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Public and Private Distortions: the case against fiduciary models of state-indigenous relationships

BY Associate Professor Nicole Roughan
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ABSTRACT

Settler-state jurisdictions such as Canada and New Zealand have recognised specific fiduciary duties arising on states in favour of indigenous claimants. On the back of such decisions, (most recently the NZ case of *Proprietors of Wakatū v. Attorney-General* [2017]), some scholars argue that state-indigenous relationships have a general fiduciary character, or can be classified as presumptively fiduciary in status. This paper rejects such a position, on four grounds. First, it argues against fiduciary political theory in which the state is conceived as a public fiduciary for all of its subjects. Second, it reiterates arguments against the paternalism of fiduciary doctrine in the specific context of state-fiduciary relationships. Third, it argues that fiduciary doctrines neither serve nor easily accommodate a relationship between state and indigenous claimants. Fourth, and most importantly, it argues that the characterisation of the state as a public fiduciary in its dealings with and for indigenous parties distorts both the public and private offices at stake in such relationships.

ABOUT THE SPEAKER



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

Nicole's research field is the philosophy of law, where she specialises in the interactions of legal systems and orders, and the resulting challenges for pluralist jurisprudence. Nicole is currently working on a new book, *Officials*, which examines the centrality of the idea of the legal official to both the existence and legitimacy of law's authority. She is also engaged in collaborative projects exploring the theoretical foundations of indigenous laws, and theories of recognition. In January 2018, Nicole took up a Rutherford Discovery Fellowship awarded by the Royal Society Te Apārangi, to pursue a five-year project on *Legalities: Jurisprudence without Borders*.

Participation is By Invitation Only

To register your participation, please contact Ms Yvonne Lim at lawylhh@nus.edu.sg.