DIRECTOR’S REPORT 2010 ................................................................. 3
ABOUT THE CENTRE ................................................................. 6
PEOPLE ........................................................................................... 7
EVENTS ......................................................................................... 20
RESEARCH AND PUBLICATIONS ................................................. 35
PUBLIC POLICY AND LAW REFORM ........................................... 41
TEACHING PROGRAMS ................................................................. 42
OTHER ACTIVITIES ....................................................................... 43
APPENDIX – ADVISORY BOARD .................................................. 44
DIRECTOR'S REPORT 2010

During 2010 the CCCS continued its busy program of events and CCCS members continued their busy research and teaching lives.

Congratulations

Among many achievements of CCCS members in 2010, we congratulate CCCS Deputy Director, Carolyn Evans, who has been appointed Dean of Melbourne Law School, commencing 1 February 2011. This is a wonderful achievement for Carolyn and great news for the Law School, marred only by our sadness that she will no longer be Deputy Director of CCCS. The Centre thanks Carolyn for her dedication to the Centre since 2003, especially her service as Acting Director during the first half of 2010.

Carolyn Evans also won a Fulbright Senior Scholarship to go to Washington College of Law at American University and Emory University in Atlanta, Georgia for three to four months. The prestigious Fulbright program is the largest educational scholarship of its kind, created by US Senator J. William Fulbright and the US Government in 1946. Aimed at promoting mutual understanding through educational exchange, it operates between the US and 155 countries. In Australia, the scholarships are funded by the Australian and US Governments and corporate partners and administered by the Australian-American Fulbright Commission in Canberra.

We also congratulate CCCS member Simon Evans on his appointment as Deputy Vice Chancellor (International). We are especially delighted that the appointment will allow Simon to continue to research and teach at the Law School and to be involved in the Centre activities.

Six professorial promotions were announced in November 2010. The Centre congratulates Pip Nicholson on her promotion to Professor and Michelle Foster and Joo-Cheong Tham on their promotions to Associate Professor to take effect from 1 January 2011.

In late December, CCCS Foundation Director, Cheryl Saunders was named Associate Dean of the Melbourne Law Masters for 2011. Cheryl is one of the architects of the MLM and a former Associate Dean, Graduate Studies.

CCCS Advisory Board Member and Melbourne Law School Alumni, Wendy Harris was appointed Senior Counsel in December.

Publishing Awards

Jeremy Gans and Andrew Palmer’s book Uniform Evidence (OUP Australia, 2009) was shortlisted in the Tertiary Scholarly Reference category of the Australian Publisher’s Association Educational Publishing Awards.

Glenn Patmore’s book Choosing the Republic (UNSW Press, 2009) was listed for the 2010 John Button Prize. The John Button Prize is named for the late Hon John Button, an outstanding graduate of the Law School who became Industry Minister, Senator and writer. The Prize, now in its second year, awards $20,000 to the best piece of non-fiction writing on politics or public policy published in the previous year.

Events

The Centre hosted two Roundtables during 2010. The first, on ‘Constitutionalism and Rights’, brought together a group of eminent scholars from the US, Canada, New Zealand...
and Australia including: Professor Stanford Levison; Professor Janet Hiebert; Assistant Professor Rhonda Evans Case; Professor Mark Graber; and Professor Paul Rishworth. The second, ‘The US Supreme Court in Critical Perspective’ was a session designed to promote discussion and reflection on the workshop series held during Chief Justice Roberts’ visit to the Law School in July.

The Centre supported the Sir Kenneth Bailey Memorial Public Lecture presented by Professor Ruth Gavison, Hebrew University of Jerusalem. Professor Gavison spoke on ‘Israel as a Jewish State: What Does it Mean? Can it be Justified?’

The Centre also co-hosted several events during the year:

- In October the Centre co-hosted a Roundtable with the Asia Law Centre. Entitled ‘The Role of Law in Balancing the Rights of Citizen and State in the PRC’, the Roundtable brought together scholars from the China University of Political Science and Melbourne Law School.

- The Centre co-hosted the launch of Joo-Cheong Tham’s Book, Money and Politics: The democracy we can't afford, with the Centre for Employment and Labour Relations Law in August.

- In October, Professor Dr. Iur. Adnan Buyung Nasution presented the Inaugural Professorial Lecture, which was co-hosted by the Centre and the Asia Law Centre.

- The Centre co-hosted a seminar with the Australian Association of Constitutional Law given by Professor Leslie Zines AO on ‘Recent Developments in Chapter III: Kirk v IRC of NSW and SA v Totani’ in late November.

The Centre also held a large number of seminars and public lectures given by visitors from all parts of the world: Professor Jamie Cameron (York University, Canada); A/Prof James Stribopoulos (York University, Canada); Claudia Geiringer (Victoria University, New Zealand); Professor Samuel Issacharoff, New York University, United States); Professor Mark Tushnet (Harvard University, United States); Professor Elizabeth MaGill (University of Virginia, United States); Dr Jason Pierce (University of Dayton, United States); Professor David Sloss (Santa Clara University, United States); Professor Wojciech Sadurski (University of Sydney); Dr Richard Ekins (University of Auckland, New Zealand)

Research, Knowledge Transfer and Teaching

Centre members continued their active research and teaching programs.

The ARC results for 2011 Discovery Projects were announced on 25 October. The Law School was again very successful in obtaining five Discovery grants worth approximately $1.2 million in funding. Of these five, CCCS Faculty are involved in four of the projects. The Centre congratulates: Professor Carolyn Evans, Professor Cheryl Saunders AO, Associate Professor Beth Gaze, Dr Margaret Young, and Dr Kirsty Gover. Nine centre members now hold Discovery Grants funded by the Australian Research Council.

The Centre also congratulates Joo-Cheong Tham on his receipt of the Melbourne University Interdisciplinary Seed Funding. Out of 93 high-quality proposals, a submission by Joo-Cheong (Co-ordinating Investigator) and his team of researchers was chosen by the scheme to receive $38,000. The team’s project Temporary Migrant Work and Contested Notions of Social Justice: The Victorian Nursing Sector, will provide a pioneering study of temporary migrant work and social justice in Australia.
Centre members continue to teach across the LLB, JD, Melbourne Law Masters and Research Higher degree programs.

**New Centre Members**

The Centre welcomes **Dr Lael Weis**, who joins the Centre as a 3 year MacKenzie post-doctoral fellow. She holds a PhD (Philosophy) and a JD from Stanford. Dr Weis’ research interests lie at the intersection of democratic political theory, constitutional legal theory, and property law. Her PhD dissertation was entitled ‘Public Purpose, Common Good: Constitutional Protection of Private Property in the Democratic State’.

We also welcome **Ben Saunders**, who started as a Research Fellow at the Melbourne Law School in September 2010. Prior to returning to the Law School Ben was an Associate at Macpherson + Kelley Lawyers, practising mainly in corporate, financial services and water law. At M+K Ben was involved in establishing Australia’s first Shariah compliant mortgage fund and also the class actions being run on behalf of investors relating to the Timbercorp and Great Southern collapses. He has worked as research assistant to Professor Ian Ramsay, director of the Centre for Corporate Law and Securities Regulation and has published numerous articles on corporate and financial services law. In 2009 he was joint winner of the Banking and Financial Services Law Association’s Research Prize. He is currently researching Australian constitutional law and history.

**Looking forward**

In 2011, a full and exciting program of events is planned. Over 2011, Melbourne Law School will continue its transition to a fully graduate law school and the Centre looks forward to further involving in its activities graduate students with particular interests in the field of public law in the future.

Cheryl Saunders has kindly agreed to step in as Acting Director of the Centre during the first half of 2011. I will spend first semester at Georgetown Law Center and return in June 2011.

**Adrienne Stone**
**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.

Professor Adrienne Stone has been Director of the Centre since 1 July 2008. CCCS 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, and
- 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
The activities of the Centre for Comparative Constitutional Studies include:

- 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,
- 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, and
- carrying out consultancies.
PEOPLE

Directors and Administrator

Professor Adrienne Stone
Director CCCS

Adrienne Stone researches in the areas of constitutional law and constitutional theory. She has published extensively on freedom of expression, the legal and institutional questions surrounding bills of rights and on judicial method in constitutional cases. Her recent publications include Hate Speech and Freedom of Speech in Australia (co-edited with Dr Katharine Gelber, Federation Press, 2007) and 'Judicial Review without Rights' (2008) 28 Oxford Journal of Legal Studies 1. She currently holds an Australian Research Council Discovery Grant for a four year project entitled "Freedom of Expression in Democratic States". She has held a Chair at Melbourne Law School since 2007. Her past positions include a Fellowship at the Research School of Social Sciences at the Australian National University, 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 taught at law schools in Australia, the United States and Canada and presented papers by invitation universities in Australia, North America and Europe including Kings College London, the University of Texas Law School, American University, Brandeis Law School and New York Law School. She is a member of the Executive Committee of the International Association of Constitutional Law and Secretary of the Australian Association of Constitutional Law. Adrienne was elected as a Fellow of the Australian Academy of Law in August 2010.

Professor Carolyn Evans
Deputy Director CCCS

Carolyn Evans 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 before returning to Melbourne in 2000. She also qualified to practice law and is a barrister and solicitor of the Supreme Court of Victoria. In 2010, Carolyn was awarded a Fulbright Senior Scholarship to allow her to travel as a Visiting Fellow at American and Emory Universities to examine questions of comparative religious freedom. 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); Mixed Blessings: Laws, Religions and Women’s Rights in the Asia-Pacific Region (2006 Martinus Nijhoff) and Law and Religion in Historical and Theoretical Perspective (CUP 2008). 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, Switzerland, Malaysia, Nepal and Australia.
Dr Madeline Grey  
*Administrator, January - April*

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. She is the author of *Challenging Women: Towards Equality in the Parliament of Victoria* (ASP 2009) which was launched at Melbourne Law School by the Minister for Women's Affairs in March 2009. Madeline left the Centre in April 2010 to take up a position as Research Support Officer in Melbourne Law School's Office for Research.

Claire Hausler  
*Administrator, July - December*

Claire Hausler joined the Centre in July 2010. She previously worked for the McGill University Faculty of Law BCL/LLB Admissions Office in Montreal, Canada. Claire holds a BCom (Hons) from the University of Melbourne.

**Centre Members**

**Professor Cheryl Saunders AO**  
*Foundation Director CCCS*

Cheryl Saunders is a laureate professor and holds a personal chair in law. She teaches in both the JD and the MLM and is the founding Director of the Centre for Comparative Constitutional Studies. Cheryl has specialist interests in constitutional law and comparative public law, including federalism and intergovernmental relations and constitutional design and change, on all of which she has written widely. Cheryl is an editor of the *Public Law Review* and a member of the editorial boards of a range of Australian and international journals, including *Publius, Jus Politicum* and the *Constitutional Court Review*, South Africa. She has held visiting positions at the universities of Oxford, Cambridge, Paris II, Georgetown, Indiana (Bloomington), Hong Kong, Copenhagen, Fribourg, Capetown and Auckland. She is President Emeritus of the International Association of Constitutional Law and the International Association of Centers for Federal Studies and a former President of the Administrative Review Council of Australia.

In addition to her research and teaching activities, Cheryl 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, Iraq and Nepal. She is a member of the Advisory Board of International IDEA.
In 1994, Cheryl 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. She is a Fellow of the Academy of Social Sciences in Australia and a Foundation Fellow of the Australian Academy of Law.

Professor Michael Crommelin AO

Michael Crommelin was Dean of the Law School from 1989 to 2007. He holds a BA and LLB (Hons) from the University of Queensland and an LLM and PhD from the University of British Columbia. Michael has held visiting appointments at a number of universities, including the University of Oslo, the University of British Columbia, the University of Calgary, and Georgetown University.

In addition, Michael has served as President of AMPLA (the Australian Mineral and Petroleum Law Association) and as a member of the Council of the Section on Energy and Resources Law of the International Bar Association. He has published extensively in the fields of energy and resources law, constitutional law and comparative law. In 2009, Michael was made an officer of the Order of Australia for service to the law and to legal education, particularly as a tertiary educator and through the development of mining and petroleum law in Australia.

Associate Professor Alison Duxbury

Alison Duxbury joined the Law School in 2001. She holds bachelor degrees in Arts and Laws (Hons) and a PhD from the University of Melbourne, and a Master of Law from the University of Cambridge, where she was a Pegasus Cambridge Commonwealth Scholar. Alison's PhD thesis explored the role of human rights and democracy in determining the participation of states in international organisations.

Following her undergraduate degrees, Alison worked at Blake Dawson Waldron and was admitted to practice in 1994. Prior to her appointment at Melbourne, Alison worked at the London office of Clifford Chance and Monash University.

Alison is an Associate Director of the Asia Pacific Centre for Military Law, a collaborative initiative between the Melbourne Law School and the Australian Defence Force Legal Service. She is also a member of the Australian Red Cross International Humanitarian Law Committee (Victorian Division) and the International Advisory Commission of the Commonwealth Human Rights Initiative based in Delhi, Accra and London. In 2007-2008 Alison was Convenor of the University's Human Rights Forum. In 2000, Alison was a Dame Lillian Penson Research Fellow at the Institute of Commonwealth Studies in London, and in 2004 and 2006 she was a Visiting Fellow at the Lauterpacht Research Centre for International Law at the University of Cambridge. In first semester 2009 she taught International Institutions and International Humanitarian Law at the Centre for Transnational Legal Studies in London, a joint venture between 11 global law schools. Alison has undertaken advice work in the areas of international law and human rights, and has published in Australian and overseas law journals in these fields. Alison's book, The Participation of States in International Organisations: The Role of Human Rights and Democracy will be published by Cambridge University Press in February 2011.
Professor Simon Evans  
*Former Director CCCS*

Simon Evans was Deputy Dean of Melbourne Law School from July 2007 to July 2010. His scholarly work is as a comparative public lawyer, with broad interests in constitutional and administrative law, particularly in common law and Commonwealth countries. He holds an ARC funded Discovery Project grant to analyse the powers and accountabilities of the executive branch of government. He recently completed a major project investigating the capacity of parliaments to protect human rights and the effectiveness of the Commonwealth model of human rights protection. He has also worked on the implementation of the Victorian Charter of Human Rights. Other interests include constitutional property rights, accountability of executive government and constitutional theory. He was Director of the Centre for Comparative Constitutional Studies from 2005 to 2007 and Director of Teaching in the Law School from 2004 to 2006. He was a national finalist in the Australian Awards for University Teaching in 2005 and a Universitas 21 Teaching Fellow in 2006-7. He is a member of the Executive of the Australian Association of Constitutional Law.

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 (IILAH) at 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. She also holds an LLB and BCom (Hons 1) from the University of New South Wales. Prior to her graduate studies she worked for the Commonwealth Attorney-General’s Department, as Research Director for the Hon AM Gleeson AC (then Chief Justice of NSW) and Legal Research Officer in the Chambers of the NSW Solicitor-General and Crown Advocate.

Michelle has published widely in the field of international refugee law, and her work has been cited in the international refugee law literature and also in judicial decisions in the UK, Australia and New Zealand. Her most important contribution to date has been her book, *International Refugee Law and Socio-Economic Rights: Refuge from Deprivation*, published by Cambridge University Press in 2007 which has been widely and favourably reviewed. Since joining Melbourne Law School in 2005, Michelle has developed a new curriculum in Refugee Law in both the LLB and LLM degrees. She has been engaged by the Refugee Review Tribunal to conduct training workshops for decision-makers and has been involved in extensive consultation with the Department of Immigration and Citizenship concerning new directions for refugee law and policy in Australia.

Michelle is an Advisory Board Member of the Melbourne Journal of International Law, an Associate Member of the International Association of Refugee Law Judges and the National Co-ordinator (with Justice Tony North) of the Australian sub-site of the Michigan-Melbourne Refugee caselaw Site.

Michelle’s current research project is an ARC funded project (with Professor James Hathaway) entitled, *The Law of Refugee Status: A Theoretical and Comparative Analysis*. The project will run from 2010-2012.
Associate Professor Jeremy Gans

Jeremy Gans is an Associate Professor 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. He published a running commentary on Victoria’s Charter of Human Rights and Responsibilities at charterblog.wordpress.com.

Associate Professor Beth Gaze

Beth Gaze’s interests are in anti-discrimination and equality law, feminist legal thought, administrative law including tribunals, and empirical legal research. She has undertaken empirical as well as legal research on Australian anti-discrimination laws, and was a member of the Advisory Committee to the Gardner Review of the Equal Opportunity Act 1995 (Vic.) in 2007 and 2008, and was a consultant to the Victorian Parliament’s Scrutiny of Acts and Regulations Committee, assisting its Inquiry into the Exceptions and Exemptions in the Equal Opportunity Act 1995 during 2009. She has experience in University equity and human research ethics areas, and has been a member of tribunals including the Victorian Mental Health Review Board and the Social Security Appeals Tribunal. She has a BSc from the University of Melbourne, LLB (Hons) and PhD from Monash University, and LLM from the University of California, Berkeley.

Dr Kirsty Gover

Kirsty Gover joined the Law Faculty in 2009 as a Senior Lecturer. Her research and publications address the law, policy and political theory of indigenous land claims and self-governance. She has a particular interest in tribal constitutionalism. Her most recent work examines the ways in which recognised tribes govern membership, by reference to the criteria used in tribal constitutions.

Kirsty received her BA/LLB, from the University of Canterbury, New Zealand, and her LLM from Columbia University, United States. She was a Columbia University School of Law Human Rights Fellow and James Kent Scholar, and was the first full time Institute Fellow at NYU Law School’s Institute for International Law and Justice (IILJ). She received her doctorate from NYU Law School, where she was a Graduate Institute Scholar of the IILJ, and a New Zealand Top Achiever Doctoral Fellow. Kirsty was a Senior Advisor and then consultant to the New Zealand government on international and domestic policy on indigenous peoples, and taught in this field at the Canterbury Law School. She
represented the New Zealand government at intergovernmental drafting sessions of the UN Declaration on the Rights of Indigenous Peoples.

In 2010 her book *Tribal constitutionalism: States, tribes, and the governance of membership*, based on her thesis was published by Oxford University Press.

**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 he 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).

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)). He helped to form and has been the Secretary of the Australian Association of Constitutional Law since its inception in 1998. He also co-authored the case book, *Conflict of Laws: Commentaries and Materials* (1997) (with Professors Martin Davies and Sam Ricketson).

**Associate Professor Pip Nicholson**

Pip Nicholson is the Associate Dean (JD) of the Melbourne Law School and a member of the CCCS. She is also the Associate Director (Vietnam) and Director of the Comparative Legal Studies Program at the Asian Law Centre. Her teaching and research are in dispute resolution, comparative legal studies, law and reform in Asia and law and society in Asia. Pip has degrees in Arts and Law from Melbourne Law School (MLS), a Masters in Public Policy from the ANU and a doctorate from the MLS. Pip is also qualified to practice law and is a barrister and solicitor of the Supreme Court of Victoria.


Pip, together with Camille Cameron, holds an ARC grant to investigate court-oriented legal reform in Cambodia and Vietnam. Her current research interests include law and legal change (including court reform) in transitional countries, drug trials in Asia and the cross-cultural legal research. Pip has spoken on these issues in the USA, Canada, Japan, Vietnam, France, Thailand, Hong Kong, Sweden, UK and the Netherlands.
Pip is an internationally recognised expert in courts and legal reform (particularly within socialist states). She has consulted widely on these issues.

**Glenn Patmore**

Glenn Patmore has an LLB (Hons) and a BA from Monash University, and an LLM from Queens University, Canada. He has been admitted to practice as a Barrister and Solicitor of the Supreme Court of Victoria. Glenn was a senior Tutor in Law at Monash University and currently is a Senior Lecturer at the Melbourne Law School. He has taught Principles of Public Law, Constitutional and Administrative Law, and his optional course entitled: Rethinking Australian Democracy and the Law. He is currently the co-ordinator for Advanced Legal Research.

Glenn is presently researching in the fields of democratic theory and practice, constitutional law, industrial law, human rights and republicanism. His book, *Choosing the Republic* (UNSW Press), was published in 2009 and he continues to write on the topic of Australian republicanism and constitutional change. Glenn’s principal fields of interest are democratic theory and practice, employee participation and labour relations law, republican reform, constitutional law, and human rights law. Glenn has published in a range of Australian and international journals, and for several years edited *Labour Essays*. He is also a member of the Faculty’s Centre for Employment and Labour Relations Law. In 2010 Glenn gave a paper examining the political ownership of the process of constitutional amendment at the 2010 Australia and New Zealand Law and History Society Conference, in Melbourne on 13-15 December 2010.

**Ben Saunders**

Ben started as a Research Fellow at the Melbourne Law School in September 2010. Prior to returning to the Law School Ben was an Associate at Macpherson + Kelley Lawyers, practising mainly in corporate, financial services and water law. At M+K Ben was involved in establishing Australia’s first Shariah compliant mortgage fund and also the class actions being run on behalf of investors relating to the Timbercorp and Great Southern collapses. He has worked as research assistant to Professor Ian Ramsay, director of the Centre for Corporate Law and Securities Regulation and has published numerous articles on corporate and financial services law. In 2009 he was joint winner of the Banking and Financial Services Law Association’s Research Prize. He is currently researching Australian constitutional law and history.

**Dr Joo-Cheong Tham**

Joo-Cheong Tham is a Senior Lecturer at Melbourne Law School and has taught at the law schools of Victoria University and La Trobe University.

His key research areas are the regulation of non-standard work and political finance law. He has also undertaken considerable research into counter-terrorism laws. 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.

Joo-Cheong is currently working on two separate areas. The first concerns the challenges of
temporary migrant work to labour regulation, a project he is undertaking with Dr Iain
Campbell, Centre for Applied Social Research, RMIT University. In the area of political
finance, Joo-Cheong’s book, Money and Politics: The Democracy We Can’t Afford was published
by UNSW Press in 2010. He is also currently editing two books, both of which will be
published in 2011: one to be published by Routledge is devoted to international perspectives
on political finance while the other, which has the working title, Electoral Regulation and
Prospects for Australian Democracy, will be published by Melbourne University Press. Together
with Associate Professor Graeme Orr, University of Queensland and Professor Brian
Costar, he is leading an Australian Research Council project, Dollars and Democracy: The

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. In 2007-2008, he was a British Academy Visiting Fellow at the Law
School, King’s College, University of London. He was also the Rydon Fellow for Australian
Politics and History at the Menzies Centre for Australian Studies, King’s College, University

Associate Professor Kristen Walker

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
Melbourne Law Masters, 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. Kristen also practices at the Victorian Bar, where
she specializes in constitutional law.

Dr John Waugh

John Waugh 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.
Dr Lael Weis

Lael K ("Lu") Weis completed her PhD and JD at Stanford University in the Department of Philosophy and Law School in June 2010. Her dissertation analyses the debate about constitutional property in American legal scholarship; in particular, it examines the claim that constitutional property rights are incompatible with democracy. Her dissertation argues that this objection assumes a particular view of property’s purposes and values—namely, one that emphasises property’s role in defining private spheres that protect individuals from government interference—that is neither plausible nor dictated by the American tradition of political and moral thought. More plausible grounds for thinking that property is valuable for self-governance associated with this tradition include: providing the basic resources needed to live a decent life and to participate in governance; and establishing a sense of stake and place in a moral and political community. However, promoting these values through constitutional mechanisms requires refashioning the theory of democratic constitutionalism assumed by the debates interlocutors; namely, the theory that makes individual rights-protection from political majorities the central project of constitutionalism.

Lu joined CCCS as a McKenzie Post-Doctoral Fellow in July 2010. Her current research projects continue to develop issues concerning property (broadly understood) and constitutionalism explored in her dissertation.

Dr Margaret Young

Margaret Young joined the Faculty as Senior Lecturer in 2009. She was previously the William Charnley Research Fellow in Public International Law at Pembroke College and the Lauterpacht Centre for International Law, University of Cambridge, where she also lectured in Cambridge's LLM course on WTO law. She has worked at the World Trade Organisation (Appellate Body Secretariat) and the United Nations International Law Commission, is a former associate to the Chief Justice of the Federal Court of Australia, and has practiced as a solicitor at a major Australian national law firm. She is the author of Trading Fish, Saving Fish: The Interaction between Regimes in International Law, which will be published by Cambridge University Press in early 2011. Her edited collection, Regime Interaction in International Law: Facing Fragmentation, is currently in press. This collection includes contributions from leading international, comparative and constitutional law scholars, and is based on the conference she convened at the University of Cambridge in 2009 on Regime Interaction in International Law: Theoretical and Practical Challenges. Margaret holds a PhD and an LLM from the University of Cambridge and a BA/LLB (Hons) from the University of Melbourne and has been a Visiting Scholar at Columbia Law School. Her graduate studies were supported by a number of awards, including the Gates Scholarship, the Commonwealth Scholarship and a scholarship from the Modern Law Review.
Advisory Board

- Ian Cunliffe
- Dr Stephen Donaghue
- Dr Gavan Griffith AO QC
- Peter Hanks QC
- Wendy Harris SC
- Justice Chris Maxwell, President, Court of Appeal
- Debbie Mortimer SC
- Mark Moshinsky SC
- Stephen McLeish SC
- Professor Brian Opeskin
- Jason Pizer
- 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 2010, the Centre hosted the following International scholars in short and long research visits:

Miss Svetlana Tyulkina
1 April – 15 May 2010
SJD Candidate
Central European University, Budapest

Miss Tyulkina's research focuses on the concept of Militant Democracy. Traditionally it is understood as banning of dangerous political parties or other limitation imposed on their activities. This practice is widely accepted in many jurisdictions and the finance of political parties is one of the instruments of militant democracy. Miss Tyulkina develops in her dissertation a new theoretical approach to the emerging regime of anti-terrorism states. She argues that there is no need to invent a new regime like it is promoted by many states and suggests the possibility to put the war on terror legislation into the frame of militant democracy.

Professor Sam Issacharoff
12 – 24 April 2010
Bonnie and Richard Reiss Professor of Constitutional Law
NYU School of Law, USA

Samuel Issacharoff is the Reiss Professor of Constitutional Law at New York University. His wide-ranging research deals with issues in civil procedure (especially complex litigation and class actions), law and economics, constitutional law, particularly with regard to voting rights and electoral systems, and employment law. During his visit to Melbourne Law School, Professor Issacharoff presented a paper on the relationship between the First Amendment and US campaign finance law as part of the CCCS lunchtime seminar program, he also be taught a Comparative Constitutional law class on issues facing fragile democracies, participating in a student symposium on the Rule of Law and in roundtable discussions on other areas of research interest including class litigation and his article on political safeguards in a democracy during wartime.

Mr Li Zhiqiang
1 October 2010 – 30 September 2011
PhD Candidate
Peking University, China

Mr Zhiqiang’s research interests lie in comparative constitutional law, equal protection and anti-discrimination, and power separation. A PhD candidate from Peking University, is working with scholars from the Centre of Comparative Constitutional Studies (CCCS) to gain insight into how equal protections works in Australia.
Delegation from the Constitutional Court of Taiwan

On Monday 16 August, the CCCS hosted a delegation from the Constitutional Court of Taiwan. CCCS Centre Members including Professor Cheryl Saunders AO, Professor Adrienne Stone, Professor Carolyn Evans, Professor Simon Evans, Dr Michelle Foster and from the Asian Law Centre, Associate Professor Sean Cooney met with the delegation over a working lunch. A range of topics were discussed including; the mention of rights in the Australian constitution; the role of the Federal Court in human rights progress; Australia’s ratification of international human rights treaties including ICCPR and ICESER; and the influence of foreign jurisdictions and international human rights bodies on the Federal Court.

The delegation included:

Ms Li-Fen Liu  
Senior Executive Officer, Dept. Clerks of the Constitutional Court, Taiwan  
Bachelor of Law, National Chengchi University, Taiwan

Mr Chien-Wen Chu  
Chief, First Section, Dept. of Clerks for the Constitution Court  
PhD of Fu Jen Catholic University, Taiwan

Ms Ya-Wen Yang  
Law Clerk for the Justice of the Constitutional Court  
LL.M., Yale Law School USA; MSc in Political Theory, London School of Economics, UK; LL.M., National Taiwan University, Taiwan

Ms Chun-Chi Hung  
Attorney at law
Research Assistants for 2010

Cheryl Saunders
Jennika Anthony-Shaw; Anthony Graham; Jane Lovitt; Owen Webb

Michael Crommelin
Martin Clark

Alison Duxbury
Mary Quinn

Carolyn Evans
Anna Hood; Michael Keks

Simon Evans
Duncan Kauffman

Michelle Foster
Anne Kallies; Lara O’Rorke; Daniel Baker; Adrienne Anderson; Louise Brown

Beth Gaze
Kate Darling; Eliza Elliot; Joanne Tassone

Kirsty Gover
Daniel Baker; Emma Poole

Pip Nicholson
Letty Tumbaga

Glen Patmore
Thomas Andrews; Patrick Coleridge; Candice Parr

Adrienne Stone
Anne Kallies; Melissa De Jonk; Madeline Grey; Christopher Tran

Joo Cheong Tham
Daniel Baker; Catherine Dow; Clara Jordan-Baird; Emily Long; Jesse Winton
EVENTS

Public Lectures, Seminars and Roundtables

Public Lectures, Seminars and Roundtables

CCCS Seminar

Speaker: Professor Jamie Cameron

Topic: Do Constitutional Rights Really Make a Difference? Expressive Freedom under section 2(b) of Canada's Charter of Rights and Freedoms

Date: Tuesday 23 February 2010

The title riffs a famous speech and article by Canada's first woman judge at the SCC (It was called, ‘Will Women Judges Really Make A Difference?’) In this seminar, Professor Cameron considered how expressive freedom has fared under the Charter and provided some kind of yes and no answer. The setting is specific to expressive freedom but Professor Cameron engaged general questions about constitutional rights and how they are working (or not) in Canada.

Professor Jamie Cameron’s teaching interests include American and Canadian Constitutional Law, the Charter of Rights, Criminal Law, and Freedom of Expression. She has done extensive research in comparative aspects of Canadian and American constitutional law, with particular emphasis on the interpretation of constitutionally guaranteed rights and freedoms in each jurisdiction. Other areas of research interest include freedom of expression and the press; freedom of association; constitutionalization of criminal law; and principles of fundamental justice. Author of The Charter's Impact on the Criminal Justice System, Professor Cameron has been involved in constitutional reform initiatives, serving as an advisor to former Ontario Premier David Peterson during the Meech Lake Accord process, as a witness to various Parliamentary committees, and as a member of the national YES committee during the Charlottetown Accord and referendum process. As well, she has been active in a variety of academic and public interest projects and currently serves as Editor of the Osgoode Hall Law Journal as well as on the Board of Editors for Ontario Reports and the Board of Directors of the Canadian Civil Liberties Association. Prior to joining Osgoode in 1984, she was Clerk to the Right Honourable Justice Dickson at the Supreme Court of Canada, practised as an associate lawyer in Vancouver, and taught at two American law schools, Columbia and Cornell.
CCCS Seminar

Speaker: Associate Professor James Stribopoulos

Topic: Has the Canadian Charter Been for Crime Control? Reflecting on Over 25 Years of Constitutional Criminal Procedure in Canada

Date: Wednesday 10 March 2010

More than 25 years after its introduction, the Canadian Charter remains a highly controversial document. Arguably, debate about the Charter is most heated when it comes to assessing its effects on the criminal justice system. In his seminar, James critically evaluated the principal and competing accounts of the Charter’s impact on the criminal process with special emphasis on the claim of critical legal scholars that the document has in reality been for crime control. By unpacking actual developments, James evaluated the merits and limitations of that thesis.

James Stribopoulos is an Associate Professor at Osgoode Hall Law School where he teaches Criminal Procedure and Evidence in Osgoode’s JD Program, while also serving as Director of the Intensive Program in Criminal Law and as Co-Director of the Part-Time LLM Program Specializing in Criminal Law. James research and teaching interests are in the areas of criminal law, criminal procedure, evidence, comparative criminal procedure, constitutional law, advocacy, legal ethics, the legal profession and the legal process. James has published extensively on the Canadian Charter’s impact on the criminal process. He recently co-edited a collection of essays in this area: The Charter and Criminal Justice: Twenty-Five Years Later (Toronto: Lexis/Nexis, 2008) with Jamie Cameron.

CCCS Seminar

Speaker: Ms Claudia Geiringer

Topic: Shades of Dialogue: How Different are the NZ Bill of Rights and the Victorian Charter?

Date: Tuesday 23 March 2010

In this seminar, Claudia drew on her experiences over the last six months working with the Charter of Human Rights and Responsibilities Act 2006 to offer some observations on the extent to which, and ways in which, drafting differences between the NZ Bill of Rights Act and the Victorian Charter are likely to be significant in practice.

Claudia Geiringer is a senior lecturer at the Victoria University of Wellington Faculty of Law, in which capacity, she has published widely on the NZ Bill of Rights Act. She is currently on leave from the Faculty, fulfilling a six-month contract with the Victorian Government Solicitor’s Office in Melbourne as (Acting) Special Counsel for Human Rights. Prior to taking
up her appointment at VUW Law Faculty, Claudia was Crown Counsel at the Crown Law Office of New Zealand in the Bill of Rights team. Claudia has also filled roles as Deputy Director and (Acting) Director of the New Zealand Centre for Public Law.

**CCCS Seminar**

**Speaker:** Professor Samuel Issacharoff  
**Topic:** The relationship between the First Amendment and US Campaign Finance Law  
**Date:** Thursday 15 April 2010

In this joint CCCS/Electoral Regulation Network seminar, Professor Issacharoff examined the way in which the freedom of expression protection in the US Constitution's First Amendment has impacted on the regulation of campaign finance in the United States. In particular, he discussed the recent and controversial case of *Citizen's United v FEC*. Commentary was provided by Dr Joo-Cheong Tham who discussed the role of the implied freedom of political communication in Australian campaign financing and compared the situation here to that in the United States.

Samuel Issacharoff is the Reiss Professor of Constitutional Law. His wide-ranging research deals with issues in civil procedure (especially complex litigation and class actions), law and economics, constitutional law, particularly with regard to voting rights and electoral systems, and employment law. He is one of the pioneers in the law of the political process, where his *Law of Democracy* casebook (co-authored with Stanford's Pam Karlan and NYU's Rick Pildes) and dozens of articles have helped to create a vibrant new area of constitutional law. He is also a leading figure in the field of procedure, both in the academy and outside. In addition to ongoing involvement in some of the front-burner cases in this area, he now serves as the Reporter for the Project on Aggregate Litigation of the American Law Institute.

**CCCS Seminar**

**Speaker:** Professor Mark Tushnet  
**Topic:** The Rise of Weak Form Review  
**Date:** Monday 17 May 2010

Professor Tushnet presented his forthcoming (2011) paper titled ‘The Rise of Weak Form Review’, which deals with what he has called weak-form constitutional review by constitutional designers in the twentieth century. He explained that weak-form review combines some sort of power in courts to find legislation inconsistent with constitutional norms with some mechanism whereby the enacting legislature can respond to a court decision to that effect.

Professor Tushnet argued that weak-form systems vary with respect to both the nature of the judicial power, which can be merely declaratory or provisionally suspensive, and the form of legislative response, which can be reenactment or slight modification of the impugned legislation. After describing several of the weak-form’s design features, Professor Tushnet examined the development of weak-form constitutional review in Canada, New
Zealand, and Great Britain. He concluded with some speculations about the future of weak-
form constitutional review.

Professor Tushnet is the William Nelson Cromwell Professor of Law at Harvard University. 
Specializing in constitutional law and theory, including comparative constitutional law, his 
research includes studies examining (skeptically) the practice of judicial review in the United 
States and around the world. Professor Tushnet also writes in the area of legal and 
particularly constitutional history, with works on the development of civil rights law in the 
United States and (currently) a long-term project on the history of the Supreme Court in 
the 1930s.

**CCCS Seminar**

**Speaker:** Professor Elizabeth MaGill

**Topic:** The US Supreme Court Meets the ‘War on Terror’: A 
Discussion of US Supreme Court Decisions.

**Date:** Tuesday 18 May 2010

This talk, given by US constitutional law scholar Elizabeth Magill, 
reviewed and evaluated the US Supreme Court decisions that 
consider various aspects of the post-9/11 legal regime in the US. It outlined the many and 
varied legal and constitutional questions that exist about that legal regime. The focus of the 
talk was the narrower set of questions that the Supreme Court has decided - and what it 
has left undecided. It also evaluated those decisions.

Professor Elizabeth Magill teaches administrative law, constitutional law, food and drug law, 
and seminars in constitutional structure and administrative law. Her scholarship focuses on 
administrative law and constitutional law, particularly separation of powers theory and 
doctrine, and her articles have been published in the Chicago, Northwestern, Pennsylvania 
and Virginia law reviews. Her 2004 article, ‘Agency Choice of Policymaking Form,’ was 
honoured as the year’s top scholarly article by the Administrative Law and Regulatory 
Practice Section of the American Bar Association. During 2005-06 she served as a fellow in 
the Law and Public Affairs Program at Princeton University and in the spring of 2009 she 
visited Harvard Law School.

**CCCS Roundtable**

**Speakers:** Professor Sanford Levinson; Professor 
Janet Hiebert; Assistant Professor Rhonda Evans 
Case; Professor Mark Graber; Professor Paul 
Rishworth.

**Commentators:** Professor Carolyn Evans; Professor Simon Evans; Professor Cheryl 
Saunders; Professor Adrienne Stone; Associate Professor Beth Gaze; Associate Professor 
Kris Walker; Dr. Joo-Cheong Tham

**Topic:** Constitutionalism and Rights

**Date:** Friday 21 May 2010
Several times a year the Centre brings together a small roundtable of experts on constitutional law to discuss papers on a particular theme. The first Roundtable for 2010 brought together a group of eminent scholars from the United States, Canada, New Zealand and Australia to discuss papers on the theme ‘Constitutionalism and Rights’.

Professor Sanford Levinson, Professor of Government at The University of Texas at Austin opened proceedings via video with a paper on: ‘The Phenomenon of State Constitutional Law and Dialogue in the US.’ The paper looked at the phenomenon of State constitutional law and dialogue in the US, an unfortunately much ignored topic.

In the next panel, Professor Janet Hiebert, Professor and Head of the Department of Political Studies of Queen’s University in Kingston, Canada presented a paper on ‘Governing Like Judges.’ The paper examined how bills of rights are influencing bureaucratic and legislative judgment in Canada, New Zealand and the United Kingdom. In the same session, Dr Rhonda Evans Case, JD, PhD, Assistant Professor of the Department of Political Science at East Carolina University, presented a paper on ‘Inviting New Friends to Join the Dialogue: Privileging Human Rights Commissions as Third-Party Interveners.’ The paper described the origins of Victoria and Ireland’s innovations in allowing Commission to intervene in human rights cases, contextualized them within the judicial landscape of each jurisdiction, and summarised the purposes for which each Commission has acted as a third-party intervener. It argued that these innovations raise significant questions concerning the concept of ‘dialogue.’

In the final session, Professor Mark Graber, Professor of Law and Government at The University of Maryland presented a paper on ‘How Constitutionalism Works.’ He suggested that constitutional crises do not occur merely because people disagree, perhaps very strongly, about the meaning of constitutional provisions. Rather, serious crises are rooted in the constitutional failure to construct politics in ways that create tolerable solutions to constitutional disagreements or to constitute citizens willing to live within constitutional norms. Professor Paul Rishworth, Faculty of Law at The University of Auckland then presented his paper: ‘The New Zealand Bill of Rights after 20 Years: Competing Conversations.’ His paper looked at the ways in which competing conversations have been played out in the NZ Parliament and in the Courts; at which conversation is in the ascendant; at the various tensions between them and the reasons why they developed; how these competing conversations impede ‘dialogue’.

Each of the session included a detailed and lively discussion between participants and panellists that ranged across jurisdictions and demonstrated some interesting connections between the papers. The day concluded with a summary by Professor Adrienne Stone before an enjoyable informal dinner where debate and discussion continued.

**CCCS Seminar**

**Speaker:** Dr Jason Pierce  
**Topic:** The (Ir)relevance of North America in Australia’s National Charter Debate  
**Date:** Monday May 31 2010

Jason Pierce explored how the North American rights regimes - the Canadian Charter and the US Bill of Rights - factored into the National Human Rights Consultation and the Rudd
Government's decision not to move forward with a national charter. While there were perfectly reasonable justifications for neither model gaining much traction in the year-long debate, he made a case, with an eye toward 2014, for the ongoing relevance of the North American models in Australia.

Dr Jason Pierce is chair of the Political Science Department at the University of Dayton and past-president of the Australian and New Zealand Studies Association of North America. He authored *Inside the Mason Court Revolution* while a Fulbright Fellow at the Australian National University Faculty of Law. He is presently co-authoring an empirical history of the High Court using the recently completed High Court Judicial Database.

Dr Jason Pierce is chair of the Political Science Department at the University of Dayton and past-president of the Australian and New Zealand Studies Association of North America. He authored *Inside the Mason Court Revolution* while a Fulbright Fellow at the Australian National University Faculty of Law. He is presently co-authoring an empirical history of the High Court using the recently completed High Court Judicial Database.

---

**CCCS Seminar**

**Speaker:** Professor David Sloss  
**Topic:** Treaty Enforcement in Domestic Courts: A Comparative Analysis  
**Date:** Thursday 1 July 2010

Professor David Sloss presented a comparative analysis of the role of domestic courts in treaty enforcement. He addressed the central question which underpins each of the country chapters: do domestic courts provide remedies to private parties who are harmed by a violation of their treaty-based primary rights?

He argued that the conventional wisdom is wrong, insofar as the conventional wisdom holds that direct judicial application of treaties is a more effective means of treaty enforcement than indirect application. In countries such as Canada and India, where domestic law precludes direct application of treaties, domestic courts play an active role in treaty enforcement by applying treaties indirectly. In contrast, in the United States, for example, although domestic courts have the authority to apply treaties directly in some cases, they rarely utilize their judicial power to remedy treaty violations committed by government actors.

David Sloss is a Professor of Law at Santa Clara University School of Law, where he serves as the Director of the Centre for Global Law and Policy. He is the editor of *The Role of Domestic Courts in Treaty Enforcement: A Comparative Perspective* (Cambridge Univ. Press, 2009). He has published numerous articles on the history of US foreign affairs law and the judicial enforcement of treaties in US courts. Professor Sloss received his B.A. from Hampshire College, his MPP from Harvard University and his JD from Stanford Law School. He taught for nine years at Saint Louis University School of Law. Before he was a law professor, he clerked for Judge Joseph T. Sneed of the US Court of Appeals for the Ninth Circuit and worked as an associate for Wilson, Sonsini, Goodrich & Rosati. He also spent nine years in the federal government, where he worked on East-West arms control negotiations and nuclear proliferation issues.
**CCCS/CELRL Book Launch**

*Money and Politics: The democracy we can't afford* by Joo-Cheong Tham

**Date:** Tuesday 3 August 2010

A public forum was held on Tuesday 3 August for the launch of Joo-Cheong Tham’s book: *Money and Politics: The democracy we can't afford.*

A panel discussed the key challenges posed by money in Australian politics. Chaired by Professor Keith Ewing of King’s College, London, panellists included:

- Daryl Melham, ALP MP, Chair of Commonwealth Joint Standing Committee on Electoral Matters;
- Michael O’Brien, Liberal Party MP, Deputy Chair, Victorian Parliament Electoral Matters Committee;
- Lee Rhiannon, Greens NSW Legislative Council Member, Member of NSW Parliament Joint Standing Committee on Electoral Matters;
- Joel Fetter, Director, Policy and Industrial Unit, ACTU; and
- Royce Millar, *The Age* journalist.

The forum was coordinated by the Centre for Employment and Labour Relations Law (CELRL) and the CCCS.

**Public Lecture**

**Speaker:** Professor Ruth Gavison

**Topic:** Israel as a Jewish State: What Does it Mean? Can it be Justified?

**Date:** Thursday 5 August 2010

Professor Ruth Gavison presented the Sir Kenneth Bailey Memorial Lecture 2010 on Thursday 5 August. Ruth Gavison is the Haim Cohn Professor of Human Rights at the Faculty of Law at the Hebrew University of Jerusalem and the Founding President of Metzilah, a center for Zionist, Jewish, Humanist and Liberal Thought.

The Metzilah Center was founded in 2005, to address the growing tendency among Israelis and Jews worldwide to question the legitimacy of Jewish nationalism and its compatibility with universal values.

Professor Gavison was a founding member of the Association for Civil Rights in Israel (ACRI), where she then served as Chairperson for many years and as President from 1996 to 1999. She is the author and editor of many articles and several books in Israel, among them Legal Activism: The Pros and Cons; the Role of the Supreme Court in Israeli Society (2000) and Where there is no vision- the people cast off restraint: A meta-purpose for Israel and Its Implications (2007). Professor Gavison earned the Avi-Hai Prize with R. Y. Medan in 2002 for their A new Covenant on State and Religion Issues Among Jews in Israel and the
E.M.E.T Prize in Law (2003), and served as a member in the Winograd Commission investigating the 2nd Lebanon War (September 2006 to January 2008). She holds honorary doctorates from JTS (2003) and Bar-Ilan University (2009), and is the first winner of the Cheshin Prize for Excellence in Legal Research (2009).

Professor Gavison’s visit to Australia was supported by the Leon Liberman Chair in Modern Israel Studies at Monash University.

The Sir Kenneth Bailey Memorial Lecture honours the Fourth Dean of Melbourne Law School, Kenneth Hamilton Bailey, who played a significant part in Australia’s contribution to the formation of the United Nations.

**CCCS Roundtable**

**Speakers:** Professor Simon Evans, Professor Adrienne Stone, Dr Ann Genovese, Dr Lu Weis

**Topic:** The US Supreme Court in Critical Perspective

**Date:** Friday 6 August 2010


**CCCS Seminar**

**Speaker:** Professor Wojciech Sadurski

**Topic:** Constitutionalization of the European Court of Human Rights through ‘pilot judgments’?

**Date:** Friday 13 August 2010

On Friday 13 August Professor Sadurski presented a public seminar at the Law School. He discussed that the accession of Central and East European States into the European Convention of Human Rights system was both a threat and a promise to the system. The threat resulted not only from the substantial increase of the number of Member States and that of the case-load, but also from the demise of a consensus which was, originally, presupposed by the system of protection of human rights in Western Europe: original members of the Council of Europe were ‘like-minded’ and the Convention system did not represent a challenge to their internal apparatus of human rights protection.

His paper, however, focuses on a promise: a possibility for the European Court of Human Rights to abandon once and for all the fiction of it being merely a sort of super-appellate court which scrutinizes individual decisions rather than laws in Member States. This shift
towards a quasi-constitutional role, going beyond the simple identification of wrong individual decisions so as to point to systemic legal defects, was triggered by systemic problems within the new Member States, while also facilitated by collaboration between the European Court and national constitutional courts. The emergence of so-called ‘pilot judgments’ is the best and most recent illustration of this trend. The way in which a national court may form a de facto alliance with the European Court effectively ‘pierces the veil of the State’, and positions the European Court as a quasi-constitutional judicial body at a pan-European level.

Wojciech Sadurski is Challis Professor in Jurisprudence in the University of Sydney. Professor Sadurski also holds a position of Professor in the Centre for Europe in the University of Warsaw, and is visiting professor (in 2010 and 2011) at the University of Trento, Italy.

He was Professor of Legal Theory and Philosophy of Law in the Department of Law, European University Institute in Florence (1999-2009). He also taught as visiting professor, at a number of universities in Europe, Asia and the United States. He has written extensively on philosophy of law, political philosophy and comparative constitutional law.

**CCCS Seminar**

**Speaker:** Dr Richard Ekins  
**Topic:** Rights, Interpretation and the Rule of Law  
**Date:** Tuesday 12 October 2010

On Tuesday 12 October Dr Ekins presented a public seminar at the law school. In this seminar, Dr Ekins considered how rights, perhaps set out in some bill of rights, legitimately inform statutory interpretation, consistent with the rule of law. He suggested that interpreters maintain the rule of law by giving effect to decisions the legislature promulgates, that is, to what it is plausible to think the legislature intended at the time of enactment. He discussed the radical approaches to rights-consistent interpretation – seen in certain applications of s3 of the Human Rights Act 1998 (UK) – and how the radical approach abandons this discipline and so licenses retrospective legal change and frustrates the legislature promulgating clear, stable law. Dr Ekins suggested that there is space for a (strong) presumption in favour of rights-conformity, but the object of interpretation must remain the intent of the legislature.

Dr Richard Ekins joined the University of Auckland Faculty of Law in 2005. He studied law and political science at Auckland, before serving a two-year term as a Judges’ Clerk at the Auckland High Court and undertaking graduate study in legal philosophy at Balliol College, Oxford. He was the joint winner of the Herbert Hart Prize for Jurisprudence & Political Theory in 2004 and has taught administrative law, constitutional law, constitutional theory and jurisprudence at Balliol. Dr Ekins works in legal and political philosophy and constitutional law and theory. His particular interest is in the study of legislative authority and statutory interpretation. He has written several articles on the nature of the authority of the Westminster Parliament and his doctorate was on the nature of legislative intent.
Constitutional Law Discussion Group

**Topic:** Dickson v The Queen [2010] HCA 30

**Date:** Thursday 14 October 2010

Following the High Court’s recent decision in *Dickson v The Queen* [2010] HCA 30 (22 September 2010), there was a meeting of the CCCS Constitutional Law Discussion Group on Thursday 14 October 2010.

Melbourne Law School Inaugural Professorial Lecture

(coordinated by the Asia Law Centre (ALC) and the CCCS)

**Speaker:** Professor Dr Iur. Adnan Buyung Nasution

**Topic:** Towards Constitutional Democracy in Indonesia

**Date:** 20 October 2011

Professor Dr Iur Adnan Buyung Nasution is widely regarded as Indonesia’s leading advocate and trial lawyer. He is a pioneer of legal aid and law reform, as well as being a key figure in the development of human rights law and constitutionalism in Indonesia. In 1992, he earned a PhD from Rijksuniversiteit Utrecht, Holland, the topic of his thesis being ‘The Aspiration for Constitutional Government in Indonesia’. Later published in The Hague, it has become the classic text on Indonesian constitutional history.

From 1957 to 1968, Dr Nasution was a Public Prosecutor and, from 1966-1968, a member of Parliament. After leaving both these posts, Dr Nasution established his law office and in 1970 took the historic step of founding the first legal aid and human rights office in Indonesia, which later became Indonesia’s key reform organisation. In doing so, he was inspired by his studies in Melbourne’s Law School in the 1950s.

Under the authoritarian rule of President Soeharto, Dr Nasution became the leading dissident lawyer in Indonesia, and was involved in hundreds of subversion trials as defence counsel, usually on a pro bono basis. He became an influential and powerful critic of human rights and rule of law violations by Indonesia's military-backed government. As a result he suffered arrest, imprisonment, loss of his practicing rights and threats against his life. At the same time, he continued to act for the poor and dispossessed, again on a pro bono basis in countless routine criminal and civil cases.

Dr Nasution’s outstanding contribution to human rights and access to justice in Indonesia were acknowledged in 1976 and 1977 by International Awards for Legal Aid in Stockholm and London. Following the fall of Soeharto and the beginning of democratisation in Indonesia, Dr Nasution received the Bintang Maha Putra of the Republic of Indonesia in 2000.

Early in 2007, Dr Nasution retired from the Legal Aid Foundation Board of Trustees and was appointed to Indonesia's Presidential Advisory Council, a highly prestigious constitutional body. In 2010, he was appointed an Honorary Professorial Fellow in the Melbourne Law School, in recognition of his huge contribution to constitutional studies and scholarship on Indonesian law and to his commitment to building the rule of law in his home country.
**CCCS/ALC Roundtable**

**Speakers:** from the China University of Political Science listed below

**Topic:** The Role of Law in Balancing the Rights of Citizen and State in the PRC

**Date:** 25 October 2011

The Centre for Comparative Constitutional Studies and the Asia Law Centre co-hosted a roundtable entitled ‘The Role of Law in Balancing the Rights of Citizen and State in the PRC’.

Speakers from the China University of Political Science and Law included: Professor HE Bing; Professor XUE Xiaojian; Professor LIU Shanchun; Associate Professor BIAN Xiuquan; and Associate Professor CHEN Yi.

Commentators and chairs from the Melbourne Law School included: Professor Simon Evans; Associate Professor Sarah Biddulph; Dr Linda Haller; and Mr Andrew Godwin.

**CCCS/AACL Seminar**

**Speaker:** Professor Leslie Zines AO

**Topic:** Recent Developments in Chapter III: Kirk v Industrial Relations Commission of NSW and SA v Totani

**Chair:** The Hon Mr Murray Gleeson AC QC

**Commentators:** Ms Debbie Mortimer SC and Associate Professor Kristen Walker

**Date:** Friday 26 November 2010

The Centre for Comparative Constitutional Studies and the Australian Association of Constitutional Law (AACL) hosted a seminar to coincide with the Annual General Meeting of the AACL.

Professor Zines is visiting fellow in the Fleming Centre for the Advancement of Legal Research at the Australian National University's College of Law. He joined the Faculty in 1962 as a senior lecturer and was promoted reader in 1965. Professor Zines was appointed Professor 1967 and named Robert Garran Professor in 1977 to 1992. Professor Zines was Dean from 1973 to 1975 and 1984 to 1986. He retired from the Faculty in 1992 and was appointed Goodhart Professor of Legal Science at Cambridge University from 1992 to 1993. He was a Member of the Royal Commission on the Tasmanian Constitution from 1981 to 1982 and the Constitutional Commission from 1985 to 1988. He has been an honorary fellow of Wolfson College, Cambridge since 1995.
Visiting Positions held by Centre Members

Cheryl Saunders spent semester two at Georgetown Law Centre in Washington DC as a Visiting Professor, teaching courses on Comparative Constitutional Law and Constitution Building. On 6 to 10 December she attended the VIII World Congress of Constitutional Law in Mexico City, where she chaired a plenary session on ‘Constitutional Law and the Generation and Use of Principles’. Her book *The Constitution of Australia: A Contextual Analysis* was also launched there. On 16 to 17 December Cheryl travelled to Berlin, where she acted as commentator in a workshop entitled ‘Examining (constitutional) courts in a legalised world: Who controls judicial control?’ The workshop is one of a series of four in a new Berlin postdoctoral fellows program: Rechtskulturen: Confrontations Beyond Comparison.

Carolyn Evans was a Visiting Fellow at the Emory Law School Centre for Law and Religion Studies in the latter half of this year. During that time, she made presentations at Emory and Vanderbilt Law Schools on comparative religious freedom.
Selected Presentations at International Conferences by Centre Members

In July Adrienne Stone, Simon Evans, Jeremy Gans and Kirsty Gover attended a symposium entitled ‘Public Law In Three Nations’, a joint initiative of the CCCS with the Auckland and Witwatersrand Law Schools. The Symposium was hosted by Auckland Law School and included papers on constitutional rights, interpretation and executive power.

Cheryl Saunders attended an international conference on the Dynamics of Constitution Making in Nepal in Post-conflict Scenario, held from January 15-17, 2010 by the Nepal Constitution Foundation (NCF) at Tribhuvan University Faculty of Law, Supreme Court Bar Association, Kathmandu, Nepal. She participated in the session on Institutions (Legislature and Constitutional Bodies) and presented a paper on the ‘Structure of the Legislative and Executive Branches’.

Cheryl was a keynote speaker at the WG Hart Legal Workshop 2010 at the Institute of Advanced Legal Studies in London on 29 June to 1 July. The workshop was entitled ‘Comparative Aspects on Constitutions: Theory and Practice’, and Cheryl’s address was the keynote for the theme on Transplants, Irritants, Migrations, Harmonization. Her topic was ‘Constitutional Transplants’.

Cheryl spent second semester at Georgetown Law Centre in Washington DC as a Visiting Professor, teaching courses on Comparative Constitutional Law and Constitution Building. On 6 to 10 December she attended the VIII World Congress of Constitutional Law in Mexico City, where she chaired a plenary session on ‘Constitutional Law and the Generation and Use of Principles’. Her book The Constitution of Australia; A Contextual Analysis (Hart, 2011) was also launched there. On 16 to 17 December she travelled to Berlin, where she acted as commentator in a workshop entitled ‘Examining (constitutional) courts in a legalised world: Who controls judicial control?’ The workshop is one of a series of four in a new Berlin postdoctoral fellows program: Rechtskulturen: Confrontations Beyond Comparison.

Alison Duxbury gave a paper entitled ‘Using the Language of Rights in the Commonwealth’ at Democracy in the Commonwealth, a conference to celebrate the 100th anniversary of The Round Table, School of Oriental and African Studies (SOAS) at the University of London on 25 June.

Carolyn Evans travelled to Malaysia in the first quarter of 2010 to present a paper ‘Religion, Law and Governance – Comparative and International Perspectives’ at a conference on Religion, Law and Governance in Southeast Asia, International Institute of Advanced Islamic Studies, Kuala Lumpur, Malaysia. She presented a paper on ‘Religious Autonomy and Religious Employment’ at a conference on Law and Religion held at Balliol College, Oxford 7-9 June. Carolyn was a Visiting Fellow at the Emory Law School Centre for Law and Religion Studies in the latter half of 2010. During that time, she made presentations at Emory and Vanderbilt Law Schools on comparative religious freedom.

Simon Evans spoke on ‘The Impact of the UK Human Rights Act on Rights Protection in Australia’ at a conference marking the 10th anniversary of the UK Human Rights Act, at Durham University on 24 and 25 September.

Pip Nicholson was recently the invited international expert to UNDP, MOJ and Judicial Reform Secretariat’s one day seminar on the finality of judgments in Hanoi, Vietnam on 11 September. She spoke about the Swiss and Australian experience.
Joo-Cheong Tham presented a paper, ‘Regulating Political Contributions: Another view from across the Tasman’, during the Political Finance Symposium at Victoria University, Wellington, on 14 May.

Joo-Cheong Tham and Iain Campbell presented a paper entitled ‘Temporary Migrant Labour in Australia: 457 Visas and Challenges to Labour Regulation’ at the LAWASIA Conference in Hong Kong on the 17 and 18 September.

Adrienne Stone visited India as part of a judicial exchange between Indian and Australian judges arranged by the Federal Court of Australia and the National Judicial Academy of India. The delegation was lead by Justice Annabelle Bennett of the Federal Court. The delegation visited courts in Delhi, Ahmedabad, Kochi, Bhopal and Calcutta and engaged in consultations and workshops with Indian judges from all levels of the Indian judiciary. The workshops focused on protecting rights and improving access to justice. Professor Stone also met with Indian academics and visited the National Law University of Delhi, the Centre for International Studies at Jawaharlal University in Delhi and the National Law Institute University in Bhopal where she gave a guest lecture.

In April Adrienne Stone attended a meeting of the Executive Committee of the International Association of Constitutional Law at the Hebrew University of Jerusalem and a Roundtable on the theme ‘Unconstitutional Constitutional Amendments’.
Selected Presentations at National Conferences by Centre Members

Alison Duxbury presented a paper at the Gilbert + Tobin Centre of Public Law’s 2010 Constitutional Law Conference held in New South Wales on Friday 19 February 2010. The conference was addressed by leading practitioners, government lawyers, judges and academics and focused on developments in the High Court and other Australian courts in 2009 and beyond. Speakers at the conference reviewed the key themes and statistics of the Court’s work in 2009 as well as recent major decisions. Associate Professor Duxbury’s paper was titled: ‘Lane v Morrison – The French Court Confronts the Issue of Military Justice.’

Simon Evans and Kristen Walker attended a Symposium at the Bond University Centre for Law, Governance and Public Policy on 4 June entitled Access to Constitutional Justice. Simon presented a paper under the theme ‘Standing rules and access to constitutional justice, while Kris presented under the theme ‘Amici curiae and access to constitutional justice: A practical perspective’.

Michelle Foster presented a conference paper entitled ‘Responsibility Sharing or Shifting? Australia’s Proposal for a Regional Approach to Refugee Protection’ at the Judicial Conference of Australia Colloquium in Hobart on 10 October.

She also hosted a workshop on ‘Responsibility Sharing or Shifting? Australia’s Proposal for a Regional Approach to Refugee Protection’ at Melbourne Law School on 10 December. A forum for discussing the implications of Australia’s proposals for a regional protection framework, the workshop was attended by 22 refugee and migration law academics from Australia, New Zealand, Hong Kong and the United Kingdom.

Adrienne Stone attended a workshop in May at the University of Sydney jointly sponsored by the University of Sydney Law School, the United States Studies Centre, University of Sydney, the Australian Studies Centre University of Texas and presented a paper for discussion entitled ‘Judicial Supremacy, Judicial Deference and Dialogue in the Three Spheres of the Constitution’.


He was invited to give a public lecture at the Castan Centre for Human Rights Law, Monash University on 4 November. He spoke on ‘Money and Politics: Why It Matters to Human Rights’. Commentary was provided by Sam McLean of GetUp!

Joo Cheong was also invited to address the Social Education and VCE Teachers Conference at the State Library of Victoria on 6 December. He spoke on ‘Why Teach Money and Politics?’. 
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


Book Chapters


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

Journal Articles


Saunders B. 2010. ‘Should Credit Default Swap Issuers be Subject to Prudential Regulation?’ Journal of Corporate Law Studies. 10: 427-450.


Young A. 2010. 'Protecting Endangered Marine Species: Collaboration between the Food and Agriculture Organisation and the CITES Regime' Melbourne Journal of International Law. 11(2): 441-490
Selected Media Commentary / Opinion Pieces

Dr Michelle Foster had an opinion piece published in *The Age* entitled ‘Refugee obligations violated’, 13 April 2010.

Glenn Patmore had an article entitled ‘The Minister responsible…’ published in *The National Times*, 4 March 2010.

Professor Cheryl Saunders had an article entitled ‘No cause yet for dissolution’ published in the *Australian Financial Review*, 15 March 2010.

Professor Adrienne Stone gave an interview for ‘I deny’ a documentary about holocaust denier Frederick Tobin in July 2010. She was interviewed by the *Financial Review* regarding Chief Justice Roberts and quoted in a profile of the Chief Justice in the *Financial Review* published on 30 July.

Dr Joo-Cheong Tham had an article entitled ‘Union fees to the ALP are a special case’ published in *The Age*, 15 January 2010. Dr Tham called for a ban on Labor’s ‘unfair’ advertising in *The Age*, 7 March 2010.

Joo Cheong’s book *Money and Politics: The democracy we can’t afford* was launched on 3 August. Joo-Cheong gave many interviews during July, August and September on questions related to the funding of political parties. He was cited in:

- Christian Kerr, ‘Parties go cap in hand to unions and business’, *The Australian*, Sydney, 5 July 2010, 4;
- Royce Millar, ‘Political brochures: your taxes at work’, *The Age*, 10 August 2010;
- Jacob Saulwick, ‘Campaign leaves both parties strapped for cash’, *Sydney Morning Herald*, 27 August 2010;
- Marcus Priest, ‘Gillard may fall short on campaign cash demand’, *Australian Financial Review*, 27 August 2010, 14;
- Jacob Saulwick, ‘Donations to parties may be outlawed’, *Sydney Morning Herald*, 9 September 2010.

His radio interviews included:

- ABC 702 Sydney, Mornings with Deb Cameron, 3 August 2010;
- Triple R 102.7FM, Breakfasters, 4 August 2010;
- ABC Radio National, *In the National Interest*, 20 August 2010;

Associate Professor Kristen Walker spoke on ABC radio about ‘IVF and adoption laws for Australian same-sex couples’ on 15 January 2010.
Grants Held and Awarded

**Carolyn Evans** – 2011 ARC Discovery Project  
*Religious autonomy and the restriction of rights or freedoms by religious communities: comparative and theoretical approaches*  
Duration: 2011-2013  
Funding: $175,443

**Beth Gaze, Anna Chapman** – 2011 ARC Discovery Project  
*Reshaping employment discrimination law: towards substantive equality at work?*  
Duration: 2011-2013  
Funding: $217,000

**Cheryl Saunders** – 2011 ARC Discovery Project  
*Meeting the challenges of constitutional comparison*  
Duration: 2011-2013  
Funding: $235,000

Maureen Tehan, Lee Godden, **Margaret Young** and **Kirsty Gover** – 2011 ARC Discovery Project  
*Climate change law and mitigation: forest carbon sequestration and Indigenous and local community rights*  
Duration: 2011-2013  
Funding: $305,000

**Simon Evans** – 2010 ARC Discovery Project  
*Executive Power under the Australian Constitution: Definition, Delimitation and Accountability*  
Duration: 2010-2012  
Funding: $213,000

Tim Lindsey and **Pip Nicholson** – 2010 ARC Discovery Project  
*Drugs, Law and Criminal Procedure in Southeast Asia: A Comparative Analysis*  
Duration: 2010-2012  
Funding: $281,000

**Joo-Cheong Tham, Brian Costar and Graeme Orr** – 2010 ARC Discovery Project  
*Dollars and Democracy: The Dynamics of Australian Political Finance and its Regulation*  
Duration: 2010-2012  
Funding: $129,000

Camille Cameron and **Pip Nicholson** – 2008 ARC Discovery Projects  
*Testing Court Reform Projects in Cambodia and Vietnam*  
Duration: 2008-2010  
Funding: $275,000

**Adrienne Stone** – 2008 ARC Discovery Project  
*Freedom of Expression in Democratic States: A New Theoretical Direction*  
Duration: 2008-2012  
Funding: $197,817
Joo-Cheong Tham - Melbourne University Interdisciplinary Seed Funding

Temporary Migrant Work and Contested Notions of Social Justice
Funding: $38,000

Out of 93 high-quality proposals, a submission by Dr Joo-Cheong Tham (Co-ordinating Investigator) and his team of researchers was chosen by the scheme to receive $38,000.

The team’s project Temporary Migrant Work and Contested Notions of Social Justice: The Victorian Nursing Sector, will provide a pioneering study of temporary migrant work and social justice in Australia. It will examine this topic through concepts of citizenship rights, human rights and equality, and provide a layered analysis of regulation and policy, as well as a detailed case-study of temporary migrant work in the Victorian nursing sector. Members of the team will travel to the Philippines to examine how temporary migrant workers are recruited and to explore pre-migration perceptions of working in Australia as a temporary migrant nurse in interviews with prospective migrants.

The project’s collaborators, Dr Kate Boese (Sociology), Dr Kate Macdonald (Politics), Dr Winsome Roberts (Social Work) and Dr Michael McGann (Philosophy), and Dr Tham, have all worked together in the past, including on a conference they organised in April this year which was concerned with temporary migrant work and social justice and which resulted in the establishment of the Temporary Migrant Workers Research Network.

Broadly, the findings of the project will be of benefit to the development of policy on temporary migrant work in Australia, specifically in the nursing sector. More specifically, the findings will be documented in two articles on conceptions of social justice and the experiences of temporary migrant nurses in Victoria that adopt an interdisciplinary approach to the study of temporary migrant work; a workshop will be organised; an edited volume based on the workshop’s proceedings produced; and an ARC Linkage Grant Application will be made for a project which will undertake a comprehensive study into the experiences of temporary migrants in their key industries of employment, and a comparison of the Australian position with that of other countries.

The University of Melbourne Interdisciplinary Seed Funding Grant Scheme was initiated in 2010 by Melbourne Research to complement the funding of the Melbourne Research Institutes and to encourage the drawing together of academic staff from across all disciplines to engage in ground-breaking research addressing complex societal changes.
Research Supervision – Graduate Research Students 2009

Carolyn Evans and Jacqueline Peel
PhD Takele Soboka Bulto ‘The imperatives of extraterritorial application of the human right to water: A case study for the Nile Basin’

Stuart Kaye and Alison Duxbury
PhD Rosin Burke ‘Accountability of UN peacekeepers under international law for crimes committed while deployed on peacekeeping and peace-support operations’

Pip Nicholson and Sean Cooney
PhD Hai Ha Do ‘The Right to Strike in Vietnam: Toward a better regime’

Cheryl Saunders and Stuart Macintyre
PhD Tanya Josev ‘The High Court and “Judicial Activism”’

Carolyn Evans and Cheryl Saunders
PhD Nurhafilah Musa ‘Administration of religion in the federal structure of Malaysia

John Howe and Joo-Cheong Tham
PhD Andrew Newman ‘Temporary Migrant Labour Schemes in the Australian and Canadian Agricultural Sectors from a Rights Based Perspective’

Carolyn Evans and Amanda Whiting
PhD Hajrah Saboor ‘Pakistan’s Islamic Identity, its Blasphemy Law and the International Law of Human Rights’

Cheryl Saunders and Adrienne Stone
PhD John Simpkins ‘Courts and Constitutionalism: The judicial branch of constitution-making and the promotion of a culture of constitutionalism’

Simon Evans and Matthew Harding
PhD My Anh Tran ‘Judicial review in private law: An examination of the court’s role in reviewing exercises of discretion by privately appointed decision makers.

Cheryl Saunders and Simon Evans
PhD Getachew Woldemariam ‘Federalism and Rights’
PUBLIC POLICY AND LAW REFORM

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 2009. Many of the submissions had a significant impact on these processes, as well as contributing to Centre members’ own research.

Five Centre Members; Professors Carolyn Evans, Simon Evans, Cheryl Saunders and Adrienne Stone and Associate Professor John Tobin made a submission to the Senate Constitutional and Legal Affairs Inquiry into the Human Rights (Parliamentary Scrutiny Bill) 2010.

Carolyn Evans also made a submission to the Samoan government inquiry into the protection of religious freedom in Samoa in March.

Joo-Cheong Tham gave evidence to the NSW Joint Standing Committee on Electoral Matters’ inquiry into political funding, 1 February 2010.

Joo-Cheong was commissioned to write an independent report on NSW political funding and its regulation: Towards a More Democratic Political Funding Regime in New South Wales: A Report Prepared for the New South Wales Electoral Commission (February 2010).

He also had a report published in December for the NSW Election Funding Authority entitled ‘Regulating the Funding of New South Wales Local Government Election Campaigns’.
TEACHING PROGRAMS

Centre members have teaching responsibilities in the Faculty’s wide range of public law subjects across all Faculty programs. In 2010 these included:

**Melbourne JD**
- Principles of Public Law
- Legal Method and Reasoning
- Constitutional Law
- Administrative Law
- Criminal Law and Procedure
- Charters of Rights in Comparative Perspective

**Melbourne Law Masters**
- Australian Charters of Rights
- Current Issues in Administrative Law
- What is it that Judges do?
- Evolving Constitutionalism in Asia
- Law of Democracy
- Law of Intergovernmental Relations
- Law of Royal Commissions and other Public Inquiries
- Post-Conflict State Building

**Melbourne LLB**
- Australian Bill of Rights
- Advanced Constitutional Law
- Comparative Constitutional Law
- Discrimination, Law and Equality
- Refugee Law
- Rethinking Australian Democracy and Law
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 (AACL) 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 organisation 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 has had a long career as a solicitor in private practice and a senior federal public servant. He has been a partner of some of Australia’s largest legal partnerships, and also practised under his own name. Earlier, 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 practices 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, State and Territory Supreme Courts, Commonwealth AAT and VCAT. He has published several books on constitutional law and administrative law. He is a consultant to Butterworths’ ‘High Court and Federal Court Practice’.

Wendy Harris SC
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.

Justice Chris Maxwell
Justice Maxwell is currently the President of the Victorian Court of Appeal. As a barrister his interests lie in the field of public law - administrative law, constitutional law, FOI and related areas such as taxation and customs. He has appeared in a number of constitutional and other cases in the High Court, dealing with issues ranging from environmental law and copyright to taxation and industrial law. Chris has had a range of experience with boards and Commissions of Inquiry as: Counsel assisting the Mental Health Review Board in the Garry
David case (1990); Junior Counsel for the State Bank of Victoria in the Tricontinental Royal Commission (1990-92); Counsel assisting the Judicial Inquiry into the Australian Secret Intelligence Service (1994-5). He has also had a variety of commercial experience, including as junior counsel for the State of Victoria in its negligence action against the former auditors of Tricontinental.

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 was appointed Solicitor General for Victoria in April 2011. 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 is the Professor of Legal Governance at Macquarie Law School, Sydney. Prior to joining Macquarie University, he held positions as Head of the Law School at the University of the South Pacific in Vanuatu (2006-2008); Commissioner and then Deputy President of the Australian Law Reform Commission (2000-2006); academic at Sydney University Law School (1989-2000) where he was Associate Professor and Associate Dean for Postgraduate Studies; and as Associate to Justice Mason at the High Court of Australia (1985-1986). He undertook his undergraduate degrees in economics and law at the University of New South Wales and then pursued postgraduate study at Oxford University on a Shell Australia scholarship. Brian researches and teaches in the broad field of public law, and has written widely on constitutional law; courts, judges and jurisdiction; international law; and conflict of laws. While at the Australian Law Reform Commission, he was Commissioner in charge of five public inquiries, including inquiries into federal judicial power, the protection of human genetic information, gene patenting and human health, sentencing of federal offenders, and sedition laws.

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 Kyrour 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.

**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). Since 2007 he has been the Judge Advocate General of the Australian Defence Force. He is also President of the Defence Force Discipline Appeal Tribunal. He was a member of various Commonwealth tribunals and was senior counsel assisting the Royal Commission into the Building and Construction Industry.