document this phenomenon, explore its potentials and vulnerabilities, discuss examples in intellectual property, real estate, organizations, and financial contracts, and re-examine the role of property law when technology turns promises into assets.

- **Sally Zhu,** ***Digital Ideational Property as a Modern Estates System? Learning Lessons for Digital Assets from Land Law***

Digital assets such as cryptocurrencies and digital securities are the latest innovation in property law. Their uniqueness has convinced the English Law Commission to embark on a revolution of property doctrine and introduce a 'third thing' category to the long standing binary of choses in possession and choses in action. Are digital assets so fundamentally different, or can they be better subsumed through common law property doctrines which have proven so resilient for centuries? There is an analogy between the English common law concept of 'estates' in land and digital assets as ideational constructs which has not been explored at all in the literature. Current digital asset systems exhibit many similarities with the old system of estates. The basic structure of holding digital assets is through exclusive control over a private key which can be used to effect on-chain transactions. In practice this basic model is complicated by technical protocols which allow multiple private key-holders to exert joint control over a digital asset, sharding private keys, restricting control using automated contracts and other technical conditions. The effect of these technical encumbrances resemble the old estates system whereby legal title holders of land could not dispose their title because it was encumbered by a limited estate. There are lessons to be learned from the estates system and its anti-commons dynamics to establish efficient infrastructure and regulation for digital assets.

- **Angela Babic*, Digital Tokenisation of Mining Legal Rights to Critical Minerals***

Given the increased demand for global sustainability, critical mineral mining has become significant to the Australian economy. Despite its profitability, critical minerals producers are often faced with financial and investment issues as traditional financiers such as banks typically avoid granting loans given the volatility of the critical minerals market. Blockchain technology and the digital tokenisation of mining legal rights and interests, granted under tenements, can possibly assist with this issue, by converting these rights and interests into easily traded tokens for investment. Using the Mining Act 1978 (WA) as the foundation for the analysis, this presentation will discuss which specific mining legal rights and interests will be most viable to tokenise to increase finance and investment into mining projects. It will also cover a range of related property issues which need to be addressed before digital tokenisation of rights and interests can be implemented, such as Crown ownership of in-ground minerals, rights to extracted minerals and priority disputes using blockchain technology.

4.3 Submitted Panel: Contesting and Reimagining the Boundaries of Land Governance in Settler States (*CATS Room 203*)

Panel abstract: This panel looks at state strategies of dispossession in three jurisdictions, the United States, Canada, and Aotearoa New Zealand. The contributors examine land fractionation, municipal boundary drawing, and resource tenures to illustrate both historical and contemporary legal strategies used by settler states to separate Indigenous title and rights from land. They explore Indigenous strategies of resistance and the need for more radical forms of legal reconciliation, treaty partnerships, and recognition of Indigenous jurisdiction.

***Moderator*: Estair Van Wagner**

- **Estair Van Wagner (non-presenting co-author Maria Bargh), *Te Tiriti and the Push for Critical Minerals***

This paper explores the current push for mineral extraction In Aotearoa New Zealand and how this is aligning with a broader strategy of dispossession of Māori authority and interests. Moves to narrow and constrain the application of Te Tiriti o Waitangi are being implemented through statutory amendments such as the 2024 Fast Track Bill, which amends a number of statutes to expedite development and resource extraction, and through policy instruments such as the Draft Minerals Strategy. Attempts to insert language limiting Māori authority to Treaty settlements undermine the broad protection of tino rangatiratanga (self-determination) in Te Tiriti. Therefore, while the National Government has claimed they will not support the Treaty Principles Bill, they are effecting similarly regressive changes to the Treaty relationship through the back door of these amendments. This will be explored in the context of mineral extraction, but the implications for Māori authority and interests more broadly will be considered.Co-presented with Dr Maria Bargh.

- **Signa Daum Shanks, *Reinforcing Colonialism Through Subnational Boundaries***

Subnational boundaries might be considered a jurisdictional level and, as a result, not as directly linked to federal or colonial trends. But in their creation, they make national Crown property understandings imposed at the most local. Particularly in the area which are more landlocked, the boundaries' creations are the most unnatural and therefore the most imposing. In being non-coastal about the sub-national, we can get at the nub of historic and modern colonialism the most swiftly and consider current political anger about a variety of topics with greater clarity. North America's North West works as a petri dish for why voting patterns,

treatment of Indigenous Peoples and a dismissal of policies with some assistance happen. That anger should be one of our higher priorities today, as its increase arguably puts us further toward less attention to climatic concerns, decolonisation and better daily neighbourliness which has been at the heart of fair social and economic stability.

- **Jessica Shoemaker*, Remedy Without Repair: Why Indigenous Land Fractionation Never Ends***

This essay addresses the special issues of federal trust land governance on Indigenous-owned reservation lands in the United States and the problem of pervasive fractionation (or extreme co-ownership rates) of individual trust allotments in particular. The Department of the Interior recently released a final report closing its landmark ten-year land buyback program, which had been funded by the settlement of the Cobell breach-of-trust class action, and this essay uses that report as an entry point to think about this ongoing fractionation problem—and broader reservation land and governance challenges—more expansively and creatively. The central claim is that technocratic approaches to fractionation and trust-status issues fail because the whole property system is broken and built on a rotten foundation. This connects to long histories of failed land-based reconciliation efforts, in the U.S. and abroad. Ultimately, the essay asserts we should instead open more space for movement toward more lasting and radical reconciliation and repair. In this effort, we might from modern treaties and other land-based reconciliation efforts being negotiated in Canada in this goal.

12:30pm-1:45pm **Lunch (*Student Lounge, Level One*)**

- ALPS announcements and subcommittee meetings

1:45pm-3:15pm **Concurrent Panels Session V (*Level Two*)**

5.1 Revitalizing Housing, Preservation, and Planning Priorities: Gaps, Boundaries, and Progressive Policies (*CATS Room 201*)

***Moderator*: Michel Vols**

- **Edward Sullivan*, Aboriginal Cultural Preservation through Planning and Land Use Regulation***

Cultural preservation protects areas of archeological importance such as artifacts and man-made changes to land reflecting previous civilizations or the cultural significance to those civilizations of natural areas, sacred or otherwise. These artifacts and areas are more often found where colonialism has displaced previous civilizations and preservation is especially important when their significance may depend on oral traditions.

Cultural preservation faces the loss of artifacts and of the integrity of the landscapes on which those civilizations settled, lived, warred, and died, most often by looting of artifacts and the despoilation of culturally significant landscapes through later "development." Traditional historic preservation mechanisms, aimed at preserving structures, such as churches, forts, or docks, are not equipped to deal with these aspects of cultural resources.

This paper deals with efforts in Oregon to inventory, preserve, and protect culturally significant resources, an effort wholly different in its approach and methodology from than that of typical historic preservation to preserve structures and areas tied to European settlement. The prospect of looting of these areas is a principal reason for surviving Native American tribal members and officials to keep them from public disclosure, which makes for difficulties when their nature and location must ordinarily be publicly disclosed, such as when land use permits or changes in plan or zoning designations occur. Moreover, the paper deals with the priority these

areas receive when balanced against other planning priorities, such as natural resources, energy, or urban area expansion.

- **Doug Harris*, The Practices of Volumetric Subdivision***

Until recently, most land subdivision could be represented on a two-dimensional survey that showed the boundaries of distinct parcels across the surface of the Earth. Ownership of land included more than just a two-dimensional plane, but the upper and lower boundaries of individual parcels were defined in general terms and remained indistinct, in large part because owners were spread out in a single layer. This has changed with the advent of statutory frameworks in the twentieth century to enable the production of air space parcels and condominium lots. Both frameworks facilitate the subdivision of real property in three dimensions to produce parcels delimited by volume, with owners co-existing above and below each other as well as side-by-side. Illinois introduced the first statutory framework in North America to enable the subdivision of air lots above railway operations in 1927. New Jersey passed general enabling legislation in 1938. Among Canadian provinces, British Columbia was the first to introduce enabling legislation in 1971. The catalyst appears to have been a large, mixed retail and commercial, waterfront development in the City of Vancouver, much of which was to be built over a railway yard. The project faltered, but the statutory framework for air space parcels remained. This paper focuses on the emergence and changing use of air space parcel subdivision in Vancouver, including the increasingly common practice of combining air space parcel and condominium subdivision to produce condominium lots, defined by volume, within air space parcels.

- **Sarah Schindler*, The Modular Housing Gap***

The housing shortage in the U.S. not only threatens to undermine the "American Dream" of homeownership, but also poses a major risk to economic stability and continued growth more broadly. Thus, reforms to increase housing supply have been proposed and enacted at almost every level of government (including eliminating single-family zoning, providing financial incentives for builders, and fast-tracking environmental review). Most of these reforms focus on reducing friction in the existing residential development process for traditional housing construction, where a builder constructs housing ("stick-built") on the site of land acquired for development. While such reforms are needed, this Article contends that there is another model for addressing the housing shortage that has received too little attention: modular housing. Unlike manufactured/mobile homes, which are subject to very different – and less favorable – legal frameworks, modular housing subject to similar legal regimes as stick-built construction but has the advantage of being significantly more cost-effective to build. Yet modular remains a very small percentage (less than 3%) of new residential development. This Article unpacks the legal and regulatory barriers to modular housing scaling up and considers prescriptive reforms for addressing the modular housing gap

- **Melvin Kelley*, The Antitrust Thrust of Fair Housing: Decentralization for Revitalization***

While the Reconstruction Amendments assuredly shifted the balance of power between the federal government and the states, federalism concerns continue to inform the structural landscape for fulfilling civil rights objectives. Given these constraints, this Article paradoxically mobilizes a combination of fair housing doctrine, economic development policies, antitrust jurisprudence, and municipal corporate rights to contend that empowering cities against state encroachment is the most promising path for realizing the promise of the AFFH imperative. This contribution thus offers a timely normative intervention into the decentralization dilemma associated with an alarming trend that has seen progressive local policies, across a range of topics including housing, thwarted by conservative state preemption.

5.2 Property Pluralism and Power Imbalances? Stakeholders, Rightsholder, and Reconciliation (*CATS Room 202*)

***Moderator*: Lee Godden**

- **Leon Terrill, *Mapping the Non-Private Domain***

Property theory can provide useful tools for understanding the challenges that arise in navigating the relationship between property structures, values and economic activity. This is one reason why theory's well-recognised neglect of non-private property is harmful. Our understandings of those challenges are less developed when it comes to other property forms. In Australia, certain forms of non-private property are becoming increasingly important due to the more widespread recognition of native title and Indigenous land rights.

This paper sets out my attempts to more cogently map the non-private domain. It tries to do so in a way that makes it easier to see how and when particular theories and explanations are relevant to various real-world structures, and when they are not. This includes providing a framework for considering the very different ways that property can be held collectively and what this means for matters such as access and use, income, decision making and alienability. It is motivated by a concern to better understand the property structures – that is, the formal legal structures – that have been used with respect to Indigenous land rights and native title in Australia, so as to better appreciate the particular challenges those landowners face in the interaction between property, values and economic activity.

- **Margaret Stephenson (and non-presenting co-author Bradford W. Morse), *Consulting with Indigenous Peoples in Australia and Canada***

While the concepts of Aboriginal title share a similar jurisprudence in Australia and Canada, development regimes on Aboriginal title lands differ significantly. In Canada, the 1997 Delgamuukw decision, that Aboriginal title includes natural resources, mandated new regimes to accommodate Aboriginal title. In 2004, in Haida Nation and Taku River the Canadian Supreme Court found that the Crown has a legal duty to consult with Aboriginal peoples about potential infringements of their Aboriginal title and Aboriginal rights. Canadian Courts further elaborated on the duty to consult in subsequent decisions, including Tsilhqot'in Nation. In Australia, the 1992 High Court's recognition of native title in Mabo forced developers to deal with the Indigenous peoples. The enactment of the Native Title Act (NTA) attempted to balance Indigenous rights with the interests of proponents in developing resources. In Canada, the process is the "duty to consult". In Australia, the process is the "right to negotiate".

This paper will question whether the Australian and Canadian consultation regimes in each jurisdiction meet the standard of "free, prior and informed consent" (FPIC) under the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). It is timely to consider this issue as Canada legislated to recognize UNDRIP (2021), and also British Columbia legislated to implement UNDRIP (2019). Additionally, Canadian courts have found that UNDRIP can inform contextual approaches in consultation cases. Although Australia has not implemented UNDRIP in domestic law, the Commonwealth government announced an Australian Law Reform Commission review of the 'Future Dealings' regime of the NTA.

- **Rachael Walsh, *Mitigating Power Imbalances in Property Through Deliberation – A Viable Path***

This project analyses the fruitfulness of stakeholder deliberation as a means of mitigating power imbalances in property relationships, ranging from bi-lateral property relationships, for example between landlords and tenants and mortgagors and mortgagees, to more systemic property relationships, for example between a broad community and biodiversity within that community. In both types of cases, a range of sources of law, including legislation, 'soft-law', and judicial decision-making, may require or encourage stake-holder deliberation, which may influence the outcome in various ways. Such deliberation seeks to mitigate the influence of power

imbalances in property relationships, but is at the same time fundamentally shaped (and constrained) by those imbalances.

Against that backdrop, this paper specifically focuses on the barriers to effective and fair stakeholder deliberation that are rooted in the power imbalances that are often embedded within 'property problems'. It assesses whether a key component of a fair and equitable deliberative property strategy must be compelled deliberation, whether that can be realistically achieved, and the costs of compelling an inter-personal engagement such as deliberation. In this respect, from an inter-disciplinary perspective, the paper assesses whether legal coercion in respect of stakeholder participation or engagement in property disputes is antithetical to the ideals of deliberative democracy, or whether an effective mediation between the two disciplines can be reached. The hope is that such a mediation can be reached, thereby unlocking a fresh area of institutional focus for property law's attempts to broker fair solutions to property problems.

- **Shai Stern*, Property Law in Pluralistic Societies: Reconciling Liberal Principles with Communal Norms***

Property law in liberal societies traditionally centers on the rights of the individual, balancing the property owner's autonomy with their obligations to the wider social fabric. This framework, however, struggles to accommodate individuals embedded in non-liberal communities or alternative social systems that reflect fundamentally different value structures. These communities often reimagine property ownership through collective norms and expectations, posing challenges to the underlying principles of liberal property law. This raises critical questions about whether existing property frameworks can meaningfully address the demands of these alternative systems without undermining their own coherence, and whether liberal property law can maintain its core values while recognizing communal property norms.

This article explores these tensions through a case study of the ultra-Orthodox Jewish communities in Israel, focusing on how communal norms influence property ownership and use. It examines the ways in which the community asserts control over private property rights and shapes the decision-making processes of individual property owners. By analyzing these dynamics, the article considers how property law might adapt to reflect pluralistic value systems while preserving its commitment to fairness, coherence, and the liberal principles at its core. This study offers insights into the broader challenges of balancing legal universality with cultural particularity in property law.

5.3 The Mechanics of Reform and Propertization: New Perspectives on Legal Education, Art, Gifts, and Personal Data (*CATS Room 203*)

***Moderator*: Sally Zhu**

- **Danyang Guo*, The Reconstruction of the RtDP in China: A Functional Comparison Approach***

The right to data portability (RtDP) is designed to provide individuals with greater control over their personal data, thereby promoting the free flow of data, enhancing user rights, and stimulating market competition and innovation. However, a comparison with the data portability provisions under the General Data Protection Regulation (GDPR) reveals several shortcomings in Article 45 of China's Personal Information Protection Law (PIPL), which governs the transfer of personal information. These shortcomings include an unclear legal nature of the right, incomplete provisions, and practical challenges in exercising the right. Drawing on a comparative analysis of foreign legal systems, this paper argues that China's approach to data portability should be restructured through a functional comparison. Specifically, it proposes recognizing personal data portability as an independent property right, with future reforms focusing on establishing technical standards for data

transmission and improving coordination with third-party data rights. Such reforms would clarify the content, enforcement mechanisms, and scope of the RtDP, facilitating a shift from the concept of "personal information transfer rights" to "personal data portability rights".

- **Paulien Wymeersch,** ***Generative Artificial Intelligence Systems as Goods Under Property Law***

Generative artificial intelligence (GenAI) systems, such as ChatGPT, can produce text and images in an automated way on a massive scale. These GenAI systems consist of algorithms and software and have been trained on a large amount of examples.

Even though the recently reformed Belgian Civil Code now explicitly recognizes intangible goods, the qualification of GenAI systems as goods under property law is challenged due to their completely digital nature. The application of established property law doctrines is hampered for cases that extend beyond "traditional" intangible assets such as claims and legal rights. Another aspect complicating the qualification of GenAI systems as goods under property law is the possible application of intellectual property rights to parts of the GenAI systems. These questions will mostly be dealt with from a Belgian and EU law perspective.

This presentation will examine the qualification of GenAI systems as goods by building on and extending the debate on ownership of software. In practice, providers of GenAI systems often reserve "all rights" with regard to these systems in their terms of use. This contractual "propertization" of GenAI systems will therefore be critically evaluated as well.

- **Ted De Barbieri,** ***Art as Real Property***

In 2020, the Baltimore Museum of Art horrified the art world—it announced it would sell three high-profile works. Museum officials said the sales—a process known as deaccession—were necessary to care for the collection, support staff salaries, fund diversity and equity initiatives, and purchase art created by women and BIPOC artists. Importantly, museum industry standards have historically prevented using deaccession proceeds to pay staff salaries and maintain artwork. Custom dictated that deaccession proceeds only fund new acquisitions. The museum paused the sales when board members, donors, and the public rebelled.

Deaccession is the most pressing issue facing not-for-profit museums and institutions across the country. COVID-19 shutdowns cratered museum revenue sending staff to gallery walls and storage warehouses to determine what art to keep and what to sell. While most institutional recipients of donated art today typically receive, or accession, artwork without donor-imposed restrictions, many significant pieces are donated in a manner that limits what can or cannot be done with the gifted art, including by prohibiting deaccession. Customs and practices aside, deaccessioning unrestricted art is legally straightforward. Yet, when it comes to the treatment of deaccessioning restricted donated art, judges, attorneys representing donors and institutions, and attorneys general, lack clear guidance.

This Article argues for adoption of a clear doctrinal solution to deaccessioning restricted donated art by treating that art like real property. In the real property law context, donors may control the disposition of land through defeasible fees, transfers that are subject to the Rule Against Perpetuities, and general principles including restraints on alienation. Each of these three real property rules grew out of policy considerations the likes of which arise in conditional gifts of art.

Treating legal issues regarding restricted donated artwork through a real property-inspired legal regime encourages donors to give, ensures the continued public viewing of art, and provides institutions with a framework for avoiding many of the existing controversies around current deaccession practices.

- **Brandon Weiss,** ***Experiments with Reforming the First-Year Property Law Course***

In spring 2024, I taught a seminar in which I used my own first-year property law course as a vehicle for considering needed reforms to the law school curriculum. The experiment has developed into working with four

students from the course on drafting a law review article that takes a wide-ranging critical perspective on modern legal education, including: the evolving legal education consumer (considering demographic shifts, generational expectations post-pandemic and in the wake of a variety of social movements (Tea Party, OWS, BLM, MAGA), as well as changes in mental health and accommodation norms), an outdated pedagogy and curriculum that centers hierarchy, an unsustainable university financial model increasingly reliant on large donors, under-developed academic freedom and free speech policies, among other dynamics. The project intends to argue that attempts to reform the first-year property law course alone will fail without broader systemic reform, and uses the experiment as a window to show what an attempt at reforming the course can teach us about legal education reform writ large.

3:15pm-3:45pm **Afternoon Tea** (*Student Lounge, Level One*)

3:45-5:15pm **Concurrent Panels Session VI**

6.1 Roundtable Discussion: Teaching Property (*CATS Room 203*)

Roundtable abstract: This roundtable will focus on the question of structural frameworks for teaching property law—both those that exist, as exemplified by existing property law casebooks, and new possible approaches to framing the subject. What are the animating questions that structure the field? What are the key lessons that students should take away from a course about property law, or what parts of the field do we understand as non-negotiable or discretionary for a basic understanding of the field? What should all students understand about the history of property law? And how should we frame the topics in the field in such a way as to prepare students to think about the most pressing questions of our present and the future—e.g. worsening inequality, the global housing crisis, and climate change? The members of this roundtable have been approached about developing a new property law casebook and created an outline for the project together. As a part of this roundtable, we will be presenting this outline in order to both offer concrete points for discussion and solicit feedback from ALPS attendees. Although this specific casebook will be targeted primarily to US law students, we look forward to a discussion that includes interdisciplinary and global contributions.

***Participants*:**

- **Jessica Shoemaker**
- **K-Sue Park**
- **Nicole Graham**
- **Brandon Weiss**
- **Doug Harris**

6.2 Access to Housing: Addressing Informality, Inequality, and Redistribution (*CATS Room 202*)

***Moderator*: Sheldon Lyke**

- **Mathew Idiculla, *Rethinking Property and Housing Rights: Claiming Housing amidst Urban Informality in India***

The dominant framework of property is based on the classical liberal "ownership model" that vests absolute rights and formal title on a single owner. Meanwhile, the "right to housing", recognized in multiple international conventions and national constitutions, is often seen in opposition to the right to private property and instead conceptualised as a "human right". Though this right has been extended to include a whole host of components for an adequate standard of living, unlike property, its legal foundations are less established and hence not easily enforceable in courts.

This paper examines whether the legal concept of property can aid in making housing a realisable right in the global south. In southern jurisdictions like India, a majority of urban residents live in conflict with the planned legal order of the city. Marginalised groups often gain de facto housing rights not through the formal legal process, but incrementally by occupying and using public space and through informal negotiations with state actors.

In this context, more than a widely framed right to housing as listed in international declarations, what is most crucial for accessing housing is a "right to stay put", a right not to be summarily evicted for violating property and planning laws. Drawing on Lefebvre's "right to the city" and Léon Duguit's "social function" of property, and building on the progressive housing jurisprudence in India, South Africa, and Brazil, this paper seeks to articulate a southern perspective on claiming property and housing rights in the context of widespread urban informality.

- **Yiru Tan,** ***Formalising Tenancy Rights in Informal Housing: A Case Study of the Unified Rental Programme in Shenzhen, China***

Informal settlement is a widespread and growing phenomenon in the Global South. Theoretical and policy debates have continued about the ways to legalise informal tenure and improve security for dwellers, including titling programmes and other property arrangements. This study focuses on a formalisation initiative, namely the Unified Rental Programme, in urban villages in Shenzhen, China. Previously owned by village collectives, these villages have transformed into informal settlements accommodating nearly 10 million tenants. Over the past decade, the legalisation of informal property has progressed with a wave of urban villages redevelopments, clarifying de facto landlords' property rights yet also leading to large-scale tenant displacement. Unlike the demolition-redevelopment approach, the new initiative encourages property management firms to lease informal housing from landlords, renovate units, and sub-lease them to tenants. By preserving rental stock and enabling tenants to secure formal tenancy contacts, this programme claims to help protect tenancy rights and expand the supply of affordable housing. This study first analyses the unique land ownership system in Shenzhen, highlighting how tenants' rights have been persistently overlooked in the power struggles between different landlord groups. Based on fieldwork in urban villages, I then examine how the Unified Rental Programme reshapes landlord-tenant relationship and provides a new source of tenure security. Last, I discuss the implications of this formalisation approach for urban informality in Shenzhen. While it may expand tenure options in informal settlement, potential gentrification and displacement remain concerns.

- **Sam Tyrer,** ***Taxation Law and Housing in Australia: Home, Inequality and Redistribution***

The role of taxation law in Australia's housing system has been the subject of recent scholarship. This paper contributes a new perspective by focussing on the impact of Australia's tax laws on people's experiences of home in housing and the need for redistributive reform. This paper has two main goals. First, it will theorise the role being played by taxation law in Australia via-a-vis its impact on the experience of home. Australia's taxation system, in combination with its real property law system, currently produces housing outcomes which are unequal. The system is perpetuating a two-class housing system, whereby some people have no choice but to occupy housing as tenants while other people have the means to occupy housing as owners. The legal framework means that the experience of home is different for each group. Locked out of home ownership, tenants are deprived of some key aspects of the experience of home which owner occupiers routinely enjoy

including greater financial and ontological security. Vulnerable cohorts are less likely to be able to access home ownership, so they are disproportionately impacted and disadvantaged by this system. Second, the paper explores the reform action which government might take to redress this situation to ensure a more equal distribution of ownership rights in housing, and thus the experience of home. It is argued that an inheritance tax is necessary to ensure the growing wealth divide in Australia between those who own housing and those who do not does not continue with deleterious social impacts.

- **Alwin Chan, *Property Rights, Responsibilities and Compulsory Acquisitions***

There is a dire need for land in many densely populated cities. Acquiring old multi-storey buildings for redevelopment is often difficult (e.g. missing owners, and holdouts asking for a 'ransom'). The justification for compulsory acquisitions of land in many jurisdictions is often framed on agreeable terms, such as public interest or public use. Similarly, few would quarrel over Heller & Krier's (1999) persuasive argument that the basis of compulsory acquisitions of land should be efficiency and justice. However, what is just, efficient or in the public interest may differ between stakeholders. This article contends that the proper basis for compulsory acquisitions of land should be based on John Locke's spoilage proviso, and proposes five principles that can be inferred from his writings: 1) substantial underutilisation (utilisation being the public good and not just economic impact) is spoilage; 2) spoilage is an objective test (the landowner's best endeavours would be irrelevant); 3) spoilage should be not be determined by the government but by independent experts; 4) compensation should be substantial; and 5) laws on compulsory acquisition of land should uniform applied, whether the acquirer is the government or a property developer.

A compulsory acquisition regime shaped by the five principles would offer all stakeholders a better chance to appraise a proposed redevelopment and weigh it against the current utilisation of the land. The five principles are consistent with more contemporary insights on landowners having not only rights but obligations, including Munzer (1990), Rose (1991), Dagan (1999), Singer (2005), and Alexander (2020).

5:15pm **End-of-Day Refreshments** (*Student Lounge, Level One or Adrian Cameron Room, Level Two depending on weather*)

<u>Day 4 (Sunday, June 1, 2025)</u>

10:15am **Check in for post-conference cultural tour hosted by the Gujaga Foundation** (pre-registration and advance tour fee payment required)

NOTE: The starting point is the "Snake Pit" opposite the Anzac Parade terminus bus stop (the last bus stop on route 390X). A southbound bus runs from the bus stop near UNSW Gate 2 on High Street to the Anzac Pde terminus (https://transportnsw.info/routes/details/transdev-john-holland-buses/390x/30390-x). La Perouse is approximately 15 mins by car from UNSW, 20 mins from Coogee and 25 mins from the CBD. The tour leader is Uncle Lloyd Walker. Below is a directional photo of the bus stop and snake pit opposite.

10:30pm **Tour to La Perouse Aboriginal community departs**

11:45am (approx.) **Tour concludes**

12:00pm (***TBC***) **Informal, optional, self-funded casual lunch at La Perouse**