

EDITORIAL

JESSIE LIU*

Every waking hour of the day, humans around the globe navigate life within a complex framework ranging from hard laws and codes of conduct down to the unwritten rules of etiquette and respect. The interpretation of these laws, or their ‘decoding’, is a necessity at all levels of governance to reinforce, demolish or unearth freedoms. It is through the observation of this ongoing cycle of ‘Decoding Life, Freedom and Governance’ that the theme of Issue 47(1) of the *University of New South Wales Law Journal* (‘*Journal*’) emerges.

On the topic of unspoken rules, it feels almost as if the *Journal* has established a custom that its first Issue of the year will spotlight human rights. Setting aside the topic of correlation versus causation, this pattern may be better framed as a continued call to action that the dismantling of existing inequalities remains necessary and that there is always more to be done to improve the quality of life for all. The year of 2023 saw renewed hostilities, natural disasters, perpetuated inequalities and a continued fight for the rights of women and girls, people under the lesbian, gay, bisexual, transgender, queer, intersex and asexual umbrella, Indigenous peoples and children.¹

Turning to Australia, Martin Clark and Brendan Gogarty unravel the legal proscription of conversion practices within a society of cisgendered and heterosexual norms, arguing that reforms focused on adaptive healthcare will best address the pseudoscientific claims that currently condemn freedoms of sexual orientation and gender. Sarah Schwartz starts by breaking down the freedom to be free – how it differs across race and class and how it is gained only through a financial exchange for those who are incarcerated – and then pieces together how community payment of bail funds serves as a direct resistance against the criminal justice system’s assumptions and uplifts the voices of First Nations and Black communities. Passing the torch to the younger generation, Rachel Gregory-Wilson, Elizabeth Handsley, Liesel Spencer and Toby Raeburn examine how child protection legislation fails to protect the best interests of infants, who have just begun their lives and have subsequent vulnerabilities which need specific legal recognition.

That snapshot of human rights is insightful but does not represent the bigger picture, and so we must redirect the lens from people to focus instead on the structures that govern them. Vivien Chen unveils how the application of phoenix activity penalties to family-owned companies increases the hidden risks

* Editor, Issue 47(1).

1 See generally Human Rights Watch, *World Report 2024: Events of 2023* (World Report No 34, 2024).

of economic abuse as a form of family violence, pushing for reforms to mitigate impacts on victim survivors who are coerced into directorship for the sole purpose of bearing liability. Ian Murray, Jeanette Jensen, Marco Rizzi, Robyn Carroll, Donovan Castelyn and Natalie Skead illuminate the tendency of charities to treat restricted philanthropic gifts as being conditionally held on private arrangements rather than on trust, and highlight the public interest implications of affording such powers to donors.

Shifting now from governance to government, acts of ‘decoding’ here stem from the interpretation of the laws governing domestic freedoms that lie dormant within the *Constitution*. David Tan, Tamsin Phillipa Paige, Despina Hrambanis and Joseph Green code judgements of the High Court from 2019–21 to a modified version of Phillip Bobbitt’s modalities, settling the dominance of doctrinal interpretation and raising insights into the shifts in judicial approach. Selecting the approach that decides constitutional questions only where necessary to do justice in the case, Tristan Taylor reveals the High Court’s reasons for adopting the prudential approach and the risks of an inconsistent and uncertain application.

Investigations of law must also be opened at the global level. Hamish MacDonald surveys the international conventions that inform the management of Australian plant breeder’s rights, reinforcing the need to protect objectivity when assessing the distinctness, uniformity and stability of new plant varieties. Sven Gallasch and Jeremy Kingsley put forward a similar call to arms in the realm of transnational competition law and direct the focus back to the human actors of competition regulation to crack the secrets behind the lack of global frictions in the enforcement of divergent domestic law. To close out the legal decoding, Harry Hobbs, Stephen Young and Joe McIntyre debunk pseudolegal claims from sovereign citizens in Australian and Aotearoa New Zealand and analyse the evolution and internationalisation of pseudolaw.

I give my sincere thanks to the 25 authors whose articles pave the way for the *Journal*’s 49th year running. It has been a privilege to have been so closely involved in the development of academic critique and to have shared hills of punctuation to die on, editorial board experiences and case citation spirals with you all. Seeing your submissions from peer review through to print will remain the best experience of my university days and thank you for playing such a huge part in that.²

To the editors who have worked their magic into every punctuation mark, reference and phrase, my deepest gratitude to every single one of you who make the *Journal* what it is, and for arming me with pedantisms that I would never be able to pick up anywhere else. To the incredible 2023 Executive Committee of Matilda Grimm, Enrico Mainas, Hayden Clift, Ella Davidson, Anna Ho, Jack Zhou, Zhong Guan, Sarah Shapiro-Parata and Lucas Weil Ruggeri, thank you for not only being a radiating warmth in my life but also for the induction day executive position brainwashing that I would not be here without. To the 2024 Executive Committee of Sharanya Murthy, Brad Marzol, Jak Yasuda, Rowan Gray, Marcella De Torres

2 Cf RL Glass, ‘A Letter from the Frustrated Author of a Journal Paper’ (2000) 54(1) *Journal of Systems and Software* 1 <[https://doi.org/10.1016/S0164-1212\(00\)00020-0](https://doi.org/10.1016/S0164-1212(00)00020-0)>.

and Rachel Luo who have put up with my nitpicking of everything from formatting to technology, thank you for making our office even homier than its surface area allows. It has been an absolute honour to spend the past year with such passionate, witty and dedicated people – may our legacies decorate the office walls to inspire generations to come.

To our faculty advisors Professors Rosalind Dixon and Gary Edmond who always go above and beyond for us, thank you for your continued and unwavering support of the life of the *Journal*, whether through your encouragement of our freedom or in imparting your wisdoms to better our governance.

The *Journal* remains indebted to the ongoing support from a much wider network of individuals who pitch in their time to make every Issue thrive. All credit for the visual elegance of these pages go to our typesetter, Kerry Cooke, and kudos for the exterior go to our cover designer, John Hewitt. The Executive Committee takes great pride in being the flagship publication of the UNSW Faculty of Law & Justice and we thank its Dean, Professor Andrew Lynch, for his steadfast advocacy of our Editorial Board and the wonderful experiences it provides. To our premier sponsors, Herbert Smith Freehills, Allens, Corrs Chambers Westgarth and King & Wood Mallesons, thank you for empowering our operations and for hosting our launches – a personal thank you to Herbert Smith Freehills for celebrating Issue 47(1)'s blast off.

The penultimate words of gratitude are dedicated to my loved ones: the friends that I have enjoyed boba with since high school and the ones who I have clawed through the rat race of law school with; my mother, whose support shined through with every plate of fruit I consumed during my tenure as an Issue Editor; and a special shout out to the devices whose keyboards no longer need to suffer many a late night of editing.

To future readers of this Issue, I ask that you put on your detective hat and enjoy the journey of decoding legal conundrums on which you will soon be embarking. Thank you for allowing me to hold your attention for the first few pages of this Issue, and for entertaining this request to exercise wilful blindness for any typos within the subsequent ones.

