



THE UNIVERSITY OF  
MELBOURNE

MELBOURNE  
LAW SCHOOL

# CENTRE FOR COMPARATIVE CONSTITUTIONAL STUDIES

Annual Report 2012



CENTRE FOR  
COMPARATIVE  
CONSTITUTIONAL  
STUDIES

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MELBOURNE LAW SCHOOL

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# DIRECTOR'S REPORT

## Activities and Engagement

A highlight of 2012 for CCCS was a major national conference held on July 20th and 21st. The conference was arranged to mark an unusually active period in the High Court which had seen a large number of significant cases over the latter part of 2011 and early part of 2012 and the conference provided an important opportunity for a discussion of key cases including the 'School Chaplains' case (*Williams v Commonwealth*). The conference was opened by a public lecture from the Hon. Nicola Roxon on 'Constitutional Reform'. It was followed the next day with a very insightful and detailed account of the High Court's decision in *Williams v Commonwealth* by Professors Simon Evans and Michael Crommelin AO which lent much clarity the High Court's recent decision. The conference ended with one of the first public discussion of the impact of the *Human Rights Parliamentary Scrutiny Act 2010* (Cth) lead by the Chair of the Parliamentary Committee on Human Rights, Harry Jenkins MP and Professor Andrew Byrnes (UNSW). In between we saw discussions on the theme "What's left of *Cole v Whitfield*?" (Justin Gleeson SC and Richard Niall SC), the Constitutionalisation of Administrative Law (Professor Cheryl Saunders, Debbie Mortimer SC); Freedom of Expression and Protest (Associate Professor Dan Meagher, Dr Steven Price and Dr Sarah Sorial) and the Nationalisation of the Court System (Stephen McLeish SC, Professor Anne Twomey and Associate Professor James Stellios). The conference provided a wonderful forum for discussion matters of real importance in constitutional law. Papers are now available online, please click [here](#).

In addition, the CCCS continued to host the MLS Legal Theory Workshop an initiative of CCCS McKenzie Fellow Dr Lulu Weis. During 2012 the workshop featured Associate Professor Matthew Harding (Melbourne – Law), Dr Daniel Halliday (Melbourne – Philosophy), Dr Jonathan Crowe (UQ), Professor Martin Krygier (UNSW), Professor Margaret Davies, Professor Vera Bergelson (Rutgers – USA), Professor David Estlund (Brown – Philosophy), Dr Carlos Bernal-Pulido (Macquarie), Dr Dale Smith (Monash), Professor Heidi M. Hurd & Professor Ralph Brubaker, Professor Robyn Eckersley (Melbourne – School of Social and Political Sciences), Professor Kim Rubenstein (ANU) and Dr Arlie Loughnan (University of Sydney).

This year also saw the continuation of CCCS' association with the [Accountability Round Table](#). The Accountability Round Table is a non-partisan group of citizens with diverse backgrounds (academics, lawyers, politicians, journalists, authors) who dedicated to improving standards of accountability, probity, transparency and democratic practice in all governments and parliaments in Australia. In 2012, the Integrity Lecture, co-hosted by CCCS and the Accountability Round Table was delivered by the Hon. Lindsay Tanner on the theme 'The Power of Ideas'.

## Visitors

Visitors to CCCS during 2012 included Assistant Professor Shubankar Dam from the Singapore Management University, Singapore and Professor Javier Couso, Professor of Law and the Director of the Constitutional Law Program, at Universidad Diego Portales' School of Law, Chile. During his visit Professor Couso taught 'Latin American Constitutionalism' in the Melbourne Law Masters.

In addition, CCCS welcomed as a visiting scholar Ciaran O'Toole who is the Fiji Programme Director for Conciliation Resources. Mr O'Toole was heavily involved in the Fiji constitution development process during 2012.

## Research Activities

The diverse research activities of Centre members during this period resulted in many publications. Of special note are two monographs: Dean Carolyn Evans; *Legal Protection and Religious Freedom in Australia* (Federation Press) launched on 6 September by Father Frank Brennan and Associate Professor Jeremy Gans' *Modern Criminal Law of Australia* (Cambridge UP, Australia).

More detail on all of CCCS activities can be found in our quarterly newsletters, available [here](#).



Professor Adrienne Stone  
Director, CCCS

# ABOUT THE CENTRE

The Centre for Comparative Constitutional Studies (CCCS) is one of the Law School's thirteen specialist research centres and was established in the Faculty of Law in 1987. The CCCS undertakes and promotes research on the constitutional law and government of Australia and of other countries and provides a focal point for scholars and practitioners interested in these areas. The Centre seeks to focus greater attention on Australian constitutional law and government and of other countries whose systems are most relevant to Australia. This is reflected in the Centre's current objectives which it pursues through its many activities.

The Centre is the current Secretariat for the Australian Association of Constitutional Law (AACL) which was formed in 1998 and is an incorporated, non-profit body funded by membership subscriptions. The Association aims to promote the discipline of constitutional law through interaction, communication, exchange and debate. Key activities include annual national conferences and an annual general meeting, State and Territory seminars, events and information sessions, participation in the International Association of Constitutional Law (IACL), receipt of a quarterly email newsletter and the development and maintenance of a constitutional law website.

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

## CENTRE MEMBERS



### Professor Adrienne Stone

Director, CCCS

Adrienne Stone became the Director of the Centre for Comparative Constitutional Studies in July 2008. She was appointed to a Chair in Law in 2007. Her research interests lie in constitutional law, comparative constitutional law and constitutional theory. She has published extensively on Australian constitutional law, with a special focus on freedom of political communication, comparative constitutional law of freedom of speech and the legal and institutional questions surrounding bills of rights. Her recent publications include *Structural Judicial Review and the Judicial Role in Constitutional Law*, (2010), *University of Toronto Law Review* (invited symposium); *Comparativism in Constitutional Interpretation* (2009) *New Zealand Law Review* 45; and *Judicial Review without Rights* (2008), 28 *Oxford Journal of Legal Studies* 1-32. She holds a grant from the Australian Research Council for a 4 year project investigating freedom of expression in democratic states.

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



### Professor Cheryl Saunders AO

Laureate Professor

Personal Chair in Law

Foundation Director of CCCS

Cheryl Saunders is a laureate professor and holds a personal chair in law. She was the foundation Director of the Centre for Comparative Constitutional Studies.

Cheryl Saunders 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. She is presently working on two major projects: an account of the Australian Constitution written from a comparative constitutional perspective and a text on comparative constitutional law.

Other positions presently held by Cheryl Saunders include President of the International Association of Centres for Federal Studies, member of the advisory board of International IDEA and member of the Program Committee of the Forum of Federations. She is an editor of the *Public Law Review*, a member of the advisory board of *I.CON* 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, Indiana (Bloomington), Hong Kong, Copenhagen, Fribourg, Capetown and Auckland and has an honorary doctorate from the University of Cordoba, Argentina. She is President Emeritus of the International Association of Constitutional Law and a former President of the Administrative Review Council of Australia. In 2010, she will teach courses at Georgetown University on comparative constitutional law and constitution building. In addition to her research and teaching activities, Cheryl Saunders is active in public debate on constitutional matters in Australia and internationally. From 1991, as deputy chair of the Australian Constitutional Centenary Foundation, she was closely involved in its pioneering work to encourage public understanding of the Constitution. She has had some involvement in aspects of constitutional design in other countries, including Fiji, South Africa, Zimbabwe, Sri Lanka, East Timor, Bhutan, Iraq and Nepal.

In 1994, Cheryl Saunders was made an officer of the Order of Australia, for services to the law and to public administration. She was awarded a Centenary Medal in 2003, and is a Chevalier de la Légion d'Honneur. She is also a Fellow of the Academy of Social Sciences in Australia and a Foundation Fellow of the Australian Academy of Law.



### Professor Carolyn Evans

Dean, Melbourne Law School  
Harrison Moore Professor of Law

Carolyn Evans is Deputy Director of the Centre for Comparative Constitutional Studies. Her teaching and research are in the areas of constitutional law, human rights and religious freedom. Carolyn has degrees in Arts and Law from Melbourne University and a doctorate from Oxford University where she studied as a Rhodes Scholar and where she held a stipendiary lectureship for two years 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.

From 2007-2010 she is undertaking a joint ARC Discovery Project with Beth Gaze on the topic of religious freedom and non-discrimination that explores religious exemptions to non-discrimination laws and the relationship between religious freedom and equality. She also researches on the area of domestic protection of human rights, particularly the role of parliament in the protection of human rights and Commonwealth Bills of Rights and held a grant on this topic with Professor Simon Evans. Papers from both grants can be found on the website of the Centre for Comparative Constitutional Studies.



### Professor Simon Evans

Pro Vice-Chancellor (International)

Simon Evans was Deputy Dean of Melbourne Law School from July 2007 to July 2010. His research and teaching are focused in the field of comparative public law. In late 2009 he was awarded an ARC Discovery Project grant to carry out research on the executive branch of government. He recently completed a major project with colleague Professor Carolyn Evans 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 Australasian Recent Developments Correspondent for I.CON (the International Journal of Constitutional Law) from its establishment. He was Director of the Centre for Comparative Constitutional Studies from 2005 to 2007 and Director of Teaching 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.

His latest working papers can be downloaded from SSRN.



### Professor Pip Nicholson

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

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

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



### **Professor Michael Crommelin AO**

Zelman Cowen Professor of Law

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 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 specialises in constitutional law.



### **Associate Professor 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. Her teaching and research interests are in the areas of public law, international refugee law, and international human rights law.

Michelle graduated with a BComm (Hons) and LLB from the University of New South Wales in 1996 and then worked as Research Director for the Hon AM Gleeson AC (then Chief Justice of NSW) in 1997. From 1997-2000 Michelle was the Legal Research Officer for the Solicitor-General and Crown Advocate of NSW, and also tutored part-time in Industrial Law at the University of New South Wales. From 2000-2004 Michelle completed an LLM and SJD at the University of Michigan, where she was a Michigan Grotius Fellow and won a number of awards including the William W. Bishop Jr. Award for study in international law, a Certificate of Merit for first place in Comparative Human Rights law, and a Community of Scholars Graduate Student Fellowship. Michelle was awarded the SJD degree in 2004

for her thesis entitled *Refuge From Deprivation: Forced Migration and Economic and Social Rights in International Law*. While at Michigan she co-authored a number of papers with James C. Hathaway on various aspects of the 1951 Refugee Convention, and participated in the 2001 and 2004 Michigan Colloquiums on Challenges in International Refugee Law as student and rapporteur respectively. She also worked as an intern at the Advice for Individual Rights in Europe (AIRE) Centre in London and conducted seminars in Dubrovnik, Croatia on cultural relativity and international law for the University of Zagreb.



#### Associate Professor Beth Gaze

Beth Gaze's interests are in anti-discrimination and equality law, feminist legal thought, and administrative law including tribunals. Current funded research projects include a study of the enforcement process under Australian federal anti-discrimination law, and the need for substantive updating of Australian anti-discrimination laws. Beth is also a member of the Victorian Mental Health Review Board, and has been a member of the Social Security Appeals Tribunal. She contributes to the teaching of law to medical students, and has experience in University equity and human research ethics areas. Before she became a legal academic she was a computer programmer.

Beth is involved in two research projects funded by ARC Discovery Grants. With Belinda Fehlberg she is continuing a project originally devised by Associate Professor Phillip Swain "Coherent, independent and user-friendly? Participant perceptions of social security administrative review processes in Australia and Britain", which is running from 2005 to 2008. With Carolyn Evans she is engaged in a project on "Non-discrimination laws and religious freedom: current conflicts and future directions" running from 2007-2009.



#### Associate Professor Joo-Cheong Tham

Joo-Cheong Tham is a Senior Lecturer at the Law Faculty 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.

He 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 Dynamics of Australian Political Finance and its Regulation (2010-2013)*.

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 of London in 2008.



### Associate Professor Alison Duxbury

Alison Duxbury's main areas of research are international institutional law, human rights law and international humanitarian law. She is currently undertaking research on the role of human rights and democracy in determining states' participation in international organisations. Alison is a member of the Australian Red Cross International Humanitarian Law Committee (Victorian Division), the Asia Pacific Centre for Military Law, and the International Advisory Commission of the Commonwealth Human Rights Initiative based in Delhi. She is currently convenor of the University's Human Rights Forum.



### 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. In 2007, he was appointed as the Human Rights Adviser to the Victorian Parliament's Scrutiny of Acts and Regulations Committee.

His early research focused on fact-finding in sexual assault trials, the subject of his doctoral thesis and a number of published articles, and criminal investigation, especially the technique of DNA identification. He is the co-author of an evidence law text and a forthcoming human rights text, and is currently working on a criminal law treatise. He has contributed to public debate on

criminal justice in a number of forums. He publishes a running commentary on Victoria's Charter of Human Rights and Responsibilities at [charterblog.wordpress.com](http://charterblog.wordpress.com).



### Associate Professor Margaret Young

Margaret Young joined CCCS when she commenced as Senior Lecturer at MLS 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 a PhD and LLM from the University of Cambridge and a BA/LLB (Hons) from Melbourne, and is a former associate to the Chief Justice of the Federal Court of Australia. Dr Young teaches international and public law classes in the Melbourne JD, LLB and MLM. Her monograph, *Trading Fish, Saving Fish: The*

*Interaction between Regimes in International Law*, will be published by Cambridge University Press in early 2011. It examines the relationship between international trade law, environmental law and the law of the sea in efforts to achieve fisheries sustainability. Public law concepts, including the emerging discipline of global administrative law, are relevant to her analysis. Dr Young is currently editing *Regime Interaction in International Law: Facing Fragmentation*, which will be published by Cambridge University Press in 2011, and which was based on the successful conference she organized at the Lauterpacht Centre for International Law, Cambridge, in June 2009.



### Dr Kirsty Gover

Kirsty Gover joined the Law Faculty in 2009 as a Senior Lecturer and is affiliated to both the Centre for Comparative Constitutional Studies and the Institute for International Law and the Humanities. 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.

Dr Gover 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. Dr Gover 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 U.N. Declaration on the Rights of Indigenous Peoples.

She is currently working on a book project, based on her thesis, entitled *Constitutionalizing Tribalism: States, Tribes and Membership Governance in Australia, Canada, New Zealand and the United States*. Other work addresses the friction between tribal and settler state laws on the status of adopted children, and the participation of indigenous communities in international trade and investment dispute resolution fora. Her article 'Genealogy as Continuity: Explaining the Growing Tribal Preference for Descent Rules' (*American Indian Law Review*, 33-1, 2009) looks at changes in the way United States tribes have determined membership since the 1930s, with an emphasis on the increased tribal use of blood quantum rules.



### **Dr Lael Weis**

McKenzie Post-Doctoral Fellow

Dr. Weis joined CCCS in July 2010 as a McKenzie Post-Doctoral Fellow. She holds a PhD and JD from Stanford University from the Department of Philosophy and Law School. She completed her dissertation, "Public Purpose, Common Good: Constitutional Property in the Democratic State," while a fellow at the Stanford Humanities Center during the 2009-10 academic year. Her research interests lie at the intersection of constitutional legal theory, democratic political theory, and property law.



### **Mr Glenn Patmore**

Glenn Patmore studied law at Monash University, Australia and 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 works as a Senior Lecturer in Law at the University of Melbourne. He has taught Torts, Constitutional and Administrative Law and an optional course on Australian democracy and the law entitled: *Rethinking Australian Democracy: History, Politics and the Law*.

He is presently researching and writing in the fields of democratic theory and practice, constitutional law, republicanism, industrial law and human rights law.

Glenn is a member of both the Centre for Employment and Labour Relations Law and Centre for Comparative Constitutional Studies.



### **Ms Paula O'Brien**

Paula graduated from Melbourne Law School with a first class honours degree in law and in arts in 1998. She was awarded a full Commonwealth Scholarship to undertake her Master of Laws degree at the University of Cambridge in 2008. She graduated from Cambridge Jesus with a class I degree, specialising in international law. She is currently undertaking her PhD at Melbourne Law School.

After graduating with her LLB, Paula completed her articles and worked as a lawyer at Minter Ellison Melbourne until 2003. Her practice was principally in the area of administrative law. She advised public sector agencies on the regulation of health professionals. From 2003 –

2007, Paula was the Executive Director of the Public Interest Law Clearing House (PILCH) in Victoria, a community legal centre which engages in case work, advocacy and education to advance the public interest, in particular the position of marginalised and disadvantaged members of the community. For her work at PILCH, she was awarded the Women Lawyers 'Rising Star' Award in 2007.

Paula's current research is in the area of public health law. Her doctoral thesis is on the domestic and international legal regulation of the global alcohol industry. Her other area of health law expertise relates to health workers and she had researched and published on questions related to the global shortage of health workers. She has looked closely at the international regulatory environment in which the shortages occur. Paula is also involved in an inter-disciplinary project on social justice and temporary migrant work, where the major case study is the Victorian nursing sector. This is, in part, an empirical project involving interviews with experts in the Victorian nursing industry, as well as nurses on 457 visas: see <http://www.socialjustice.unimelb.edu.au/Research/migrantwork3.html>. Paula's part in the project relates to the law regulating the international recruitment and registration of health workers.



### Mr Ben Saunders

Research Fellow

Ben Saunders is a Research Fellow at the Melbourne Law School, examining executive power in Australia and a lawyer, practising in corporate, financial services and water law. Ben is undertaking a PhD at the TC Beirne School of Law, University of Queensland, researching representation and responsible government under the Australian Constitution.

Ben Saunders is a Research Fellow at the Melbourne Law School, and is investigating the definition and regulation of Executive Power in Australia, under an ARC Discovery Project.

He is also a PhD candidate at the University of Queensland, researching representative and responsible government under the Australian Constitution. Prior to starting at the Law School

in 2010 Ben was an Associate at M+K Lawyers, practising in corporate, financial services and water law.

### Jean Goh

Centre Administrator

Jean Goh joined Melbourne Law School in February 2012 and currently holds two positions within the organisation. She is the Centre Co-ordinator for the Centre for Comparative Constitutional Studies and the Network Administrator for the Electoral Regulation Research Network. Since joining the University of Melbourne in 2009, she has held various roles within the University. Jean hails from Kuala Lumpur, Malaysia and relocated to Melbourne at the end of 2004 to further her studies. She is multi-lingual and graduated from RMIT in 2007. Through her current roles within the Law School, Jean hopes to further develop her skills in communications and events management within an internationally recognised organisation.

## 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

### **Assistant Professor Shubhankar Dam**

School of Law, Singapore Management University, Singapore  
25 May 2012 to 25 July 2012

Shubhankar Dam is an Assistant Professor at Singapore Management University School of Law. His research interests are primarily in the field of Indian constitutional law and governance, and comparative constitutional law. During his time at Melbourne Law School, he will be researching on the legislative powers of the executive, both in parliamentary and presidential systems. Using India, Brazil, Russia and some East European jurisdictions, this research will evaluate the ways in which certain legislative arrangements can upend the traditional distinctions between parliamentary and presidential systems.

### **Professor Javier Couso**

Director of the Constitutional Law Program at Universidad Diego Portales' School of Law, Chile  
14 to 18 May 2012

Javier Couso is a Professor of Law and the Director of the Constitutional Law Program at Universidad Diego Portales' School of Law, Chile. A member of the Executive Committee of the 'International Association of Constitutional Law' (IACL), he has also served in the Board of Trustees of the 'Law Society Association' (LSA). He works on Comparative Constitutional Law and Legal Culture, with a focus on Latin America.

He has been visiting professor at the University of Wisconsin-Madison and at the University of Bologna. His recent publications include *The Constitutional Law of Chile and Cultures of Legality: Judicialisation and Political Activism in Latin America*.

### **Ciaran O'Toole**

Fiji Programme director, Conciliation Resources (CR), London  
24 September 2012 to 24 June 2013

Ciaran has spent over five years working on peacebuilding and governance issues in Fiji, firstly working within a local Fijian NGO called the Citizens' Constitutional Forum, and then moving to Conciliation Resources (CR), an international peacebuilding NGO based in London. CR primarily works with local people and organisations to help build peace, with programmes in conflict affected regions such as Central Africa, the Caucasus, Kashmir and the Philippines. Most recently Ciaran has been heavily involved in the Fiji constitution development process, with CR providing considerable support in the setting up and managing of the Constitution Commission secretariat, while providing ongoing support to CR's local civil society partners.

## CCCS GRADUATE RESEARCH STUDENTS

Student	Supervisor(s)
Dylan Lino	Professor Adrienne Stone & Professor Cheryl Saunders AO
John Simpkins	Professor Adrienne Stone & Professor Cheryl Saunders AO
Elizabeth Southwood	Professor Adrienne Stone & Professor Cheryl Saunders AO
Tanya Josev	Professor Cheryl Saunders AO
Katherine le Roy	Professor Cheryl Saunders AO
Getachew Woldemariam	Professor Cheryl Saunders AO & Professor Simon Evans
Tsegaye Ararssa	Professor Cheryl Saunders AO & Professor Michael Crommelin AO
Brian Opeskin	Professor Cheryl Saunders AO
Nurhafilah Musa	Professor Carolyn Evans & Professor Cheryl Saunders AO
Hajrah Saboor	Professor Carolyn Evans
Leilani Elliott	Professor Carolyn Evans
Takele Bulto	Professor Carolyn Evans
Kasia Lach	Professor Carolyn Evans
Clancy Kelly	Professor Carolyn Evans
My Anh Tran	Professor Simon Evans
Nimmith Men	Professor Pip Nicholson
Sally Low	Professor Pip Nicholson
Hai Ha Do	Professor Pip Nicholson
Joseph Kikonyogo	Professor Pip Nicholson
George Kailis	Professor Michael Crommelin AO & Dr Kirsty Gover

Student	Supervisor(s)
Vasko Nastevski	Associate Professor Michelle Foster
Olivera Simic	Associate Professor Michelle Foster
Anthony Mihalopoulos	Associate Professor Beth Gaze
Marco Bini	Associate Professor Beth Gaze
Kathy Adams	Associate Professor Beth Gaze
Andrew Newman	Associate Professor Joo-Cheong Tham
Roisin Burke	Associate Professor Alison Duxbury
Michelle Lesh	Associate Professor Alison Duxbury
Sasha Radin	Associate Professor Alison Duxbury
Jennifer Rowe	Associate Professor Jeremy Gans
Julia Dehm	Associate Professor Margaret Young & Dr Kirsty Gover
James Munro	Associate Professor Margaret
Liz Macpherson	Dr Kirsty Gover
Robin Robinson	Dr Kirsty Gover
Darren Parker	Dr Kirsty Gover

# EVENTS

## CCCS Seminar Series



### What's the Story? The United Kingdom Supreme Court's New Approach to Communications

Thursday 29 March 2012, 1-2pm

What is the United Kingdom Supreme Court's story? What challenges does it face in getting its message out – both about what it has done in cases, but also more widely about its role?

The paper rested on three propositions. First, that effective communication of the Supreme Court's work (both to parties in a case, and more widely) supports judicial independence. Second, that the Supreme Court must develop a communications strategy wider than the traditional release of judgments in cases. Third, that while seeking to increase its public profile (one of the goals of top court reform in the UK), the Court must take care not to be perceived as a new active participant in partisan contests. This has been a delicate task for the UK Supreme Court since opening in 2009. To illuminate these matters the paper reviewed innovations in the Court's approach to communications, notes challenges the Court has faced in getting a clear message out, and finally, provided suggestions for further reforms to enhance its communications operation.

**Richard Cornes** is a Senior Lecturer in Public Law at the University of Essex, Associate Member of Landmark Chambers, London, Editor of *Public Law's* International survey and a member of that journal's editorial board.



### Democracy, Liberty and Displacement of the Prerogative

Tuesday 8 May 2012, 1-2pm

This seminar explored the interaction between executive power and statute, by considering the approach the courts take to statutory displacement of the royal prerogative and the Commonwealth's inherent executive power. A particular focus was the extent to which courts gave weight to contemporary ideals of the rule of law and human rights. It was argued that, with some notable exceptions, the approach currently taken by the courts is defensible given the variety of circumstances in which displacement arises.

**Ben Saunders** is a Research Fellow at the Melbourne Law School, and is investigating the definition and regulation of Executive Power in Australia, under an ARC Discovery Project. He is also a PhD candidate at the University of Queensland, researching representative and responsible government under the Australian Constitution. Prior to starting at the Law School in 2010 Ben was an Associate at M+K Lawyers, practising in corporate, financial services and water law.



### Models of Democracy and Models of Constitutionalism in Latin America

Tuesday 15 May 2012, 5.30-6.30pm

Models of democracy are hardly separable from models of constitutionalism. The model of democracy that a person embraces determines to a great extent the model of constitutionalism that she will adhere to. In the 1990s, there was widespread consensus throughout Latin America as to the virtues of liberal democracy and the model of constitutionalism prevalent in Western Europe, the United States, and other former British colonies. In recent years, however, some Latin American countries have diverged from that consensus and embraced different models of democracy, which have led them to adopt different models of constitutionalism. For example, Venezuela, Bolivia, Ecuador and Nicaragua have adopted radical forms of democratic rule—multiethnic democracy in Bolivia and Ecuador, and the so-called 'Bolivarian democracy' in Venezuela and Nicaragua— which may be incompatible with some core elements of the liberal democratic model of constitutionalism, such as judicial independence and full freedom of expression. The seminar addressed these developments.

**Javier Couso** is Professor of Law and Director of the Constitutional Law Program at Universidad Diego Portales (Chile). He is a member of the Executive Committee of the International Association of Constitutional Law (IACL). He has been a Visiting Professor of Law at Bocconi University, Italy (2012); the University of Bologna, Italy (2011); the Instituto Tecnológico Autónomo de México (ITAM), 2011; and the University of Wisconsin at Madison (2006-2007). Professor Couso specialises in Comparative Public Law. Recent publications include, *The Constitutional Law of Chile*, Javier Couso et al. (Kluwer Law International, 2011); “Models of Democracy and Models of Constitutionalism: The Case of Chile’s Constitutional Court: 1970 – 2010,” *Texas Law Review* (2011); and *Cultures of Legality: Judicialization and Political Activism in Latin America*. (Cambridge University Press, 2010), Javier Couso, et al.



### Money in the 2012 American Presidential Elections

Wednesday 23 May 2012, 1-2pm

Co-hosted with the Electoral Regulation Research Network

The 2012 American presidential election has already seen an explosion not just in the amount of money being spent, but in the sources of that money and the new organizational forms that are quickly becoming dominant players in the electoral process. In particular, newly emergent organizations outside the formal political parties and the candidates’ campaigns known as “SuperPacs” have quickly come to be at least as important in raising and spending money as the parties and the campaigns themselves.

These SuperPacs are a uniquely American phenomenon.

Nearly all commentary on these new organizations treats their emergence as having caused by the Supreme Court’s controversial *Citizens United* decision, in which the Court held that corporations and unions have constitutional free speech rights to engage in unlimited electoral spending. In this talk, Professor Pildes took issue with that view. Despite the fact that these entities emerged directly in the aftermath of the Court’s decision, *Citizens United* was not the reason these organizations have exploded onto the electoral scene. Professor Pildes then explored the question of why, among those critical of the rise of SuperPacs, there is such a strong temptation to view *Citizens United* as the “root of all evil” in the financing of American elections.

**Richard H. Pildes** is the Sudler Family Professor of Constitutional Law, School of Law, New York University. He and his co-authors created the law of democracy as a field of study in the law schools, and his scholarship focuses on legal issues concerning the design of democratic processes and government, as well as constitutional, administrative, and national-security law. He is the author of more than 50 major academic articles and is the co-author of the casebook, *The Law of Democracy* and a co-editor of the book, *The Future of the Voting Rights Act*.

### Constitutions Inside Out: Outsider Interventions in Domestic Constitutional Contests

Thursday 9 August 2012, 1-2pm

Increased interactions among peoples and states combined with the growth of written constitutions are creating new opportunities for “extra-territorial” forms of constitutional interpretation, that is, the interpretation of domestic constitutions by “outsiders.” This article considered the potential benefits, and dangers, of outsider interpretation. It also identified factors relevant to the appropriateness or legitimacy of such practices, drawing from analogous rules and doctrines developed in the context of U.S. federalism and international law.



**Rosalind Dixon** is a Professor of Law, at the University of New South Wales, Faculty of Law, having recently served as an Assistant Professor at the University of Chicago Law School. She earned her BA and LLB (with the medal in law) from the University of New South Wales, and was an associate to Chief Justice Murray Gleeson, before attending Harvard Law School, where she obtained an LLM and SJD. Her work focuses on comparative constitutional law and constitutional design, socio-economic rights and constitutional law and gender.



**Vicki C. Jackson**, the Thurgood Marshall Professor of Constitutional Law at Harvard Law School, writes and teaches in U.S. Constitutional Law, Comparative Constitutional Law, Federal Courts, Gender Equality and related topics. Her recent books include *Constitutional Engagement in a Transnational Era* (2010), *Federal Courts Stories* (with Judith Resnik) (2010), *Inside the Supreme Court* (with Susan Bloch) (2008); *Comparative Constitutional Law* (with Mark Tushnet) (2006). Her

current works-in-progress include books or papers on the constitutional history of the U.S. Supreme Court's federalism decisions, the intellectual foundations of proportionality analysis in public law, and the benefits of a pluralist approach in advancing gender equality.



### Transnational Constitutionalism's Problem with Constitutional Identity: Prospects and Pitfalls

Thursday 16 August 2012, 1-2PM

Working nation-state constitutions depend for their meaning, coherence and integrity on the elaboration of a suitable constitutional identity which draws on the relevant nation-state's national identity, culture and history but remains distinct from all of these. As widely discussed relating to a constitution for the European Union (EU), the prospects of transnational or global constitutionalism are questionable as formidable obstacles stand in the way of elaborating a common identity among the twenty seven EU member nation-states, each with its own constitutional identity, national identity, culture and history. By exploring how constitutional identity develops in national settings and how that may be adapted to transnational settings, Professor Rosenfeld argued that a transnational constitutional identity is plausible and focused on its likely key features.

**Michel Rosenfeld** is the Justice Sydney L. Robins Professor of Human Rights and director of the Program on Global and Comparative Constitutional Theory at the Benjamin N. Cardozo School of Law in New York City. He is the author of several books and is president of the United States Association of Constitutional Law, co-editor-in-chief of the *International Journal of Constitutional Law* (I•CON), and was president of the International Association of Constitutional Law (1999-2004). He was awarded the French Legion of Honor in 2004 and in 2007-2008 held an International Blaise Pascal Research Chair at the Ecole Normale Supérieure in Paris, and in 2011, the Perelman Chair in Legal Philosophy at the Free University of Brussels.



### The UK Experiment with Declarations of Incompatibility

Wednesday 19 September 2012, 1-2pm

Dr Aruna Sathanapally presented the work captured in her upcoming book, *Beyond Disagreement: Open Remedies in Human Rights Adjudication*.

Animated by an interest in institutional design for modern democracies, Dr Sathanapally's research focused on innovative approaches to the protection of human rights and the promotion of deliberative processes. Her book presented the first comprehensive legal and empirical study of the judicial use of, and political reactions to, declarations of incompatibility in the UK—a device that has inspired debates in Australia over legal protection for human rights.

Dr Sathanapally placed this particular innovation in the context of a broader trend in comparative human rights protection of 'open remedies', and examined the operation and effectiveness of declarations of incompatibility, based on the now significant body of UK experience.

**Dr Aruna Sathanapally** is an Australian lawyer, originally from Sydney, who completed her masters and doctoral studies at Balliol College and the Centre for Socio-Legal Studies at the University of Oxford. She has worked as a legal adviser to Amnesty International and has advised on institutional design and regulatory affairs as a consultant at McKinsey & Co. in London.

### The Elusive Constitutional Settlement of Sri Lanka's Ethnic Crisis

Monday 8 October 2012, 1-2pm

Sri Lanka has both geographically concentrated and dispersed minorities. The majority Sinhalese are a minority in two Provinces. Reluctance to accommodate the minorities in State power and discrimination led to demands for federalism and finally to separatist violence. Sinhala and Tamil extremism aggravated the crisis. While Tamil separatists have been militarily defeated, the search for a political solution to the ethnic conflict continues with no immediate prospects of

an agreement, due to extremist pressure and lack of political will. Compounding the situation are serious issues of governance, a strong executive presidency without effective safeguards and waning respect for the rule of law. Today, the resolution of the ethnic crisis has become a part of a wider struggle for democratic governance.



**Dr. Jayampathy Wickramaratne**, a legal practitioner from Sri Lanka, specialises in constitutional law and human rights. He is a President's Counsel, equivalent to Queen's Counsel. His doctoral thesis was titled "Fundamental Rights in Sri Lanka". He was Senior Advisor, Ministry of Constitutional Affairs and a member of the team that drafted the Constitution Bill of 2000. Dr. Wickramaratne was a member of the panel of experts appointed by the President to service the All Party Representative Committee and was a signatory to the "majority report" which proposed a strong power-sharing arrangement as a solution to Sri Lanka's ethnic crisis.



### **ERRN (VIC) & CCCS Seminar: Party Political Funding in NSW (and Beyond?) – Can Human Rights be Deployed to Resist Dogmatic Liberalism's Intolerance of Pluralistic Party Structures?**

*Tuesday 20 November 2012, 12-pm*

Imagine a State where the governing party decided to re-write the law to liquidate the main opposition party. Or passed a law to render unlawful the existing structure of the main opposition party. Or changed the law to restrict the right of opponents to campaign

against it at election time.

Welcome to New South Wales. For all practical purposes the ALP has been declared unlawful as originally created. Formed by trade unions to give working people a political voice, the State has now decided that the ALP can no longer exist in its present form, a form that is an untidy mixture of individual and collective membership.

Is this lawful? Can the NSW model of party funding law be adopted elsewhere in Australia? Are there parallels for such uses of State power elsewhere the liberal democratic world? Is it consistent with international human rights obligations? Does it matter? Are human rights relevant to democracy?

**Keith Ewing** has been Professor of Public Law at King's College, London since 1989, having been employed previously at the Universities of Edinburgh and Cambridge. He is a frequent visitor to Australia, and has held positions at Monash, UWA, University of Queensland, University of Sydney, and the University of Melbourne, where he is currently visiting.



### **The Fiscal Compact, the "Golden Rule" and the Paradox of European Federalism**

*Thursday 6 December 2012, 1-2pm*

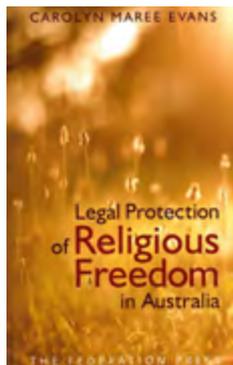
The paper analysed the central provision of the recently enacted Fiscal Compact, which directed member states of the European Union (EU) to incorporate into their constitutions a "golden rule", i.e. a requirement that yearly budgets be balanced. The purpose of the paper is to examine –by surveying the introduction of these pervasive budgetary constraints in four selected states (Germany, France, Italy and Spain)– the institutional implications that the "golden rule" has on the role of the political and judicial branches, both in the states and in the EU. The paper argued that, while the domestic effects of the "golden rule" are likely to vary from one state to another, the Fiscal Compact systematically enhanced the powers of the EU institutions to direct and police

the budgetary policies of the states, thus increased centralization in the EU architecture of economic governance.

The paper contrasted this development with the federal experience of the United States (US). In a comparative perspective, in fact, it appears that while most US states are also endowed with "golden rules" in their constitutions, the federal government never played a role in the adoption of these balanced budget rules and still today is barred from interfering with the budgetary processes of the states. In conclusion, the paper suggested that an unexpected paradox emerged in the new constitutional architecture of the EU: although in crafting the institutional response to the Euro-zone crisis state governments have repeatedly discarded a US-like federal model as being too centralised and centripetal for the EU, they have ended up establishing a regime that is much less respectful of state sovereignty than the US federal system.

**Federico Fabbrini** is tenure-track Assistant Professor of “European & Comparative Constitutional Law”. His main areas of research are federalism, fundamental rights, separation of powers, economic governance, and global constitutionalism, mainly in a comparative perspective between the European Union and the United States. On these topics he has published, among others, in the *Oxford Yearbook of European Law*, the *European Constitutional Law Review*, the *Columbia Journal of European Law* and the *Georgetown Journal of International Law*.

## CCCS Book Launches



### **Carolyn Evans, *Legal Protection of Religious Freedom in Australia***

Thursday 6 September 2012, 5.30-pm

The Centre for Comparative Constitutional Studies (CCCS) hosted the launch of Carolyn Evans’ *Legal Protection of Religious Freedom in Australia* (The Federation Press, 2012). The book launch was opened by Father Frank Brennan, with an introduction by Professor Adrienne Stone.

### **Legal Protection of Religious Freedom in Australia**

The role and place of religion in Australia have become more contested and controversial in recent years. Law makers now have to chart a difficult course between the traditional legal practices and the realities of a new multi-religious Australia. This book examined the way in which the law protects (or fails to protect) freedom of religion or belief in Australia. Its first part considered the social, political, international and constitutional contexts surrounding religious freedom. The analysis included legal distinctions between religion and concepts such as race, ethnicity, culture and sincere belief; the varying legal definitions of religion; and the High Court’s narrow interpretation of Constitution s116, at odds with more expansive conceptions used in international law and some other domestic legal systems.

**Professor Carolyn Evans** is Dean of Melbourne Law School. Carolyn has degrees in Arts and Law from Melbourne University and a doctorate from Oxford University where she studied as a Rhodes Scholar and where she held a stipendiary lectureship for two years before returning to Melbourne in 2000. 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.

**Father Frank Brennan** is a Jesuit priest, professor of law at Australian Catholic University and Adjunct Professor at the Australian National University College of Law and National Centre for Indigenous Studies. He was the founding director of Uniya, the Australian Jesuit Social Justice Centre.

## CCCS Public Lectures



### **ART/CCCS Inaugural Lecture: Integrity in Politics: The Power of Ideas**

Thursday 22 November 2012, 5.30-7pm

Widespread disenchantment suggests that public engagement with the political process is at its lowest ebb in decades. Lindsay Tanner has written extensively on the corrosive impact of entertainment media and political manipulation on our democratic process. He offered deep insights and thoughtful suggestions for reviving political engagement in Australia.

**Lindsay Tanner** is Special Advisor to Lazard Australia and Vice-Chancellor’s Fellow at Victoria University. From 1993 to 2010 he was Federal Labor MP for Melbourne, and from 2007 to 2010

he was Federal Minister for Finance and Deregulation.

**The Accountability Roundtable** is a non-partisan group of citizens with diverse backgrounds (academics, lawyers, politicians, journalists, authors) who are gravely concerned with the current erosion of honesty and integrity of our democratic parliamentary and governmental processes.

## CCCS Conference

### Recent Developments in Constitutional Law: CCCS Conference 2012

Thursday to Friday 19-21 July 2011

The Centre for Comparative Constitutional Studies hosted a major conference on recent developments in constitutional law from Thursday 19 to Saturday 21 July 2012.

The conference provided a forum, for the discussion of recent events in constitutional law including the High Court's recent decisions on s 92 of the *Constitution*, freedom of political communication, the nature of federal executive power, the nationalisation of state courts, the constitutionalisation of administrative law, proposals for constitutional reform and the future of human rights protection.

The conference opened on the evening of Thursday 19 July with a public lecture by The Hon. Nicola Roxon, Attorney-General for the commonwealth of Australia.

The conference also provided a forum for the launch of *The Future of Australian Federalism: Comparative and Interdisciplinary Perspectives* (edited by Gabrielle Appleby, Nicholas Aroney and Thomas John) by Roger Wilkins AO, Secretary of the Attorney-General's Department.

Conference speakers included:

- Professor Andrew Byrnes
- The Hon. Catherine Branson QC
- Professor Michael Crommelin AO
- Ms Kylie Evans
- Professor Simon Evans
- Justin Gleeson SC
- Harry Jenkins MP
- Associate Professor Daniel Meagher
- Stephen McLeish SC
- Richard Niall SC
- Mr Steven Price
- Professor Cheryl Saunders AO
- Dr Sarah Sorial
- Associate Professor James Stellios
- Associate Professor John Tobin
- Professor Anne Twomey
- Roger Wilkins AO



## Legal Theory Workshop

The Legal Theory Workshop series meets regularly to discuss unpublished works-in-progress on a variety of theoretical and normative issues in the law.

Guests presenters for Semester one 2012 includes:

### 16 March 2012

Associate Professor Matthew Harding (University of Melbourne), “The Perfectionism of Charity Law”  
Commentator: Dr Lael Weis (Melbourne)

### 30 March 2012

Dr Daniel Halliday (Philosophy, University of Melbourne), “Is Inheritance Morally Distinctive?”  
Commentator: Mr Cameron Rider (Melbourne)

### 20 April 2012

Dr Jonathan Crowe (University of Queensland), “Law as an Artifact Kind”  
Commentator: Dr Dale Smith (Monash)

### 4 May 2012

Professor Martin Krygier (UNSW), “Why the Rule of Law is Too Important to be Left to Lawyers”  
Commentator: Professor Michael Crommelin

### 18 May 2012

Professor Margaret Davies (Flinders University), “Home and State”  
Commentator: Dr Ann Genovese (Melbourne)

### 25 May 2012

Professor Vera Bergelson (Rutgers University), “Choice of Evils: In Search of a Viable Rationale”  
Commentator: Dr Kevin Heller (Melbourne)

Guests presenters for Semester two 2012 includes:

### 3 August 2012

Professor David Estlund (Brown – Philosophy), “Bad Facts”  
Commentator: Dr Daniel Halliday (Melbourne – Philosophy)

### 10 August 2012

Dr Carlos Bernal-Pulido (Macquarie), “The Migration of Proportionality across Europe”  
Commentator: Professor Cheryl Saunders (Melbourne)

### 24 August 2012

Dr Dale Smith (Monash), “Are Judges Opportunistic Interpreters?”  
Commentator: The Hon. Justice Margaret Stone (Melbourne – Judge in Residence)

### 7 September 2012

Professor Heidi M. Hurd & Professor Ralph Brubaker (University of Illinois), “Debts and the Demands of Conscience: An exploration of the moral underpinnings of debt relief”  
Commentator: Dr Jeannie Paterson (Melbourne)

### 5 October 2012

Professor Robyn Eckersley (Melbourne – School of Social and Political Sciences), “Does Leadership Make a Difference in International Climate Negotiations?: EU Normative Power versus G2 Emissions Power”  
Commentator: Associate Professor Margaret Young (Melbourne)

12 October 2012

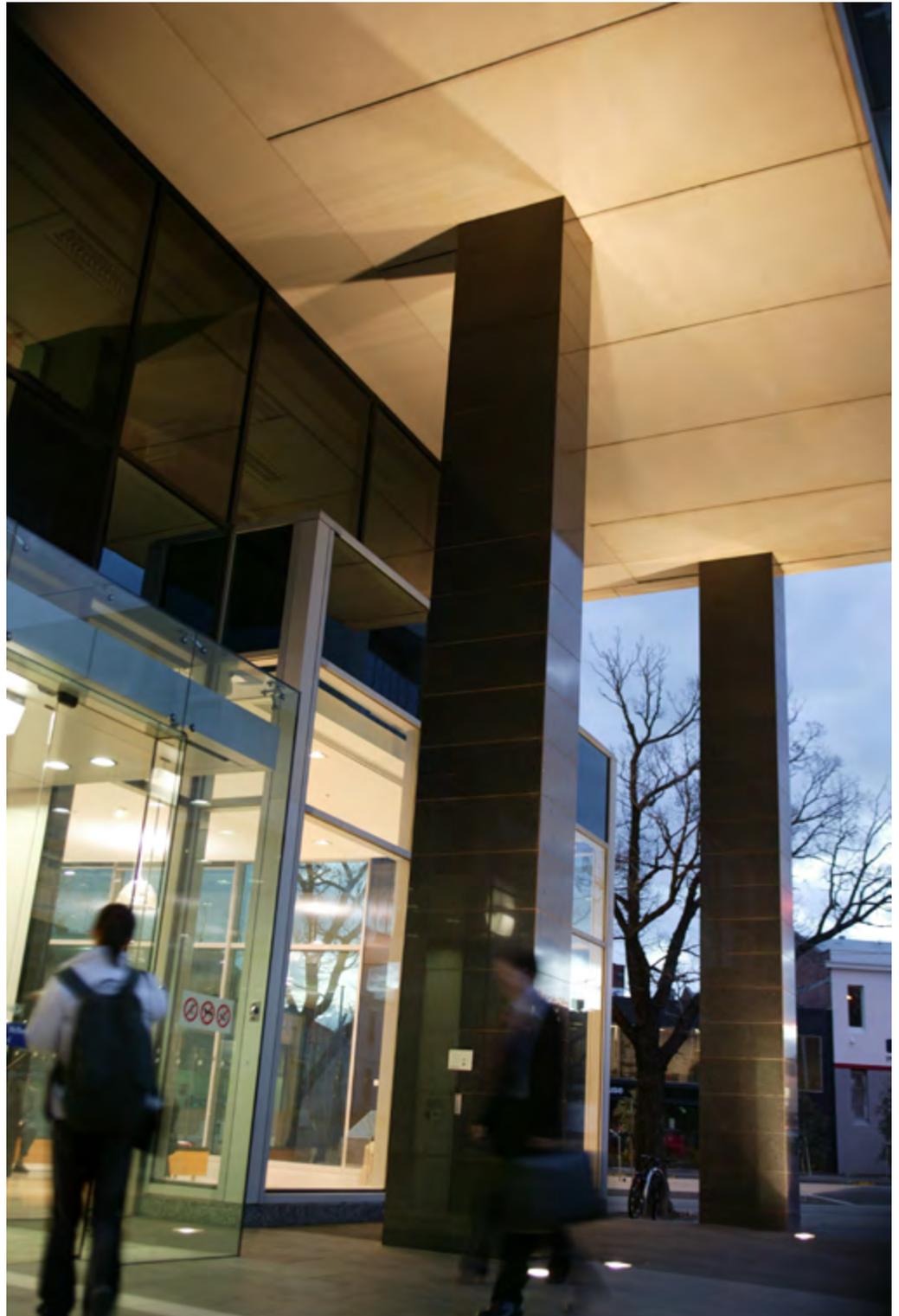
Professor Kim Rubenstein (ANU), “What is a ‘Real’ Australian Citizen? Insights from Papua New Guinea and Mr Amos Amé”

Commentator: Associate Professor Shaun McVeigh (Melbourne)

26 October 2012

Dr Arlie Loughnan (Sydney), “The Asymmetry of Responsibility and Non-Responsibility in Criminal Law”

Commentator: Associate Professor Jeremy Gans (Melbourne)



# FUNDED RESEARCH GRANTS

## Australian Research Council (ARC) Discovery Projects in 2012

**Carolyn Evans** (2011-2013)

*'Religious Autonomy and the Restriction of Rights or Freedoms by Religious Communities: Comparative and Theoretical Approaches'*

Funding: \$174,443

Religious communities must be autonomous in order to protect their unique identity and mission. Yet in exercising their autonomy they may interfere with the rights of freedoms of others. This project's sophisticated analysis of the tension between two sets of rights will offer a resolution that strengthens Australia's social fabric.

**Beth Gaze** and Anna Chapman (2011-2013)

*'Reshaping Employment Discrimination Law: Towards Substantive Equality at Work?'*

Funding: \$217,000

The Australian employment discrimination law system comprises long standing anti-discrimination law and novel discrimination provisions from the Fair Work Act 2009. This project studies the operation and effectiveness of the reshaped system, to assess whether it is likely to be effective in supporting a more substantive version of equality at work.

**Cheryl Saunders** (2011-2013)

*'Meeting the Challenges of Constitutional Comparison'*

Funding: \$235,000

This project offers a more genuinely global approach to comparative constitutional law. It will deepen understanding of the operation and underlying assumptions of systems of government in countries around the world, assisting Australia in its dealings with neighbours and strategic partners and in developing its own constitutional arrangements.

Maureen Tehan, Lee Godden, **Margaret Young** and **Kirsty Gover** (2011-2013)

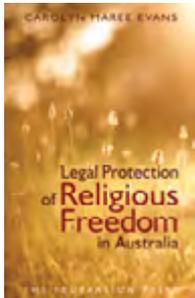
*'Climate Change Law and Mitigation: Forest Carbon Sequestration and Indigenous and Local Community Rights'*

Funding: \$305,000

The project examines the impact of climate change law and mitigation on Indigenous peoples and local forest communities in Australia, India and Malaysia. It examines the United Nations – Reducing Emissions from deforestation and Forest Degradation scheme which gives credit for carbon sequestration in forests thus providing financial incentives to avoid deforestation for communities in sensitive ecosystems.

# PUBLICATIONS

## Books



*Legal Protection of Religious Freedom in Australia*

**Carolyn Evans**

Publisher: Federation Press

Year: 2012

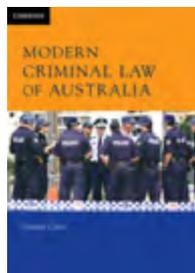


*The Funding of Political Parties: Where Now?*

Edited by: Keith Ewing, Jacob Rowbottom and **Joo-Cheong Tham**

Publisher: Routledge

Year: 2012

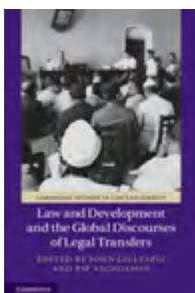


*Modern Criminal Law in Australia*

**Jeremy Gans**

Publisher: Cambridge University Press

Year: 2012

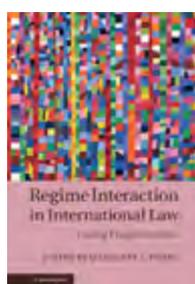


*Law and Development and the Global Discourses of Legal Transfers*

Edited by: John Gillespie and **Pip Nicholson**

Publisher: Cambridge University Press

Year: 2012



*Regime Interaction in International Law: Facing Fragmentation*

Edited by: **Margaret Young**

Publisher: Cambridge University Press

Year: 2012

## Book Chapters

- Crommelin, M**, 'Australia' in G Anderson (ed), *Oil & Gas in Federal Systems*, Oxford University Press, Canada (2012) 35-60
- Evans, C**, 'Religion and Freedom of Expression' in J Witte and C Green (eds), *Religion & Human Rights: An Introduction*, Oxford University Press, United States (2012) 188-203
- Evans, S** and Bosland, J, 'Plain Packaging of Cigarettes and Constitutional Property Rights' in T Voon, A Mitchell, J Liberman and G Ayres (eds), *Public Health and Plain Packaging of Cigarettes: Legal Issues*, Edward Elgar Publishing, United Kingdom (2012) 48-80
- Ewing, K, Rowbottom, J and **Tham, J**, 'Introduction' in K Ewing, J Rowbottom and J Tham (eds), *The Funding of Political Parties: Where Now?*, Routledge, United Kingdom (2012) 1-8
- Gans, J**, 'Ozymandias on Trial: Wrongs and Rights in DNA Cases' in P Roberts and J Hunter (eds), *Criminal Evidence and Human Rights: Reimagining Common Law Procedural Traditions*, Hart Publishing, United Kingdom (2012) 195-214
- Gillespie, J and **Nicholson, P**, 'Taking the Interpretation of Legal Transfers Seriously: The Challenge for Law and Development' in J Gillespie and P Nicholson (eds), *Law and Development and the Global Discourses of Legal Transfers*, Cambridge University Press, United Kingdom (2012) 1-26
- Nicholson, P** and Pitt, S, 'Official Discourses and Court-oriented Legal Reform in Vietnam' in J Gillespie and P Nicholson (eds), *Law and Development and the Global Discourses of Legal Transfers*, Cambridge University Press, United Kingdom (2012) 202-236
- Saunders, C**, 'Cooperative Arrangements in Comparative Perspective' in G Appleby, N Aroney and T John (eds), *The Future of Australian Federalism: Comparative and Interdisciplinary Perspectives*, Cambridge University Press, United Kingdom (2012) 414-431
- Saunders, C**, 'International Regimes and Domestic Arrangements: A View from Inside Out' in M Young (ed), *Regime Interaction in International Law: Facing Fragmentation*, Cambridge University Press, United Kingdom (2012) 55-84
- Saunders, C**, 'Le Fédéralisme Australien et L'autonomie Locale' [Australian Federalism and Local Autonomy] in O Duhamel, M Gullaume and C Zalc (eds), *L'Australie*, Seuil, France (2012) 39-50
- Saunders, C** and **Dziedzic, A**, 'Parliamentary Sovereignty and Written Constitutions in Comparative Perspective' in A Welikala (ed), *The Sri Lankan Republic at 40: Reflections on Constitutional History, Theory and Practice*, Centre for Policy Alternatives (CPA), Sri Lanka (2012) 477-506
- Saunders, C** and **Foster, M**, 'Australia' in D Halberstam, M Reimann and J Sanchez Cordero (eds), *Federalism and Legal Unification: A Comparative Empirical Investigation of Twenty Systems*, International Academy of Comparative Law, France (2012) 66-76
- Tham, J**, 'Contribution Limits: A Case for Exempting Trade Union Affiliation Fees' in K Ewing, J Rowbottom and J Tham (eds), *The Funding of Political Parties: Where Now?*, Routledge, United Kingdom (2012) 35-53
- Young, M**, 'Food Security, Sustainability and Trade Distortions: Fisheries Subsidies and the WTO' in R Rayfuse and N Weisfelt (eds), *The Challenge of Food Security: International Policy and Regulatory Frameworks*, Edward Elgar Publishing, United Kingdom (2012) 190-205
- Young, M**, 'Introduction: The Productive Fiction Between Regimes' in M Young (ed), *Regime Interaction in International Law: Facing Fragmentation*, Cambridge University Press, United Kingdom (2012) 1-19
- Young, M**, 'Regime Interaction in Creating, Implementing and Enforcing International Law' in M Young (ed), *Regime Interaction in International Law: Facing Fragmentation*, Cambridge University Press, United Kingdom (2012) 85-110

## Refereed Journal Articles

**Duxbury, A**, 'International Human Rights Law and the Events of 2001: Has the World Changed Forever?' (2012) 30 *Australian Yearbook of International Law* 13-46

**Evans, C** and Hood, A, 'Religious Autonomy and Labour Law: A Comparison of the Jurisprudence of the United States and the European Court of Human Rights' (2012) 1 *Oxford Journal of Law and Religion* 81-107

**Foster, M**, 'The Implications of the Failed 'Malaysian Solution': The Australian High Court and Refugee Responsibility Sharing at International Law' (2012) 13 *The Melbourne Journal of International Law* 395-423

**Patmore, G**, 'Justification for Initiating a Constitutional Amendment to Establish an Australian Republic: An Empirical Study' (2012) 40 *Federal Law Review* 89-110

**Patmore, G**, 'The Head of State Debate: A Response to Sir David Smith and Professor David Flint' (2012) 58 *Australian Journal of Politics and History* 251-267

**Saunders, C**, 'Constitution as Catalyst: Different Paths within Australasian Administrative Law' (2012) 10 *New Zealand Journal of Public and International Law* 143-165

**Saunders, C**, 'Constitution-making in the 21st Century' (2012) 4 *International Review of Law* 1-10

## Other Journal Contributions

**Duxbury, A**, 'Assange and the Law of Diplomatic Relations' (2012) 16 *ASIL Insights*

# APPENDIX

## Advisory Board Profiles

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

#### 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.



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