



THE UNIVERSITY OF
MELBOURNE

CENTRE FOR COMPARATIVE CONSTITUTIONAL STUDIES
ANNUAL REPORT 2007



MELBOURNE LAW SCHOOL
Australia's first, Australia's global

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DIRECTOR'S REPORT 2007

2007 was another busy and successful year with the Centre for Comparative Constitutional Studies delivering a full and engaging program of research, teaching, publication and public events.

Melbourne Law School celebrated 150 years of law teaching, a milestone in the history of the Law School, the University of Melbourne and legal education in this country. A gala dinner was held on 21 November in the Great Hall of the National Gallery of Victoria which celebrated one of the most significant moments in Melbourne Law School's long history. The dinner also offered the opportunity to honour Michael Crommelin for his 18 year tenure as Dean and for his extraordinary contribution to the School over this period.

The context in which the Centre works was as exciting and volatile as usual. The Victorian Charter of Human Rights and Responsibilities came into force. Issues of federal reform returned to the political agenda and comparative constitutional law attracted increasing attention as discrete areas for research and study, in Australia and throughout the world.

There were a number of changes in Centre personnel. After two and a half years as Centre Director, on 1 July 2007, Simon Evans took up the position of Deputy Dean, Melbourne Law School and I resumed the directorship of the Centre. The Centre welcomed a new member, Professor Adrienne Stone, who was appointed to a Chair in Law at Melbourne Law School. She was previously a Fellow in the Law Program at the Research School of Social Sciences at the Australian National University where she was also a Senior Lecturer in the Faculty of Law. In July 2008 Adrienne will become the new Centre Director. We also welcomed Associate Professor Jeremy Gans and Dr Fiona Hanlon as Centre Members. Fiona, a PhD Candidate in the Centre, was awarded her doctorate for her PhD Thesis *An Analysis of the Office of Attorney General in Australia and Directions for the Future*. In May 2007 Madeline Grey joined the Centre as Administrator. She previously worked for the Parliament of Victoria as a researcher and administrator. Madeline holds a PhD from the University of Melbourne in history. At the beginning of 2007 both Simon Evans and Carolyn Evans were promoted to Associate Professor.

Research and Knowledge Transfer

In 2007 Centre members were actively engaged in research work on key topics in Australian and comparative public law.

During the first part of the year I was extensively engaged in preparation for the VII World Congress of Constitutional Law, in my capacity as President of the International Association of Constitutional Law. In April I visited China as the guest of the China Law Society to deliver a series of lectures in universities and to professional groups on the themes of the Congress: Rethinking the Boundaries of Constitutional Law. Later in the year I participated in the Fourth International Conference on Federalism in Delhi, India, where I presented the theme of 'Interaction in Federal Systems.' Publications during the year included an analysis of the reasoning of the High Court in the *Workchoices* decision (with other colleagues in the Law School); an edited collection of essays in honour of Sir Ninian Stephen (with Tim McCormack); several articles and chapters on the increasingly topical issue of the use of foreign law by courts; and an introduction to the I.CON symposium on the work of Louis

Favoreu. At the end of 2007, projects in train include a re-examination of the methodology of constitutional interpretation in federal systems, generally and with particular reference to Australia; a book on the Australian Constitution for the Hart series on Constitutions of the World; and an edited collection of essays on National Constitutional Jurisprudence and Global Values (with Dennis Davis and Alan Richter), also to be published by Hart. In March I was honoured by my appointment to the position of Laureate Professor, which is one of the University's highest honours.

In May **Associate Professor Simon Evans** visited China and Hong Kong as a Universitas 21 Fellow. He gave lectures on "Attitudes to Proportionality in Constitutional Review" and "Recent Developments in Australian Constitutionalism" at the Law Institute of the Chinese Academy of Social Sciences and Peking University and People's (Renmin) University.

Deputy Director **Associate Professor Carolyn Evans** visited the United Kingdom in April to give an invited lecture at the University of Cambridge on extreme speech. She also travelled to Hong Kong to talk on human rights and terrorism and to Vietnam to talk on religious freedom and public education. Carolyn also delivered papers in London, Oxford, Bristol and Liverpool on topics concerned with her two ARC research projects: Parliaments and Protection of Human Rights, and Religious Freedom and Discrimination.

Professor Adrienne Stone continued her research on freedom of expression, publishing an edited collection (with Dr Katharine Gelber) entitled *Free Speech and Hate Speech in Australia* and delivering a paper on *Freedom of Speech and Sedition at Law and Liberty in an Age of Terror* a major conference held at the University of New South Wales in July. She was awarded an ARC Discovery Grant to continue her work on Freedom of Expression for the period 2008-2012.

Her research on judicial review produced an article entitled *Judicial Review without Rights* to appear in the Oxford Journal of Legal Studies in 2008. She also delivered a paper on the life of jurist and legal theorist Julius Stone at a Conference honouring his 100th Birthday at the University of Sydney and (with Simon Evans) delivered a paper on 'Proportionality and Balancing in Constitutional Law' at the IACL World Congress in Athens.

Dr Joo-Cheong Tham's public law research included work on an Early Career Researcher grant aimed at examining the impact of a statutory bill of rights on Australian counter-terrorism laws. Under the auspices of a British Academy Visiting Fellowship based in King's College, University of London, he is furthering this research by undertaking a comparative study of the enactment of control orders in Australia and the United Kingdom. In July, he gave an invited lecture at the Victoria University of Wellington on Australian political finance. Some of this lecture will be incorporated into a book on Australian political finance that will be published in 2009 by UNSW Press.

Professor Cheryl Saunders, Associate Professor Simon Evans, Associate Professor Carolyn Evans and Professor Adrienne Stone participated in the *World Congress of Constitutional Law* Conference held in Athens, Greece 11-15 June 2007. This event marked the end of my Presidency of the International Association of Constitutional Law which furthered the Centre's connections with the global community in comparative constitutional scholarship.

Parliaments and the Protection of Human Rights

The major ARC funded Centre research project *Parliaments and the Protection of Human Rights*, which began in 2004, was successfully completed in 2007. The project investigated how Australian parliaments protect human rights. The principal investigators are Associate Professor Simon Evans and Associate Professor Carolyn Evans.

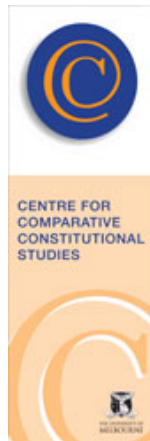
Simon and Carolyn have spoken on topics related to this project through Australia and in many other parts of the world. They have published articles and chapters on aspects of the project in Australia, the United Kingdom and Europe. They also ran a major conference on human rights Acts which is discussed later in this report. The project will result in the publication of a book on Australian Bills of Rights (Lexis Nexis 2008).

Looking forward

2007 marked the beginning of the process of transition to a fully graduate law school, taking on the name 'Melbourne Law School' and initiating a new phase in legal education in Australia. The Centre looks forward to involving in its activities graduate students with particular interests in the field of public law.

Cheryl Saunders
Director

ABOUT THE CENTRE



The Centre for Comparative Constitutional Studies is a focal point for research, scholarship, teaching and information about Australian constitutional law and the constitutional law of other countries.

It is one of the Law School's specialist research Centres, providing a uniquely Australian focal point for constitutional studies from a distinctively comparative perspective.

The Directorship of the Centre was Associate Professor Simon Evans (January to July) and Professor Cheryl Saunders (July onwards) and its members are drawn from the Law School's faculty. The Centre's advisory board consists of leading Australian and international public lawyers.

Objectives

The objectives of the Centre for Comparative Constitutional Studies are:

- to examine and evaluate the Australian constitutional system and to contribute actively to the debate on the Australian system of government
- to examine and advise on the constitutional and legal framework for relations between levels of government, in theoretical and practical operation
- to introduce comparative constitutional concepts and knowledge on comparative constitutional principles, institutions and practices into the Australian constitutional debate
- to develop and promote a sound understanding of the constitutional systems of countries in the neighbouring region, both in underlying theory and practical operation
- to contribute to the debate on constitutional issues elsewhere in the world in the light of the experience of Australia and the Asia-Pacific region
- to provide a public and specialist resource on constitutional and comparative constitutional issues.

The Centre pursues these objectives through its activities—research, teaching, information exchange, and by providing a resource centre, consultancies and research collaboration.

Activities

- conducting research, both independently and in collaboration with others
- providing research training, at graduate and undergraduate levels
- developing and conducting courses
- hosting and contributing to public seminars and conferences

- responding to inquiries from the Australian public and media and from individuals and organisations in other countries
- collecting and disseminating constitutional materials and information, making full use of information technology
- maintaining an active visitors' program
- fostering and participating in networks within Australia and overseas
- publishing books, articles, journals and newsletters, and having research results published
- making submissions to public inquiries
- carrying out consultancies

PEOPLE

Directors and Administrator



Professor Cheryl Saunders AO
Founding Director CCCS
Director (1 July 2007 onwards)

Cheryl Saunders is the Founding Director of the Centre for Comparative Constitutional Studies. She has held a personal chair in the Faculty since 1989 and is a Fellow of the Academy of the Social Sciences in Australia. During 2006 she was the Arthur Goodhart Visiting Professor of Legal Science at the University of Cambridge and a visiting professor at the University of Copenhagen, where she taught comparative constitutional law.

Other positions presently held by Cheryl Saunders include President of the International Association of Constitutional Law and of the International Association of Centres for Federal Studies. She is an editor of the *Public Law Review*, the symposium editor of *I.CON*, a member of the editorial boards of a range of Australian and international journals, including *Publius* and a member of the *Conseil Scientifique, Traité International de Droit Constitutionnel*. She is an Honorary Professor at the University of Capetown and an external examiner for the University of Hong Kong. She has been enseignante invitée at Université Paris II, Panthéon-Assas for the past 8 years.

Cheryl Saunders has specialist interests in constitutional law and comparative constitutional law, including federalism and intergovernmental relations and constitutional design and change. She is presently working on two major projects: an account of the Australian Constitution written from a comparative constitutional perspective and a text on comparative constitutional law.

In addition to her research and teaching activities, Cheryl Saunders is active in public debate on constitutional matters in Australia and internationally. From 1991, as deputy chair of the Australian Constitutional Centenary Foundation, she was closely involved in its pioneering work to encourage public understanding of the Constitution. She has had some involvement in aspects of constitutional design in other countries, including Fiji, South Africa, Zimbabwe, Sri Lanka, East Timor and Iraq.

In 1994, Cheryl Saunders was made an officer of the Order of Australia, for services to the law and to public administration. She was awarded a Centenary Medal in 2003, and an honorary doctorate from the University of Cordoba, Argentina in 2005.



Associate Professor Simon Evans
Director CCCS (until 1 July 2007)

Dr Simon Evans joined the Faculty and the Centre in 1999. Previously he had served as Associate to Sir Anthony Mason at the High Court of Australia and practised as a lawyer in a commercial firm in Sydney. He holds degrees in Science and Law from the University of Sydney and a doctorate in law from the University of Cambridge. His research interests focus on constitutional rights (especially property rights and socio-economic rights) and mechanisms for government accountability. During 2006 he was engaged with Carolyn Evans in a major ARC funded research project on Australian Parliaments and Human Rights. He teaches Constitutional Law, Advanced Constitutional Law and Comparative Constitutional Law at an undergraduate level, and Theories of Constitutional Interpretation and Protecting Rights in the graduate program. He became director of the Centre in 2005.



Associate Professor Carolyn Evans
Deputy-Director CCCS

Associate Professor Carolyn Evans is Associate Dean (Research) of the Melbourne Law School and a Deputy Director of the Centre for Comparative Constitutional Studies. Her teaching and research are in the areas of constitutional law, human rights and religious freedom. Carolyn has degrees in Arts and Law from Melbourne University and a doctorate from Oxford University where she studied as a Rhodes Scholar and where she held a stipendiary lectureship for two years. She also qualified to practice law and is a barrister and solicitor of the Supreme Court of Victoria.

Carolyn is the author of *Religious Freedom under the European Court of Human Rights* (OUP 2001) and co-author of *Australian Bills of Rights: The Law of the Victorian Charter and the ACT Human Rights Act* (LexisNexis 2008). She is co-editor of *Religion and International Law* (1999, Kluwer) and *Mixed Blessings: Laws, Religions and Women's Rights in the Asia-Pacific Region* (2006 Martinus Nijhoff). She is an internationally recognised expert on religious freedom and the relationship between law and religion and has spoken on these topics in the United States, United Kingdom, Russia, China, Greece, Vietnam, India, Hong Kong and Australia. From 2007-2009 she is undertaking a joint ARC Discovery Project with Beth Gaze on the topic of religious freedom and non-discrimination.

She also researches on the area of domestic protection of human rights, particularly the role of parliament in the protection of human rights and Commonwealth Bills of Rights. She is currently completing an ARC Discovery Grant on this topic with Associate Professor Simon Evans. Papers from the project can be found on the website of the Centre for Comparative Constitutional Studies.



Associate Professor Kristen Walker
Deputy-Director CCCS

Kristen Walker is an Associate Professor at the University of Melbourne. Prior to joining the Law Faculty, she completed her articles with Arthur Robinson and Hedderwicks in Melbourne and also served as Associate to Sir Anthony Mason, then Chief Justice of Australia. Kristen teaches Constitutional Law and Law and Sexuality in the LLB program and, in the graduate program, Principles of Public and International Law. She has also taught international human rights law and legal ethics at Columbia Law School in New York. Kristen's research interests are in constitutional law, law and sexuality, and international law, particularly human rights and refugee law.



Katy Le Roy
Assistant Director CCCS

Katy Le Roy is the Assistant Director of the CCCS, and has been closely associated with the Centre since 1996. Katy completed her undergraduate degrees in Law and Arts at the University of Melbourne, before completing Articles of Clerkship and practicing as a solicitor with Holding Redlich. She is a Barrister and Solicitor of the Supreme Court of Victoria and has also worked in Germany in finance law, and as a Research Fellow in the Law School. In 2006, she co-edited with Cheryl Saunders a volume in the Global Dialogue series on *Legislative, Executive and Judicial Governance in Federal Countries*.

Together with Cheryl Saunders, Katy is co-editor of *The Rule of Law*, published in 2003 by the Federation Press. Katy teaches Fundamentals of the Common Law in the Graduate Program at the Melbourne Law School, and is also a PhD Candidate at the Centre. She is doing her doctoral research on constitution making in the Asia Pacific, looking specifically at constitution making processes in Fiji and the Solomon Islands, and democratic participation in constitution making. Her main academic interests are constitution making, comparative federalism, constitution theory and political theory. In 2007, she taught a subject on Constitution-Making in the Melbourne Law Masters with Professor Cheryl Saunders and Professor Christina Murray.



Dr Madeline Grey
Administrator

Madeline Grey joined the Centre in May 2007. She previously worked for the Parliament of Victoria as a researcher and administrator. Madeline holds a PhD from the University of Melbourne in history.

Centre Members



Professor Adrienne Stone

Adrienne Stone joined the Faculty and the CCCS at the end of 2006 from the Research School of Social Sciences at ANU. Her research interests lie in constitutional law, comparative constitutional law and constitutional theory. She has published extensively on Australian constitutional law, with a special focus on freedom of political communication, comparative constitutional law of freedom of speech and the legal and institutional questions surrounding bills of rights.

Adrienne Stone was appointed to a Chair in Law in 2007. She was previously a Fellow in the Law Program at the Research School of Social Sciences at the Australian National University where she was also a Senior Lecturer in the Faculty of Law. Previous positions include Associate-in-Law at Columbia Law School, a solicitor at Malleson Stephen Jaques in Sydney and Associate to the Hon. Justice M.H. McHugh of the High Court of Australia. She has also taught as a visitor at Tulane Law School and the University of Western Ontario (Canada).

Her research interests lie in constitutional law, comparative constitutional law and constitutional theory. She has published extensively on Australian constitutional law, with a special focus on freedom of political communication, comparative constitutional law of freedom of speech and the legal and institutional questions surrounding bills of rights.

Her recent publications include an edited collection *Hate Speech and Freedom of Speech in Australia* (co-edited with Dr Katharine Gelber, Federation Press, 2007) and an article 'Judicial Review without Rights' forthcoming in the *Oxford Journal of Legal Studies*.

She is a member of the Council of the Australian Association of Constitutional Law and a member of the Executive Committee of the International Association of Constitutional Law.



Associate Professor Beth Gaze

Beth Gaze has a BSc from the University of Melbourne, an LLB (Hons) from Monash University and an LLM from the University of California, Berkley. Her interests are in anti-discrimination and equality law, feminist legal thought, and administrative law including tribunals, and on empirical legal research generating knowledge about the actual operation of the legal system. She has recently completed a study of the enforcement process under Australian federal anti-discrimination

law, and is supervising a PhD project on the need for substantive updating of Australian anti-discrimination laws. She is currently working on two ARC Discovery Grant funded research projects in 2006: (with Professor Belinda Fehlberg) a study of the experience of appellants in the Australian Social Security Appeals Tribunal, and (with Associate Professor Carolyn Evans) a study of the conflict between the principles of freedom of religion and non-discrimination.

She is a member of the Victorian Mental Health Review Board, and has been a member of the Social Security Appeals Tribunal. She has experience in University equity and human research ethics areas.

She is also a member of the Faculty's Centre for Employment & Labour Relations Law.



Associate Professor Jeremy Gans

Jeremy Gans is an Associate Professor (from 2008) in Melbourne Law School, where he researches and teaches across all aspects of the criminal justice system. He holds higher degrees in both law and criminology, and has worked for brief periods in both public and private legal settings. In 2007, he was appointed as the Human Rights Adviser to the Victorian Parliament's Scrutiny of Acts and Regulations Committee.

The topic of much of his research has been fact-finding in sexual assault trials, the subject of his doctoral thesis and a number of published articles. His later work concerns criminal investigation, especially the technique of DNA identification, and human rights. He has contributed to public debate on criminal justice in a number of forums.



Dr Michelle Foster

Michelle Foster is a Senior Lecturer and Director of the International Refugee Law Research Programme in the Institute for International Law and the Humanities at the University of Melbourne Law School. Her teaching and research interests are in the areas of public law, international refugee law, and international human rights law. Michelle has LLM and SJD degrees from the University of Michigan Law School, where she was a Michigan Grotius Fellow. In 2006, Michelle began a formal collaboration between Melbourne Law School and the University of Michigan's Program in Refugee and Asylum Law on a major project in international refugee law. Michelle has published a number of articles on international refugee law and her book, *International Refugee Law and Socio-Economic Rights: Refuge from Deprivation*, is being published in July 2007 by Cambridge University Press.



Dr Pip Nicholson

Pip Nicholson joined the Asian Law Centre in 1997 and the Centre for Comparative Constitutional Studies in 2006. Pip was a Senior Fellow of the Faculty from 1998. She joined the Faculty permanently as a lecturer in 2002, becoming a senior lecturer in 2004 and Director of Teaching in 2006-2007. A graduate in Law and Arts from the University of Melbourne with a Masters in Public Policy from the Australian National University and doctorate from the Law School University of Melbourne, Pip teaches on the Vietnamese legal system in both the LLB and Law Masters of the Melbourne Law School and teaches on Vietnamese law to a consortium of American law-schools.

Pip's doctoral research focused on the Vietnamese court system between 1945 and 1976, in the course of an analysis of the extent to which the Vietnamese legal system mirrored or diverged from its Soviet parent.

Pip is interested in the challenges of cross-cultural legal research and legal reform - particularly within Asia. She has recently completed research on corruption within the Vietnamese court system, the reforms to the Vietnamese court system commenced in 2002 and the take-up of labour law reforms in Vietnam. In 2005, she co-edited with John Gillespie, *Socialism and Legal Change: The Dynamics of Vietnamese and Chinese Reform*. Her most recent publication is *Borrowing Court Systems: the Experience of Socialist Vietnam* (Martinus Nijhoff, 2007). Her current research explores local Vietnamese mediation, drugs prosecutions within Vietnam and the utility of legal culture in the study of the transforming legal systems within Asia.

Pip currently consults on changes in transitional legal systems, with particular focus on Vietnam.



Dr Joo-Cheong Tham

Joo-Cheong Tham is a Senior Lecturer in Melbourne Law School and has taught at the law schools of Victoria University and La Trobe University. His research focusses on the regulation of non-standard work, anti-terrorism laws and political finance law. He has published over 25 book chapters and refereed articles. His research has also been published in print and online media with Joo-Cheong having written more than 30 opinion pieces. He has also given evidence to parliamentary inquiries into terrorism laws and political finance law.

He is currently a British Academy Visiting Fellow at King's College, University of London and is undertaking a comparative study of control orders in Australia and the United Kingdom in relation to the protection of human rights. He is also writing a book on Australian political finance law that will be published by UNSW Press in 2009.

Joo-Cheong graduated with a LLB (Hons) from the University of Melbourne in 1998 and completed an LLM in 2003 with the same university. He was granted a doctorate of laws by the University of Melbourne on the basis of his thesis that examined the legal precariousness of casual employment.



Mr Glenn Patmore

Glenn has an LLB (Hons) and a BA from Monash University, and an LLM from Queens University, Canada. His principal fields of interest are democratic theory and practice, constitutional law, human rights law and the republican debate.

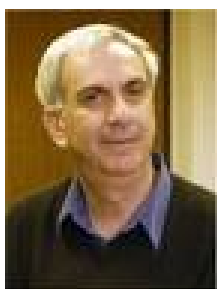
Glenn has published in a range of Australian and international journals.

He is also a member of the Faculty's Centre for Employment & Labour Relations Law.



Mr John Waugh
Senior Lecturer

John holds degrees in Arts and Law from the University of Melbourne and the University of Cambridge. He researches and teaches in Australian constitutional law and history.



Professor Geoffrey Lindell
Professorial Fellow

Geoff Lindell is a Professorial Fellow of the University of Melbourne and also holds appointments as an Adjunct Professor of Law at the Adelaide University and the Australian National University. He joined the Melbourne University Law School in 1994 and retired from full-time teaching in early 2002. Since that time he has continued to research and write, in addition to being available to undertake some sessional teaching and consulting. Throughout his long career he has taught and published widely in the field of Australian constitutional and public law, including the publication, as editor, *Future Directions in Australian Constitutional Law* (1994), senior co-editor of *Parliament: The Vision in Hindsight* (2001 with R Bennett) and also as co-author of *Sawer's Australian Constitutional Cases* (4th ed., 1982 with Professor L Zines). Professor Lindell edited *The Mason Papers* (2007), a selection of Sir Anthony Mason's articles and speeches.

Geoff served as a member of the Distribution of Powers Advisory Committee to the Constitutional Commission (1986-1987), and was a consultant to the Australian Constitutional Convention (1975-1985). Before joining the Australian National University Law School in 1975, where he taught until the end of 1993, he held a senior position in the Commonwealth Attorney-General's Department and has frequently since acted as a consultant to the same Department. He appeared as counsel in two major High Court constitutional cases (*Fencott v Muller* (1983) and *McGinty v Western Australia* (1995)).



Dr Fiona Hanlon

Fiona has extensive experience in the provision of high-level legal and policy advice to Government and senior management and in representing government in a broad range of forums, including at the interstate and international intergovernmental level.

Before commencing the research for the thesis Fiona held a number of senior positions in the Victorian public sector, including Deputy Secretary of the Department of Justice and First Assistant Secretary of the Department of Premier and Cabinet. Fiona was also Executive Director of the Victorian Constitution Commission which was tasked by Premier Bracks to review the voting system for the Victorian Legislative Council. The Commission's recommendations formed the background to amendments to the Victorian Constitution that introduced the system of proportional representation under which the Council is now elected.

Advisory Board

- Ian Cunliffe
- Dr Stephen Donaghue
- Dr Gavan Griffith AO QC
- Peter Hanks QC
- Wendy Harris
- Justice Chris Maxwell, President,
Court of Appeal
- Debbie Mortimer SC
- Mark Moshinsky
- Stephen McLeish
- Professor Brian Opeskin
- Jason Pizer
- Pamela Tate SC, Solicitor-General for
Victoria
- Justice Richard Tracey, Federal Court
of Australia

Biographical information on the members of the Advisory Board is set out in the Appendix to this Report.

Visitors to the Centre

During 2007, the Centre hosted the following International scholars in short and long research visits:

- **Dr Amos Jones**, Fulbright Postgraduate Award holder, Harvard Law School, 1 September 2006 – 31 May 2007
- **Dr Dirk Hanschel**, Senior Research Assistant at the Chair of German and Comparative Public Law, International Law and European Law, University of Mannheim, Germany, 10 April – 10 June 2007
- **Professor Kent Roach**, University of Toronto Faculty of Law, Canada, 9 - 10 July 2007
- **Professor Christina Murray**, The University of Cape Town, South Africa, 18 July – 24 July 2007
- **Professor Elisabeth Zoller**, Director of the Centre for American Law, Université Panthéon-Assas (Paris II), France, 19 September - 25 September 2007
- **Professor Sandra Liebenberg**, Harry Oppenheimer Chair in Human Rights Law, Department of Public Law, Stellenbosch University, South Africa, 24 September - 30 September 2007.

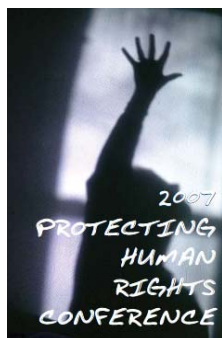
Research Assistants

This is a partial list of the research assistants who worked with Centre members on research projects during 2007:

- Elizabeth Sheargold
- Holly Smart
- Duncan Kaufmann
- Kirsty Souter
- Carryn Vincec

EVENTS

International Conference



International Conference on Legislatures and the Protection of Human Rights 25 September 2007

The 2007 *Protecting Human Rights Conference*, co-hosted by the CCCS, was a very successful and well attended event. Over 170 people from government and legal fields including former Prime Minister the Rt Hon Malcolm Fraser, Shadow Attorney General, Senator Joe Ludwig, West Australian Attorney General, the Hon Jim McGinty and Mr Julian Burnside QC, listened to leading Australian and international speakers' analyses of Australian Human Rights Acts and the operation and future potential of the Charter and other Australian Human Rights Acts.

Papers presented at the conference discussed:

- The current state of play regarding Australian Human Rights Acts.
- The background to a proposed Western Australian Human Rights Act and emerging themes from the Western Australian public consultation process.
- The UK Human Rights Act and key lessons for Australia.
- Making law under a Human Rights Act.
- The role of Human Rights Commissions.
- Parliament and the identification of rights issues.
- Human rights in the Courts including the issue of interpretation, dialogue and deference in the Courts; the consequences of incompatibility: declarations, appeals, rectification and override; and the impact on criminal law and procedure.
- Beyond Civil and Political Rights: Protecting Social, Economic and Cultural Rights under Bills of Rights



Left to right: The Rt Hon Malcolm Fraser,
Fred Chaney AO, Senator Marise Payne.

Featured speakers included:

- Professor George Williams (Director, Gilbert+Tobin Centre of Public Law, UNSW)
- Murray Hunt (Legal Adviser to the United Kingdom Joint Committee on Human Rights, UK)
- Professor Sandra Liebenberg (Stellenbosch University, South Africa)
- Senator Marise Payne (Commonwealth Parliament)
- Professor David Kinley (Faculty of Law, University of Sydney)
- The Hon Jim McGinty MLA (WA Attorney-General)
- Fred Chaney AO (Chairman, Consultation Committee for a Proposed WA Human Rights Act)
- Associate Professor Penelope Mathew (Legal Adviser, ACT Human Rights Commission)
- Dr Julie Debeljak (Monash University)
- James Stellios (ANU)
- Richard Refshauge SC (ACT Director of Public Prosecutions)

Most of the papers presented at the Conference are available from the Centre's website.

Public Lectures



Dean's Public Lecture
Salvaging the Constitution for Europe
Professor Ingolf Pernice, Humboldt University, Berlin
10 September 2007

Professor Pernice occupies the chair for public law, international and european law at the Humboldt-Universität of Berlin. He has been the Dean of the Law Faculty since February 2006. In 1997 he founded the Walter Hallstein-Institut for European Constitutional Law of the Humboldt-University Berlin of which he is the Managing Director. In 1998 he founded the European Constitutional Law Network which he continues to coordinate. The background to the lecture was the process of developing a constitutional foundation for the European Union which began in May 2000 with the famous Humboldt Lecture of the German Minister for Foreign Affairs.

After years of work, a Convention adopted by consensus a draft Treaty establishing a Constitution for Europe. After making some amendments the Treaty was signed by the Heads of State and Government of the 25 European Union (EU) Member States in October 2004. Negative referendums in France and the Netherlands in 2005 led to a deep crisis in the EU and ultimately to the preparation in 2007 of a new draft for a Reform Treaty on the EU. Under this treaty, the substance of the Constitutional Treaty is to be preserved, while all "constitutional symbolism" would be deleted.

In his lecture, Professor Pernice explained the rationale for this solution and explored the key questions of whether it will be possible in future to talk about a Constitution of the EU; and whether the "constitutional approach" will be lost? Some theoretical aspects of the concept of a "constitution" were discussed. Attention was also paid to the question of why this concept does not necessarily relate to a State alone, but can apply also to organisations that in a "postnational" sense are above the state.

Seminars and Roundtables



The Rule of Law in Blair's Britain
Professor Adam Tomkins, Professor of Public Law, the University of Glasgow, Scotland
20 March 2007

In this seminar, Professor Tomkins examined the changing contours of the rule of law in British constitutional law since the coming into force of the UK's Human Rights Act in 2000. Tomkins, who has held the John Millar Chair in Public Law at the University of Glasgow since 2003, posited that the British constitution is currently at a crossroads and faces a series of hard choices as to how the relationship between the political/parliamentary and the legal/judicial elements of the constitution should now develop.

LLB Student Forum – Talking to Seven Judges: Arguing constitutional cases in the High Court

Associate Professor Kris Walker, Melbourne Law School

18 April 2007

Kris Walker discussed some of her recent appearances in the High Court of Australia. She covered the process of taking a case to the High Court, starting with the commencement of proceedings and finishing with oral argument. She also discussed the challenges and joys of presenting oral argument to seven judges. The presentation was for Melbourne LLB students only.



Cultural Wars and Constitutional Law: Australia and the United States Compared.

Dr Amos Jones, Fulbright Postgraduate Award holder, Harvard Law School

9 May 2007

Dr Amos N Jones is a graduate of Harvard Law School and Columbia University Graduate School of Journalism. He was the 2006-07 Fulbright Postgraduate Scholar and was a visitor to the Centre for Comparative Constitutional Studies at Melbourne Law School. His research focuses on the law of racial discrimination, the development of international human rights, and the role of religion in lawmaking.

In his seminar, Dr Jones presented the principal observations of his work on how political culture has influenced the legal development of Bills of Rights and social reforms proposed in Australia.



The German Federalism Reform (Part I) – A New Distribution of Legislative Powers?

Dr Dirk Hanschel, University of Mannheim, Germany

24 May 2007

Dr. Dirk Hanschel, M.C.L. was a visitor at the Faculty of Law at the University of Melbourne. He was working on a book project on “Mechanisms of Conflict Resolution in Federalist States.” Dr. Hanschel is a post-doctoral research fellow and lecturer at the Chair of German and Comparative Public Law, International Law and European Law at the University of Mannheim, Germany. Apart from his research on comparative Constitutional law, Dr. Hanschel specializes in international environmental law, human rights, dispute resolution and negotiation and administrative law.

Dr Hanschel’s gave two seminars. In his first seminar he focussed on the first part of German federalism reform entered into force on 1 September 2006. Its main purpose was to reverse the increasing entanglement, and subsequent weakening, of legislative powers of the federal (*Bund*) and the state (*Länder*) parliaments which had led to numerous blockade situations in the legislative process and to a considerable reform gridlock. In the seminar Dr Hanschel addressed the question of whether this purpose has been achieved and whether one may claim that German federalism has proven its ability to reform itself. This provided

the basis for a broader discussion on the adequate distribution of powers in a federalist state, including comparative aspects derived from the Australian Constitution.



Professor Cheryl Saunders
and Dr Dirk Hanschel.

Approaches to interpretation of the federal provisions of the German Constitution

Dr Dirk Hanschel, University of Mannheim, Germany

7 June 2007

Dr Hanschel's second seminar focussed on the question of how the German Federal Constitutional Court (*Bundesverfassungsgericht*) has chosen to interpret provisions in the German Constitution dealing with the distribution of legislative powers between the federation (*Bund*) and the States (*Länder*). After dealing with the Court's general interpretative approach to the delineation of powers, Dr Hanschel examined recent Court decisions, concerning, in particular, the concurrent and the framework legislative powers of the federation. These decisions were discussed in the light of recent changes to the German Constitution (including those enacted as a result of federalism reform), and left room for comparative analysis, in particular with regard to the Australian Constitution.



Judicial Activism and Democratic Dialogue in Canada

Professor Kent Roach, University of Toronto Faculty of Law, Canada

10 July 2007

Professor Kent Roach is Prichard-Wilson Chair of Law and Public Policy at the University of Toronto Faculty of Law, with cross-appointments in criminology and political science, and a Fellow of the Royal Society of Canada.

In his seminar, Professor Roach posed and discussed a range of questions including 'What is judicial activism? Has the Supreme Court of Canada engaged in judicial activism in its interpretation of the 1982 Canadian Charter of Rights and Freedoms? Does situating judicial activism in the context of a dialogue between courts, the legislature, the executive and the people adequately respond to the democratic critique of undemocratic judicial activism? Is there genuine democratic dialogue in Canada about the treatment of rights?' Professor Roach presented from a chapter on Judicial Activism in the Supreme Court of Canada that will be part of a forthcoming collection on judicial activism in common law countries edited by Professor Brice Dickson and published by Oxford University Press.



The Human Rights Act in the United Kingdom

Mr Rabinder Singh QC and Dr Angela Ward, the London Bar, the United Kingdom

7 August 2007

Rabinder Singh QC is a barrister at Matrix Chambers in London. He specialises in administrative law and human rights law. He has appeared in many of the important cases decided under the UK's Human Rights Act and in the European Court of Human Rights. He

is a Visiting Professor of Law at the London School of Economics and is chair of the Constitutional and Administrative Law Bar Association.

Dr Angela Ward BL is a Barrister practising at the Bars of England and Wales, and Ireland, specialising in EU law and the law of the European Convention of Human Rights. She has appeared at all levels of the UK judiciary in cases in these fields and has petitioned in the European Court of Human Rights.

Mr Singh spoke on “*The Impact of the Human Rights Act in the United Kingdom.*” Dr Ward followed and spoke on “*Commercial Undertakings and the Enforcement of Human Rights: the European and British Experience.*”

The speakers examined questions such as ‘What has been the impact of the UK’s Human Rights Act on the institutions of government in the UK? How have public authorities and Parliament changed their practices to comply with human rights obligations? Is there a constitutional “dialogue” between different branches of the state? What further changes are in train? Should commercial undertakings be able to enforce human rights rules?’ These and other questions which are also relevant to the interpretation and operation of the Victorian *Charter of Human Rights and Responsibilities* were discussed at length.

CCCS Case Discussion: A free and confident society? A discussion on the recent High Court decision in *Thomas v Mowbray* [2007] HCA 33 (2 August 2007) 9 August 2007

One of a series of Centre meetings to analyse and discuss the implications of High Court decision in the field of public law, shortly after the decision is handed down.



The Concept of Public Law

Professor Elisabeth Zoller, Université Pantheon-Assas (Paris II), France

18 September 2007

Elisabeth Zoller [Docteur en droit, Agrégée de droit public] is Professor of Public Law in the Law School at the University of Paris II (Panthéon-Assas) where she is Director of the Centre for American Law and Director of the Doctorate Program on the Common Law System. She taught in France (Angers, Nantes, Strasbourg) and in the United States (Cornell and Rutgers) before joining the Law School of Paris II in 1995 where she teaches constitutional law and comparative public law. Elisabeth has authored several books in French and in English on International Law, Constitutional Law, and more recently Comparative Law.

All legal systems distinguish between public law and private law. Every country has its own way of conceptualizing this distinction and putting it into practice. In the common law tradition, the distinction is blurred and sometimes barely discernible; it can be intuited only from specific rules or particular institutions embedded in the larger body of the law in force. In the civil law tradition, particularly in France, the distinction between public law and private law is glaring. Rather than being deduced from the legal system through various rules or institutions, the distinction structures the whole legal system, constituting its very backbone. Such is the case in France, where public law is radically separated from private law as

illustrated by the dual court system with a high court to adjudicate private law disputes (Cour de cassation) and another one to hear public law cases (Conseil d'Etat). The seminar explored the reasons for the divide between the two traditions and its consequences for the rights of the individual.

**CCCS Case Discussion: Roach v Electoral Commissioner [2007] HCA 43 (26 September 2007)
9 October 2007**

One of a series of Centre meetings to analyse and discuss the implications of High Court decision in the field of public law, shortly after the decision is handed down.



Fiona Hanlon and Professor Cheryl Saunders.

An Analysis of the Office of Attorney General in Australia and Directions for the Future.

Fiona Hanlon, PhD Candidate, CCCS, Melbourne Law School. (Fiona has since been awarded the degree.)

9 October 2007

Fiona Hanlon was a PhD candidate in the Centre. She has extensive experience in the provision of high-level legal and policy advice to Government and senior management and in representing government in a broad range of forums, including at the interstate and international intergovernmental level.

Before commencing the research for the thesis Fiona held a number of senior positions in the Victorian public sector, including Deputy Secretary of the Department of Justice and First Assistant Secretary of the Department of Premier and Cabinet. Fiona was also Executive Director of the Victorian Constitution Commission which was tasked by Premier Bracks to review the voting system for the Victorian Legislative Council. The Commission's recommendations formed the background to amendments to the Victorian Constitution that introduced the system of proportional representation under which the Council is now elected.

The Seminar examined the assumption, explored by Fiona in her PhD Thesis *An Analysis of the Office of Attorney General in Australia and Directions for the Future*, that the office of Attorney General in Australia carries with it an obligation to act independently of political considerations that does not apply to other ministerial offices. This is the orthodox view. There is, however, another view, the heterodox view, of the office of Attorney General, according to which the ministerial office that bears the title 'Attorney General' cannot be distinguished from other ministerial offices in any significant respect.

The legitimacy of the orthodox view was discussed in light of the faith and trust that it places in the Attorney General in relation to the maintenance of the integrity of Australia's constitutional structures and the manner of the exercise of executive power.



Left to right: Professor Cheryl Saunders, Professor Michael Crommelin, Sir Anthony Mason.

'The Mason Papers', a selection of Sir Anthony Mason's articles and speeches chosen and edited by Professor Geoffrey Lindell in consultation with Sir Anthony.

Launched by Professor Cheryl Saunders, Director CCCS

15 November 2007

The Mason Papers: a selection of Sir Anthony Mason's articles and speeches chosen and edited by Professor Geoffrey Lindell in consultation with Sir Anthony. The collection covers a range of highly topical subjects such as the role of judges and judicial independence, whether Australia should adopt a bill of rights, the health of Australia's democratic institutions, the establishment of an Australian republic, globalization and the decline of parliamentary and national sovereignty. It also contains a wide range of Sir Anthony's well known speeches and articles on constitutional and administrative law, international law, human rights, equity and contract law.

The book was launched by the Director of the CCCS, Professor Cheryl Saunders. The event was chaired by the Dean of the Law School, Professor Michael Crommelin. Both Sir Anthony and Professor Lindell were present at the launch.

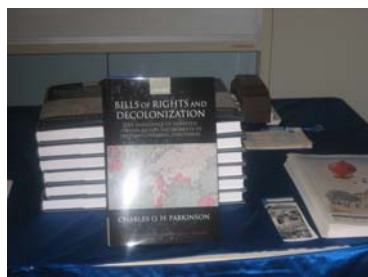


Associate Professor Simon Evans and Suzanne Corcoran.

Sir Anthony was Chief Justice of Australia from 1987 to 1995.

He is currently a non-permanent Judge of the Hong Kong Court of Final Appeal. He has also been Chancellor of the University of NSW, National Fellow at the Research School of Social Sciences at the Australian National University, a Judge of the Supreme Court of Fiji, and President of the Solomon Islands Court of Appeal. He also held the positions of Commonwealth Solicitor-General and Justice of the NSW Court of Appeal.

Professor Geoffrey Lindell is a Professorial Fellow of the University of Melbourne and also holds appointments as an Adjunct Professor of Law at the Adelaide University and the Australian National University. Throughout his long career he has taught and published widely in the field of Australian constitutional and public law.



'Bills of Rights and Decolonization' by Dr Charles Parkinson.

'Bills of Rights and Decolonization: the emergence of domestic human rights instruments in Britain's overseas territories,' by Dr Charles Parkinson

Launched by Justice Hayne

20 November 2007

Bills of Rights and Decolonization traces the emergence of human rights instruments in Britain's former colonial territories in Africa, the West Indies and South East Asia as well as in the Atlantic and Pacific Oceans. More broadly it explores the political dimensions of securing

the protection of human rights at independence and the British legal establishment's change in attitude towards bills of rights for its overseas territories.

At a time when Australia is considering whether to adopt a bill of rights, *Bills of Rights and Decolonization* offers valuable insights by explaining how bills of rights became the accepted norm for nations that gained independence from Britain in the latter half of the twentieth century.

Dr Charles Parkinson completed his LLB(Hons), BA(Hons) and MA at the University of Melbourne and his DPhil as a Commonwealth Scholar at Trinity College, Oxford. His principal area of research is Commonwealth constitutional law and he is the author of *Sir William Stawell and the Victorian Constitution*.



Justice Kenneth Hayne and Professor Michael Crommelin.

Justice Kenneth Hayne was appointed to the Court in September 1997. He graduated in Arts and Law from the University of Melbourne and as a Bachelor of Civil Law from the University of Oxford. Elected Rhodes Scholar for Victoria in 1969, he joined the Victorian Bar in 1971 and was appointed Queen's Counsel for Victoria in 1984. He was appointed a judge of the Supreme Court of Victoria in 1992. He practised in State and Federal courts principally in commercial, constitutional and general civil matters. Justice Hayne was appointed a Companion in the General Division of the Order of Australia in 2002.

National Workshop on The Future of Discrimination Law in Australia
Organised by Associate Professor Beth Gaze
15-16 November 2007

This workshop, attended by thirty academics, practitioners and agency staff from around Australia provided a rare opportunity to focus on the general content and operation of anti-discrimination law. It was partly funded by a Workshop Grant from the Academy of the Social Sciences in Australia, and partly by the ARC, with assistance from the Centre for Employment and Labour Relations Law.

Visiting Positions held by Centre Members

Cheryl Saunders

- 2007: Enseignante invitée, Université Pantheon Assas Paris II, France

Selected Presentations at International Conferences by Centre Members

Carolyn Evans

- “‘Spirited Girls who would not Know their Place’: Religious Speech Directed Against Women’s Equality’, Conference on Extreme Speech and Democracy, University of Cambridge, United Kingdom, 21 April 2007
- ‘Religious Freedom and Women’s Rights’, Oxford Society for Law and Religion, Oxford, United Kingdom, 24 April 2007
- ‘British Influences on Australian Human Rights Acts’, Faculty of Law, Oxford University, Oxford, United Kingdom, 24 April 2007
- “‘Spirited Girls who would not Know their Place’: Religious Speech Directed Against Women’s Equality’, Bristol Faculty of Law, Bristol, United Kingdom, 25 April 2007
- ‘Religious Freedom and Women’s Rights’, Liverpool Law Faculty, Liverpool, United Kingdom, 26 April 2007
- ‘Religious Freedom and Women’s Equality’, Rethinking the Boundaries of Constitutional Law Conference, IACL (International Association of Constitutional Law) World Congress, Athens, Greece, June 2007
- ‘Australian Parliaments and Terrorism Laws: Assessing Democratic Institutions for Protecting Human Rights’, Terrorism, Human Security and Development: Human Rights Perspectives, City University of Hong Kong, China, 16-17 October 2007
- ‘Religious Controversy and Curriculum Design in State Schools: An International Human Rights Perspective’, Conference on Religion and the Rule of Law in South East Asia, Hanoi, Vietnam, 2-4 November 2007

Michelle Foster

- ‘International protection for the victims of sex trafficking’, Feminism and International Law Workshop, National Centre of Competence in Research on International Trade Regulation, University of Zurich, 23-24 June 2007

Katy Le Roy

- Invited by the Forum of Federations to participate as an expert in two workshops held in Colombo, Sri Lanka, in June 2007, to discuss federal possibilities for Sri Lanka with Tamil and Sinhalese participants including scholars, public servants and journalists.

- 'Public Participation in Constitution Making', the World Congress of the International Association of Constitutional Law, Athens, Greece, June 2007.
- 'Enhancing Stability of Government in Nauru', Executive Power and the Battle for Parliamentary Confidence in the Pacific Islands Conference, hosted by the University of the South Pacific, Port Vila, Vanuatu, 21-23 September 2007

Pip Nicholson

- 'Vietnamese Court Reform: the Discourse(s) of Aid?' University of Umea, Sweden, invitational symposium, 'Rule of Law on the International Agenda: Policy, Politics and Morality', 15-16 June 2007
- 'Maintaining and Promoting the Rule of law?', Further Conceptualization and Practical Progress on Building Coherent and Effective Rule of Law Programmes and Strategies, The Hague, 26-27 October 2007

Cheryl Saunders

- Address to a conference organised by the Legal Research Foundation on *Whose Law is it Anyway*, "Constitutional and Political Implications of a Single Economic Market", Wellington, New Zealand, 9 March 2007.
- Address at the University of Trieste, Italy, "Australian Federalism in Comparative Perspective", 18 March 2007
- South Africa classes
- Alinta seminars
- China program and talks
- Opening address, VII World Congress of Constitutional Law, Athens, Greece, 11 June 2007
- Watts conference presentation, Kingston, Canada, October 2007
- Presentation of the theme "Interaction in Federal Systems" to the Fourth International Conference on Federalism, Delhi, India, 5 November 2007
- Protecting Rights through distributing power, a presentation to an international conference on *The Protection of Constitutional Rights in Modern Democracies: A Comparative Perspective* Pescara, Italy, December 12 2007
- Commentary on two papers on Methodology in Comparative Law, in a conference on *Asian Constitutionalism in Comparative Perspective* 14, 15 December 2007, Siena, Italy

Adrienne Stone

- 'Balancing and Proportionality: A Distinctive Ethic' (with Simon Evans), Rethinking the Boundaries of Constitutional Law Conference, IACL (International Association of Constitutional Law) World Congress, Athens, Greece, June 2007

Selected Presentations at National Conferences by Centre Members

Carolyn Evans

- 'States Bills of Rights in Australia – the Seven Deadly Sins of Bills of Rights Opponents', Constitutional Law Conference, Gilbert+Tobin Centre of Public Law, University of New South Wales, Sydney, February 2007
- 'The Desirability and Legality of Entrenching State Bills of Rights', Australian Parliamentary Studies Association, Victorian Chapter, Parliament House, Melbourne, 19 September 2007
- 'Securing Human Rights when Securing the State', Law Institute of Victoria, Melbourne, 3 October 2007

Michelle Foster

- 'Constraints on Protection Elsewhere Schemes imposed by the Refugee Convention', Protection Elsewhere: International law and the off-shore processing and protection of refugees, Workshop, Melbourne Law School, Melbourne, 23 February 2007
- 'Protection Elsewhere: The Legal Implications of Requiring Refugees to Seek Protection in Another State', The Metropolis Conference, Melbourne, 9 October 2007

Jeremy Gans

- 'Evidence under Victoria's Charter of Human Rights', Evidence Law, Criminal Justice and Adjudication Colloquium, Conference of the Faculty of Law, UNSW, Sydney, 2007
- 'The case for a group DNA sampling power', ANZ Society of Criminology Annual Conference, Adelaide, 2007

Beth Gaze

- 'Legal Representation and Success in Federal Discrimination Claims', Australian Law and Society Conference, University of Melbourne, 28-30 Nov 2007

Pip Nicholson

- 'Legal Training in Asia: A Vietnamese Retrospective' University of Melbourne, 9 July 2007
- 'Legal Reform: the Vietnamese Economic Court', New Courts in Asia, Jointly convened by the University of Victoria, Canada and the Asian Law Centre, University of Melbourne, Australia, 15 – 17 July 2007

Cheryl Saunders

- Address to the retired members of (federal) Parliament lunch, “Constitutional Reform and Australian Federalism”, 8 March 2007
- Book launch, Geoff Lindell (ed) *The Mason Papers* 21 November 2007
- “Constitutional Recognition of Local Government”, a plenary address to the National General Assembly of Local Government, Darwin, 27 November 2007

Adrienne Stone

- ‘Reflections on the Life of Julius Stone’, Julius Stone Centenary Conference, University of Sydney, Julius Stone Institute of Jurisprudence, Sydney, July 2007
- ‘Sedition and Freedom of Speech,’ Law and Liberty in the War on Terror Conference, University of New South Wales, Sydney, July 2007

RESEARCH AND PUBLICATIONS

Publications edited in the Centre

- **Public Law Review:** A refereed journal dealing with public law in Australia and New Zealand

Publications¹

Books

- **Evans S**, Fenwick C, **Saunders C**, **Tham J** & Donaldson M. 2007. Work Choices Case: Analysis and Implications. In Aicken K (ed), *WorkChoices: The High Court Challenge*. North Ryde, Australia: Thomson Lawbook Co, pp. 1-77.
- **Foster M**. 2007. *International Refugee Law and Socio-economic Rights: Refuge from Deprivation..* New York, United States: Cambridge University Press.
- **Lindell G**. 2007. *The Mason Papers*. Sydney, Australia: Federation Press.
- **Nicholson P**. 2007. *Borrowing Court Systems: The Experience of Socialist Vietnam*. Leiden, Netherlands: Martinus Nijhoff Publishers.
- McCormack T & **Saunders C**. 2007. *Sir Ninian Stephen: A Tribute*. Carlton, Australia: Miegunyah Press (Melbourne UP).
- Gelber K & **Stone A**. 2007. *Hate speech and freedom of speech in Australia*. Sydney, Australia: Federation Press.
- **Waugh J**. 2007. *First Principles: The Melbourne Law School 1857-2007*. Melbourne, Australia: Miegunyah Press (Melbourne UP).

Book Chapters

- **Evans C**, Hood A & Moir J. 2007. From local to global and back again: Religious freedom and women's rights. In Chen J, Puig G & Walker G (eds), *Rights Protection in the Age of Global Anti-Terrorism*. Sydney, Australia: Federation Press, pp. 112-130.
- **Evans S** & **Evans C**. 2007. Parliamentary deliberation about religious vilification legislation. In Gelber K & Stone A (eds), *Hate Speech and Freedom of Speech in Australia*. Sydney, Australia: Federation Press, pp. 170-193.
- **Lindell G**. 2007. Governor-General. In McCormack T & Saunders C (eds), *Sir Ninian Stephen: A Tribute*. Carlton, Australia: Miegunyah Press (Melbourne UP), pp. 26-56.
- **Lindell G**. 2007. Introduction. In Lindell G (ed), *The Mason Papers*. Sydney, Australia: Federation Press, pp. 1-10.

¹ Some publications by Centre members on non-public law issues are not included here.

- **Nicholson P.** 2007. Comparative law and legal transplants between socialist states: An historical perspective. In Lindsey T (ed), *Law Reform in Developing and Transitional States*. United Kingdom: Routledge, pp. 143-158.
- **Nicholson P.** 2007. Vietnamese Courts: Contemporary Interactions Between Party-State and Law. In Balme S & Sidel M (eds), *Vietnam's New Order: International Perspectives on the State and Reform in Vietnam*. New York, United States: Palgrave Macmillan, pp. 178-197.
- **Saunders C.** 2007. Chair of the constitutional centenary foundation. In McCormack T & Saunders C (eds), *Sir Ninian Stephen: A Tribute*. Carlton, Australia: Miegunyah Press (Melbourne UP), pp. 57-79.
- **Saunders C.** 2007. Comparative constitutional law in the courts: Is there a problem? *Current legal problems 2006*. Oxford, United Kingdom: Oxford University Press, pp. 91-127.
- **Saunders C.** 2007. Comparing federal constitutions. *Die Ordnung der Freiheit: Festschrift für Christian Starck zum siebzigsten Geburtstag*. Tübingen, Germany: Mohr Siebeck, pp. 937-952.
- **Saunders C.** 2007. Judicial dialogue in common law countries. *Renouveau du droit constitutionnel: Melanges en l'honneur de Louis Favoreu*. Paris, France: Dalloz, pp. 413-428.
- **Stone A.** 2007. How to think about the problem of hate speech: Understanding a comparative debate. In Gelber K & Stone A (eds), *Hate Speech and Freedom of Speech in Australia*. Sydney, Australia: Federation Press, pp. 59-80.
- **Tham J.** 2007. Australian terror laws and academic freedom. In Turk J & Manson A (eds), *Free Speech in Fearful Times: After 9/11 in Canada, the U.S., Australia & Europe*. Toronto, Canada: James Lorimer & Company Limited, pp. 234-244.

Journal Articles

- **Beaton-Wells C.** 2007. Capturing the criminality of hard core cartels: The Australian proposal. *Melbourne University Law Review*. **31** (3): 675-704.
- **Evans C.** 2007. Time for a treaty? The legal sufficiency of the declaration on the elimination of all forms of intolerance and discrimination. *Brigham Young University Law Review*. **2007** (3): 617-638.
- **Evans C & Gaze E.** 2007. Religious freedom and non-discrimination laws. *Human Rights Defender*. **16** (2) August 2007: 5-6.
- **Evans S & Evans C.** 2007. Australian parliaments and the protection of human rights. *Papers on Parliament*. **47**: 17-39.
- **Foster M.** 2007. Protection elsewhere: The legal implications of requiring refugees to seek protection in another state. *Michigan Journal of International Law*. **28** (2): 223-286.

- **Foster M.** 2007. Review of Complementary Protection in International Law. *University of New South Wales Law Journal*. **30** (1): 316-320.
- **Gans J.** 2007. Catching Bradley Murdoch: Tweezers, Pitchforks & the Limits of DNA Sampling. *Current Issues in Criminal Justice*. **19** (1): 34-48.
- **Gans J.** 2007. DNA identification, privacy and the irrelevance of Australian law. *Privacy Law Bulletin*. **3** (9): 110-116.
- **Gans J.** 2007. Much Repented: Consent to DNA Sampling. *University of New South Wales Law Journal*. **30** (3): 579-608.
- **Gans J.** 2007. The Peter Falconio Investigation: Needles, Hay and DNA. *Current Issues in Criminal Justice*. **18** (3): 415-430.
- **Evans C & Gaze E.** 2007. Religious freedom and non-discrimination laws. *Human Rights Defender*. **16** (2) August 2007: 5-6.
- **Gaze E.** 2007. Work and Family: Caring and Sharing, or Stereotyping and Role Playing? *Right Now, Human Rights in Australia Law Magazine*, 2007 Issue 2, December, 17-18
- **Howe J & Landau I.** 2007. 'Light Touch' Labour regulation by state governments in Australia. *Melbourne University Law Review*. **31** (2): 367-399.
- **Evans A & Howe J.** 2007. Enhancing corporate accountability through contextual ethical exercises in corporate law teaching. *Journal of Corporate Law Studies*. **7** (2): 337-355.
- **Lindell G.** 2007. The Combet Case and the appropriation of taxpayers' funds for political advertising - An erosion of fundamental principles? *Australian Journal of Public Administration*. **66** (3): 307-328.
- **Nicholson P & Nguyen Q.** 2007. Vietnamese Law: A Guide to Sources and Commentary. *Journal of Comparative Law*. **2** (1): 219-257.
- **Saunders C.** 2007. The interesting times of Louis Favoreu. *International Journal of Constitutional Law*. **5** (1): 1-16.
- **Tham J.** 2007. Towards an understanding of standard employment relationships under Australian labour law. *Australian Journal of Labour Law*. **20** (2): 123-159.
- **Tham J & Ewing .** 2007. Limitations of a charter of rights in the age of counter-terrorism. *Melbourne University Law Review*. **31** (2): 462-498.
- **Walker K.** 2007. The Same-Sex Marriage Debate In Australia. *International Journal of Human Rights*. **11** (1&2): 109-130.
- **Stewart M & Walker K.** 2007. 17th Congress of the International Academy of Comparative Law: Tax Law Session: Australia - National Report. *Michigan State Journal of International Law*. **15** (2): 193-245.

Selected Media Commentary / Opinion Pieces

Tham, J. and Orr, G., 'Caught in a spin cycle', Courier-Mail, 23 May 2007, 25

Tham, J. and Orr, G., 'Turning taxes into spin', The Age, 17 May 2007, 14

Tham, J., 'Democracy encourages corruption and undue influence', The Age, 2 February 2007, 15

Other Publications

Major Reference Works

- **Evans C** & Rogan TM. 2007. Encyclopedia of World Constitutions. *Australia: At-a-glance*. New York, United States: Facts On File.

Full Written Papers Refereed

- Otto D & **Tham J**. 2007. Deconstructing the logic of responding to one threat with another: the perils of countering terrorism by eroding human rights. In Smith M(ed), *Human Rights 2006: The Year in Review*. 115-153. Melbourne, Australia: The Castan Centre for Human Rights Law.

Grants

Michelle Foster was awarded a University of Melbourne Early Career Grant for a project entitled, 'One's Own Country: Changing Concepts of Nationality in International Law'.

Pip Nicholson and Professor Cameron were awarded an Australian Research Council Discovery Project grant for the project 'Testing Court Reform Projects in Cambodia and Vietnam'. This grant was awarded in 2007 and will commence in February 2008.

Consultancies

Centre members provide advice on public law questions on a private consultancy basis for a wide range of national and international bodies.

- Katy Le Roy was retained as a United Nations Development Program consultant to work as legal counsel to the Nauru Constitutional Review Commission from January to March 2007, and as legal counsel to the Nauru Constitutional Convention in April and May 2007.
- Cheryl Saunders was a participant in a Multiparty Dialogue, "Mapping out a New Federal Judicial System for Iraq", Cairo, Egypt, 20-24 January 2007 and a Multiparty Dialogue on Federalism in Iraq, Dubai, 25-27 February 2007

Research Supervision – Graduate Research Students 2007

Carolyn Evans

- John Date (Masters): 'Implications of Canon Law for Church Organisations Operating in Australia'
- James Irving (Masters): 'Security and liberty: freedom of expression and counter-terrorism laws in Australia'
- Clancy Kelly (PhD): 'Is Australia in violation of the international human right to non-discriminatory and equitable access to health care services of Aboriginal and Torres Strait Islander peoples? Possibilities and limitations of national and international legal procedures'
- Kasia Lach (PhD): 'The EU and the contemporary notion of state sovereignty'
- NurHafilah Musa (PhD): 'Administration of religion in the federal structure of Malaysia'
- Hajrah Saboor (PhD): 'Blasphemy law: a violation of right of free speech or a protection against its abuse'
- Danielle Ujvari (PhD): 'Human rights and development: children's psychosocial recovery in the post-conflict context – a new conceptual model'

Simon Evans

- Emily Hammond (PhD): 'Judicial review for substantive unfairness: prospects under the Australian constitution'
- Matthew Storey (PhD): 'Statutory Property in Australia'

Michelle Foster

- Vasko Nasteovski (PhD): 'The enactment of law crimes legislation in Australia without offending the prohibition on retrospective legislation'
- Olivera Simic (PhD): 'Gender-based violence and human rights violations committed by UN peacekeepers'

Jeremy Gans

- Daniel McGlone (PhD): 'The Defendant in Victorian Criminal Trials'
- Stephanie Morrow (LLB): 'Section 47A of the Crimes Act 1958'
- Aaron Mentha (LLB): 'Forensic Sampling of Police Officers'

Beth Gaze

- Lee Adams (SJD): 'Mediating Work and Family Responsibilities: A Comparative Study of Legislative Strategies in Three Common Law Countries'
- Dominique Allen (PhD): 'An evaluation of the effectiveness of Australia's Anti-Discrimination Laws in protecting substantive equality'
- Tony Mihalopoulos (PhD): 'The Granting of 'recognition space' to indigenous peoples and ethnocultural groups with a particular emphasis on the concepts of 'self-determination' and 'legal pluralism'

Pip Nicholson

- Elsie D'Alcorrdo (SJD): 'First world Convention and Third World Corruption: The OECD Convention on bribery and international commercial transactions and foreign subsidiary corporations in the Philippines', with Professor Michael Tilbury, completed December 2007.
- Minh Duong (Masters): 'Commercial dispute resolution in the Vietnamese Economic Court'
- Jothie Sauntharajah (PhD): 'Constantly colonised: legal containment of minority religions – legal identities in post-colonial Singapore'

Cheryl Saunders

- Katy Le Roy (PhD): 'Constitution-making in the Asia-Pacific Region.'
- Fiona Hanlon (PhD): 'Role of the Attorney-General.' (accepted)
- Emily Hammond (PhD): 'Judicial Review and Courts created by Parliament.'
- Nurhafilah Musa (PhD): 'Administration of Religion in the federal structure of Malaysia' (with Carolyn Evans)

Research Supervision – Advanced Legal Research & Legal Internship Projects (LLB)

Beth Gaze

- Kate Brennan: 'Substantive Legitimate Expectation in Australian and British Administrative Law: The Significance of Increasingly Divergent Visions of the Rule of Law'

Cheryl Saunders

Alysia Debowski (LLB): 'The distribution of power over education in the Australian federation – a comparative perspective.'

PUBLIC POLICY AND LAW REFORM

Internship

Evelyn Tadros was the Centre's fourth Law Reform and Public Policy Intern (summer 2006-2007) and contributed significantly to the improvement of the Centre's communications, website and educational materials.

Selected Submissions to Inquiries and other involvement in law reform

The following is a partial list of the submissions made by Centre members to law reform processes throughout Australia in 2007. Many of the submissions had a significant impact on these processes, as well as contributing to Centre members' own research.

- Gans, J., 'Submission on a Charter of Rights for Tasmania' to Human Rights Community Consultation Committee, Law Reform Institute of Tasmania, 2007.
- Gans, J., 'Submission on the Proposed WA Human Rights Act' to Consultation Committee for the Proposed Human Rights Act, Department of Justice, Western Australia, 2007.
- Tham, J., Submission to the Victorian Electoral Matters Committee's Inquiry into the 2006 State Election and Matters related there to, June 2007, 80 pp (with Ken Coghill) (note: invited to appear as witness before committee but unable to attend)

TEACHING PROGRAMS

Centre members have teaching responsibilities in the Faculty's wide range of public law subjects across all Faculty programs. In 2007 these included:

Bachelor of Laws

Constitutional Law
Administrative Law
Advanced Constitutional Law
Discrimination, Law and Equality

Postgraduate Courses

Graduate Diploma of Government Law
Master of Public and International Law

Postgraduate Subjects

Principles of Public Law
Refugee Law (with Michelle Foster and Richard Niall)

The Melbourne JD

Administrative Law
Constitutional Law
Principles of Public Law

Universitas 21 Teaching Fellowship

Simon Evans was awarded a fellowship to visit universities in Canada, Singapore, China and Hong Kong to investigate **Global perspectives on teaching and learning in public law**. The project has three strands: identifying international best practice, understanding our students and investigating opportunities for cooperative teaching.

OTHER ACTIVITIES

The **Centre for Comparative Constitutional Studies** has links to and participates in networks with other centres, institutes and associations with interests in constitutional law within the University, across Australia and throughout the world, including:

Australian Association of Constitutional Law

The Australian Association of Constitutional Law is a forum for scholars and practitioners of constitutional law across Australia. It is affiliated with the International Association of Constitutional Law. It aims to develop and promote the discipline of constitutional law in Australia; to support teaching, research and the practice of the law which relates to the discipline; to provide a forum for the exchange of knowledge and information between practitioners, teachers and other interested persons regarding the discipline; to increase public awareness and understanding of the discipline; and to liaise with other bodies in the promotion of any of the above objects. The Centre for Comparative Constitutional Studies provides Secretariat services to the AACL.

Forum of Federations, Canada

The Forum of Federations is a non-profit, international organization based in Ottawa, Canada. It undertakes a wide range of programs designed to bring tangible improvements to the practice of federal governance around the world. Since its creation in 1998, the Forum has engaged in two major areas of activity, namely the establishment of an international network on federalism, and a program of consultation for governments at the federal and constituent-unit levels, both in Canada and abroad. The Forum's international board of directors includes members from Australia, Nigeria, India, Germany, Switzerland, Brazil, and Canada.

International Association of Constitutional Law

The Association provides a forum for the exchange of knowledge and information and the development of an understanding of constitutional systems. Drawing its members from a wide range of countries, the Association fosters a network of constitutionalists globally allowing for the examination and comparison of common constitutional issues and phenomena.

International Association of Centres for Federal Studies

The International Association of Centres for Federal Studies (IACFS) is an association of Centres and Institutes throughout the world with interests in independent research and publication about political, constitutional, legal, administrative, fiscal, economic, historical and philosophical issues relevant to political systems which have federal features. The Association was established to further the study and understanding of federal principles and patterns in all their variety. The Centre is a member of the IACFS and the Centre's Director is a member of the Board of the IACFS. The Centre participates in the annual conference of the IACFS.

APPENDIX – ADVISORY BOARD

Ian Cunliffe

Ian Cunliffe is a solicitor in private practice with his own firm. For the past 10 years he was a member of a large Australian legal partnership. Prior to that Ian was successively head of the Legal Section of the Department of Prime Minister and Cabinet, Secretary and Director of Research of the Australian Law Reform Commission and chief executive of the Australian Constitutional Commission. At the beginning of his career, Ian was Associate to Sir Cyril Walsh at the High Court of Australia. He holds degrees in Arts and Law from the Australian National University. His constitutional interests focus on the role of the Constitution as a brake on government and as a guarantor of freedom of interference by government. He was the unsuccessful litigant (3:4) in the implied rights case *Cunliffe v. The Commonwealth* (1994) 182 CLR 272.

Dr Stephen Donaghue

Stephen is a Victorian barrister whose practice areas include constitutional and administrative law. In addition to winning the Supreme Court Prize as a law student at the University of Melbourne, Stephen also holds a doctorate from Oxford, where he studied after receiving a Menzies Memorial Scholarship in Law and a Commonwealth Scholarship. He practised with Minter Ellison in both Melbourne and London offices, and was Associate to Justice Hayne of the High Court of Australia. He is the author of *Royal Commissions and Permanent Commissions of Inquiry* (Butterworths 2001) and of numerous articles in leading journals in the public and commercial law fields.

Dr Gavan Griffith AO QC

Gavan Griffith AO, QC., was Solicitor-General of Australia from 1984 to 1997 and practices as counsel and as an international arbitrator from chambers in Melbourne and at Essex Court Chambers, London.

Peter Hanks QC

Peter Hanks practises predominantly in public law - administrative law and constitutional law. He appears regularly for Commonwealth and State government agencies, and against those agencies, in the Federal Court, High Court, Supreme Court, Commonwealth AAT and VCAT. He has published several books on constitutional law and administrative law. He is a principal contributor to Butterworths' 'High Court and Federal Court Practice' and 'Administrative Law Service'.

Wendy Harris

Wendy Harris is a Melbourne barrister, specialising in constitutional and commercial law, with a particular interest in free expression. She has been involved in a number of leading constitutional cases, including *Theophanous v Herald & Weekly Times*; *Kruger v Commonwealth*; *Kartinyeri v Commonwealth* and *Grain Pool of WA v Commonwealth*. She has an active public law practice, and has spoken and written in national and international fora on free expression and other constitutional issues. She is a member of the London-based Interights Freedom of Expression Project Advisory Panel.

Justice Chris Maxwell

Justice Maxwell is currently the President of the Victorian Court of Appeal.

Debbie Mortimer SC

Debbie Mortimer practises in Public Law, Administrative Law, Migration, Anti-Discrimination, Native Title/Aboriginal issues, FOI Jurisdictions: Tribunals, Supreme, Federal and High Courts, including appellate work. She has experience as an academic and in practice in Medical Law and Ethics, especially IVF and related issues. She is a former Associate to Sir Gerard Brennan.

Mark Moshinsky SC

Mark Moshinsky practices mainly in Commercial Law, Conflict of Laws, Constitutional Law, Administrative Law and Taxation. Mark studied law at the University of Melbourne 1984-1988 and was awarded the Supreme Court Prize 1988. He completed a Bachelor of Civil Law with First Class Honours at Oxford University as a Rhodes Scholar.

Stephen McLeish SC

Stephen McLeish is a Victorian barrister practicing mainly in the areas of Administrative Law (including Immigration and Freedom of Information), Constitutional and Corporate/Commercial Law. He was formerly Associate to Chief Justice Sir Anthony Mason (High Court of Australia) and a Solicitor with Arthur Robinson & Hedderwicks. He completed a Master of Laws Degree at Harvard in 1991 concentrating on Constitutional Law and Jurisprudence and has published articles on Public and Corporate Law.

Professor Brian Opeskin

Brian Opeskin was a full-time Commissioner at the Australian Law Reform Commission from 31 July 2000 until 2006. He led the Commission's inquiry on the *Judiciary Act 1903* (Cth) (*The Judicial Power of the Commonwealth*, ALRC 92, 2001), and jointly led the inquiry into the protection of human genetic information (*Essentially Yours*, ALRC 96, 2003), and into gene patenting and human health (*Genes and Ingenuity*, ALRC 99, 2004). He is now Professor and Head of School at the University of the South Pacific, Port Vila, Vanuatu. He has previously taught in the fields of constitutional law, federal courts, international law, and conflict of laws at Sydney University Law School, where he was an Associate Professor until July 2003. He has published many articles in these fields and has co-authored several books. He holds degrees in Economics and Law from the University of New South Wales, and a Bachelor of Civil Law degree from the University of Oxford. He was admitted as a barrister of the Supreme Court of New South Wales in 1989.

Jason Pizer

Admitted to the Victorian Bar in 1999, Jason's areas of practise include Administrative Law (Judicial Review) and Administrative Law (Merits Review). From May 1994 until April 1995, prior to completing his articles at Mallesons Stephen Jaques, Jason worked as an associate to Sir Anthony Mason, the then Chief Justice of the High Court. Jason is currently the co-

editor of Kyrou and Pizer, *Victorian Administrative Law*, the author of the chapter entitled 'Applications to the Victorian Civil and Administrative Tribunal' in the *Lawyers Practice Manual*, and has published articles in numerous journals on various areas of the law, including the Victorian Civil and Administrative Tribunal, freedom of information, company law, intellectual property law, torts law and equity.

Pamela Tate SC, Solicitor-General for Victoria

Pamela Tate was appointed Solicitor-General in July 2003. She is the first female Solicitor-General appointed for the state of Victoria. Prior to her appointment, she practised at the Bar principally in the field of public law. She had graduated from Monash University in 1987 with a first-class honours degree in law and was awarded the Butterworth's research prize for her honours thesis. Before being called to the Bar in 1991, she had worked as an associate to High Court justice Sir Daryl Dawson for two years. She also has a first-class honours degree in philosophy from Otago University, and spent three years doing postgraduate studies in philosophy at Oxford University after obtaining a Commonwealth Scholarship.

Justice Richard R S Tracey

Justice Tracey was appointed to the Federal Court of Australia in July 2006. A former student and senior lecturer at the University of Melbourne, Richard Tracey was Queen's Counsel in Victoria, Tasmania and New South Wales. His civil practice concentrated on administrative law and industrial law. He also had a long and distinguished military practise including as Judge Advocate and Reviewing Judge Advocate (Defence Force Magistrate). He was a member of various Commonwealth tribunals and was senior counsel assisting the Royal Commission into the Building and Construction Industry.

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