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DIRECTOR’S REPORT 2009

The year 2009 was especially significant for the CCCS. It marked the 21st Anniversary of the foundation of the Centre, an event celebrated on 27 November with a major Conference.

The conference opened with papers from the Chief Justice of Australia the Hon Robert French on ‘The Future of Australian Constitutionalism’ and Foundation Director Professor Cheryl Saunders AO on ‘The Internationalisation of Constitutional Law’. The conference also featured a plenary sessions addressed by Professor Sujit Choudhry Scholl Professor of Law at the University of Toronto on ‘Comparative Constitutional Law: The Rights Revolution and Beyond’, and, in the closing session Stephen Gageler SC and myself on Comparativism in the Australian Courts. In between were two lively parallel sessions with papers from Centre members: Associate Professor Kris Walker, Professor Michael Crommelin and Professor Simon Evans as well as Professor Theunis Roux and Mr Edward Santow, (UNSW) and Justice Rachel Pepper (Land and Environment Court, NSW).

The second major event for the Centre in 2009 was a Review of the Centre conducted pursuant to University requirements by:

- Professor Gerry Simpson (Chair), Chair of Law, The University of Melbourne and Visiting Professor of International Law, London School of Economics.
- Professor Vicki Jackson, Georgetown University, Professor of Law, United States, Senior Fellow, The Melbourne Law Masters, Melbourne Law School.
- Professor John Williams, Professor of Law, Associate Dean Research, Law School, The University of Adelaide.

The Review Committee’s terms of reference were as follows: to consider whether;

- the purposes and objectives of the Centre have been met;
- the Centre is continuing to provide a unique and productive role in the University;
- the Centre continues to fit within the basic organisation structure of the University; and
- the Centre has a firm financial base.

The Final Report of the Review Committee concluded:

The Centre is unique not just within Melbourne University but in Australia generally. Its comparative focus and intellectual ambition make it a key player in the development of public law at the University of Melbourne, in Australia more broadly and in the wider world. There is now a remarkably gifted and diverse group of engaged and productive scholars gathered in the centre under the leadership of Adrienne Stone and Carolyn Evans. The Centre’s energy is striking in the light of the senior administrative positions held by many of its members (Simon Evans is Deputy Dean of the Law School, Carolyn Evans is Associate Dean, Cheryl Saunders has been Centre Director and Michael Crommelin was Melbourne Law’s longest serving Dean). The range, substance and quality of the work undertaken by the Centre is all
the more impressive given the relatively small (indeed, by the standards of private institutions, miniscule) level of funding.

To sum up, the Centre continues to deliver - on a very small budget - enormous benefits to the Law School, the University, the profession and the cadre of Australian public lawyers. The Review Committee was impressed particularly by the combination of modest financial outlay and substantial intellectual inventiveness.

The CCCS is a success; it has met its objectives and more. The people in the Centre are doing important and substantial work. The leadership of the centre has been marked by a sensitive combination of intellectual entrepreneurship, administrative competence and exemplary scholarship.

Congratulations

During the year, Centre members were actively engaged in research work on key topics in Australian and comparative public law. Their wonderful achievements are documented in this report. Special congratulations are due to:

- CCCS member, Michelle Foster, on the award of the University’s Woodward Medal for 2009. This honour is bestowed on a member of staff in the humanities or social sciences whose research has 'made a significant contribution in a field of humanities or social sciences.' In Michelle's case, the award reflects the ground-breaking work published in her CUP book, *Refuge from Deprivation: International Refugee Law and Socio-Economic Rights*.
- CCCS Advisory Board Member, Debbie Mortimer SC, on her receipt of the Law Institute of Victoria’s Paul Baker Award. We are delighted that she has been honoured for her outstanding contributions over many years to administrative and human rights law.
- CCCS Deputy Director, Carolyn Evans, and Deputy Dean, Simon Evans on their promotion to the rank of Professor.
- CCCS member, Joo-Cheong Tham, who accepted an invitation to join the IFES’ Advisory Group on Global Standards in Political Finance. IFES, the International Foundation for Electoral Systems, is the world’s premiere election assistance organisation. The Advisory Group comprises 100 internationally recognised experts, regulators and civil society practitioners in political finance (see generally http://www.ifes.org/about.html).
- CCCS member, Glenn Patmore, on the publication of *Choosing the Republic* (UNSW Press 2009).
- CCCS member, Jeremy Gans, on the publication of J Gans and A Palmer *Uniform Evidence* (OUP 2009).

Centre activities and events

Despite, the busy year, the Centre also continued to maintain a very busy program of other activities. In March, the Centre hosted a visit (arranged jointly with Melbourne Law School’s Asian Law Centre) by the former Chief Justice of the Constitutional Court of Indonesia, Professor Dr Jimly Asshidique. During that visit Professor Asshidique delivered a public
lecture entitled ‘Creating a Constitutional Court for a New Democracy’. He also participated in a Judicial Roundtable on Transnational Judging on Friday 13 March attended also attended by the Chief Justice of Australia, the Hon Justice Robert French, the Hon Justice Kenneth Hayne of the High Court of Australia, the Hon. Chief Justice Michael Black, of the Federal Court of Australia, Justice Weinberg of the Court of Appeal of Victoria and Justice Vickery of the Supreme Court.

The Constitutional Law Discussion Group met regularly both at the Law School and on one occasion we were hosted by Melbourne Chambers (due to the generosity of Advisory Board members Debbie Mortimer SC and Associate Professor Kris Walker). The group discussed the High Court’s decisions in K-Generation Pty Limited v Liquor Licensing Court [2009] HCA 4 (2 February 2009), Wong v Commonwealth of Australia; Selim v Lele, Tan and Rivett constituting the Professional Services Review Committee No 309 [2009] HCA 3 (2 February 2009) and Wurridjal v The Commonwealth of Australia [2009] HCA 2 (2 February 2009) (The Northern Territory Intervention Case).

The Centre also held a large number of seminars and public lectures given by visitors from all parts of the world and in late November, a Colloquium on Constitutional Theory featuring papers from CCCS Professorial Fellow Geoffrey Lindell, Professor Jeffrey Goldsworthy (Monash), the Hon Sir Anthony Mason, Professor Nicholas Aroney (University of Queensland), Dr Patrick Emerton (Monash), Dr Alison Young (Oxford University), Professor Theunis Roux (UNSW) and Dr Katie Young (ANU).

**Research, Knowledge Transfer and Teaching**

Centre members continued their active research, knowledge transfer and teaching programs. Seven centre members hold Discovery Grants funded by the Australian Research Council. New grants awarded in 2009 include Dr Joo-Cheong Tham’s project Dollars and Democracy, Associate Professor Pip Nicholson’s project Drugs, Law and Criminal Procedure in South East Asia and Professor Simon Evans’ project Executive Power under the Australian Constitution: Definition, Delimitation and Accountability.

Many Centre members consulted with government and other bodies and engaged in public policy and law reform activities. Major reports were produced by Associate Professor Beth Gaze on Exceptions and Exemptions to the Equal Opportunity Act 1995 (Scrutiny of Acts and Regulations Committee), Dr Kirsty Gover on Legal Pluralism and State-indigenous relations in Western settler societies (International Council on Human Rights Policy) and Dr Joo-Cheong Tham on the federal government’s Electoral Reform Green paper, Donations, Funding and Expenditure. Centre members were also actively involved with the media, giving many interviews and writing opinion pieces for major newspapers.

Centre members continue to teach across the LLB, JD, Melbourne Law Masters and Research Higher degree programs. Among the many teaching activities of centre members, I note especially the innovative new subject in the Melbourne Law Masters on Post-Conflict State-Building’, from 4-10 November, taught by Professor Cheryl Saunders with international law colleagues (Bruce Oswald, Gerry Simpson and John Tobin).

**New Centre Members**

We are pleased to welcome two new CCCS Members: Dr Margaret Young and Dr Kirsty Gover. Dr Margaret Young joined the Law 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. She 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.

Dr Kirsty Gover also 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 was one of about 15 newly appointed academics selected to attend an Early Career Workshop at the Law and Society Association Annual Meeting in Denver, Colorado on 26-27 May. Participants received mentoring from established socio-legal scholars and one-on-one advice on their current research projects. Dr Gover is working on a book entitled *Tribal Constitutionalism: Membership Governance in Comparative Perspective*. The book will form the basis of the inaugural workshop of the Comparative Tribal Constitutionalism Research Program co-sponsored by the Centre for Comparative Constitutional Studies.

Looking forward

In 2010, a full and exciting program of events is planned. Over 2010, 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.

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 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) in the University of Toronto Law Review, 'Comparativism in Constitutional Interpretation' (2009) in the New Zealand Law Review, and 'Judicial Review without Rights', (2008) in the Oxford Journal of Legal Studies. She holds a grant from the Australian Research Council for a 4 year project investigating freedom of expression in democratic states.

Adrienne is also a Fellow of the Australian Academy of Law (elected 2010), 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 Carolyn Evans  
Deputy Director CCCS

Professor 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 the University of Melbourne 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 to 2010 she is undertaking a joint ARC Discovery Project with Associate Professor 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.

Dr Madeline Grey
Administrator

Dr 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.

Centre Members

Professor Cheryl Saunders AO
Foundation Director CCCS

Professor Cheryl Saunders AO is a laureate professor and holds a personal chair in law. She was the foundation 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. 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 include President of the International Association of Centres for Federal Studies, member of the advisory board of International IDEA (Institute for Democracy and Electoral Assistance) 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 (the International Journal of Constitutional Law), 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 (IACL) 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 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 Simon Evans  
Former Director CCCS

Professor 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. Simon 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 and 2007.

Dr Michelle Foster

Dr 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.
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

Associate Professor 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 is currently working on two ARC Discovery Grant funded research projects: a study of the experience of appellants in the Australian Social Security Appeals Tribunal (with Professor Belinda Fehlberg), and a study of the conflict between the principles of freedom of religion and non-discrimination (with Professor Carolyn Evans). She has a BSc from the University of Melbourne, LLB (Hons) and PhD from Monash University, and LLM from the University of California, Berkeley.

Beth is also a member of the Faculty’s Centre for Employment and Labour Relations Law.

Dr Kirsty Gover

Dr 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.

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.

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*, 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.

**Professor Geoffrey Lindell**

*Professorial Fellow*

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

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

**Associate Professor Pip Nicholson**

Associate Professor 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.

**Mr Glenn Patmore**

Mr 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.
Dr Joo-Cheong Tham

Dr 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.

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 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 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 has LLMs from the University of Melbourne and Columbia Law School, where she studied after receiving a Fulbright Scholarship. Kristen teaches Constitutional Law in Practice in the graduate program. She has also taught international human rights law and legal ethics at Columbia Law School in New York and gender, sexuality and human rights law at the James E Rogers School of Law at the University of Arizona. Kristen’s research interests are in constitutional law, law and sexuality, and international law, particularly human rights and refugee law. In constitutional law, Kristen’s work has included work on judicial power, the implied freedom of political communication, the relationship between international law and constitutional law, and constitutional interpretation generally. Kristen also practises as a barrister and has appeared in many constitutional cases, including Roach v Australian Electoral Commission, Thomas v Mowbray, XYZ v Commonwealth, Wurridjgal v Commonwealth, The Queen v Tang and, most recently, Rowe v Electoral Commissioner. She has also appeared in cases concerning the Victorian Charter of Human Rights and Responsibilities.
Dr John Waugh

Dr 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 Margaret Young

Dr 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.

Margaret 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 organised at the Lauterpacht Centre for International Law, Cambridge, in June 2009.

Advisory Board

- Ian Cunliffe
- Dr Stephen Donaghue
- Dr Gavan Griffith AO QC
- Peter Hanks QC
- Wendy Harris
- Justice Chris Maxwell, President, Court of Appeal
- Debbie Mortimer SC
- Mark Moshinsky SC
- Stephen McLeish
- 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 2009, the Centre hosted the following International scholars in short and long research visits:

Professor Graeme Austin
J Byron McCormick Professor of Law, University of Arizona, USA.
8 September 2008 – 28 February 2009
Professor Austin’s principal project was a book-length study, *Human Rights and Intellectual Property: Analysis and Sources* (co-authored with Professor Larry Helfer (Vanderbilt) under contract with Cambridge University Press). The study examined the integration of international human rights norms into the international law of intellectual property, both at the systemic/institutional level, and also through a number of case studies, including: Freedom of expression, education rights, the right to an adequate standard of health, and the right to participate in cultural life.

Professor Janet Hiebert
Department of Political Studies, Queen’s University, Canada
15 December 2008 – 16 February 2009
Professor Hiebert conducted research on Bills of Rights and developments in Australia.

Professor Peter Strauss
Betts Professor of Law, Columbia Law School, USA
5 – 12 April 2009
During his stay, Professor Strauss researched the ways various legal systems, including Australia’s, have attempted to keep politics and regulatory science apart.

Professor Axel Kaemmerer
Chair of Public Law, European Law and Public International Law, Bucerius Law School, Hamburg, Germany
22 – 23 April 2009
During his two day visit, Professor Kaemmerer met with Centre Members to discuss his research which focuses on the comparative aspects of constitutional law, which has been a predominantly European one so far, which means that he focuses on both the constitutionality of the EU legal framework as well as on the convergence of member States’ constitutions as a consequence of ‘Europeanization’. As for non-European States, he is interested in their respective approaches to human rights protection on the constitutional level and the role of constitutional courts.

Professor Peter Spiro
Charles Weiner Professor of Law Temple University, Beasley School of Law Philadelphia, USA
15 May 2009
During his one day visit, Professor Spiro met with Centre Members and gave a seminar on the subject of his research interest on the topic of in the United States, absolute territorial birthright citizenship has been guarded as a matter of constitutional faith in the face of assaults relating to undocumented immigration. But considered outside that politicised context it is not clear that jus soli makes sense, even from a liberal perspective. Assuming a goal of mapping citizenship status onto organic community, birth location no
longer supplies a reliable proxy for life trajectories. The existing rule risks the detachment of citizenship from community, which in turn could undermine the foundations of the liberal state. The paper suggests a case for modifying birthright citizenship, but concludes that fixes are unlikely to reverse the declining salience of membership in the state.

**Professor William Buss**  
*O.K. Patton Professor of Law, University of Iowa, USA*  
1 June – 13 July 2009

Professor Buss' research project is a study of the influence of the American constitution on the Australian constitution. A series of articles includes a detailed analysis of what the Australian framers said at their conventions, how they understood and agreed about the meaning of the American constitution and how their choices of what to adapt for Australia have played out compared to developments in American law. Professor Buss' current focus is on the Judicature. During his time in Australia worked on interstate commerce and interstate freedom of movement.

**Professor Michael W. Dowdle**  
*Distinguished Visiting Scholar at the Department of Business Law and Taxation, Monash University and Visiting Associate Professor of the Faculty of Law, National University of Singapore*  
Monday 20 July 2009

During his one day visit, Associate Professor Dowdle gave a seminar entitled ‘The Regulatory Constitution’. Full details are included in the Public Lectures, Seminars and Roundtables section of this report.

**Professor Hugh Corder**  
*Senior Fellow (The Melbourne Law Masters), University of Cape Town, South Africa*  
16 – 22 September 2009

Professor Corder has been Professor of Public Law at UCT since 1987. A graduate of Cape Town, Cambridge and Oxford universities, his teaching and research focuses on constitutional and administrative law, particularly judicial appointment and accountability. He is very involved in community work, concentrating on popular legal education, race relations, human rights and the abolition of the death penalty. He was a technical adviser in drafting the transitional Bill of Rights for South Africa and has written two books, editing a further three. He was elected a Fellow of the University of Cape Town in 2004.

**Professor Vicki Jackson**  
*Senior Fellows (The Melbourne Law Masters), Georgetown University, USA*  
5 – 11 August 2009

Professor Jackson teaches constitutional law, comparative constitutional law, federal courts, the Supreme Court and gender-related subjects. She is co-author of *Comparative Constitutional Law* and an Articles Editor for the *International Journal of Constitutional Law*. Her research interests also include comparative constitutional law, comparative federalism and freedom of expression. She served as a Deputy Assistant Attorney General in the Office of Legal Counsel in the US Department of Justice, as a member of the DC Bar Board of Governors and as a co-chair of the Special Committee on Gender of the DC Circuit Task Force on Gender, Race and Ethnic Bias.
Dr Alison Young
Lecturer and Fellow, Tutor in Law, Faculty of Law, Hertford College, University of Oxford, United Kingdom
15 September – 15 December 2009
Dr Young teaches Constitutional law, Administrative law, European Union law and Comparative Public law. Her D Phil examined defamation law and freedom of expression and she currently researches in applied constitutional theory, public law and human rights, particularly freedom of expression. She is the author of Parliamentar y Sovereignty and the Human Rights Act (Hart, 2009)

Research Assistants for 2009

This is a partial list of the research assistants who worked with Centre members on research projects during 2009:

Professor Carolyn Evans
David Hume, Duncan Kaufman, Elizabeth Sheargold, Kirsty Souter, Leilani Ujvari, Samantha Jeewa

Professor Simon Evans
Perry Herzfeld, David Hume, Duncan Kaufmann, Elizabeth Sheargold

Dr Michelle Foster
Anne Kallies, Nawaar Hassan, Kat Brazenor

Associate Professor Beth Gaze
Samantha Jeewa, Kirsty Souter, Ruth Quibell, Aditi Gorur, Anna Jaffe

Associate Professor Pip Nicholson
Simon Pitt, Sonja Sivak and Dylan Tromp

Mr Glenn Patmore
Natasha McNamara, Paravathi Suriyakumaran, Shi Qing Tan, Alexandra Whelan

Professor Cheryl Saunders
Hal Tileman, Christopher Tran

Professor Adrienne Stone
Michael Power, Christopher Tran

Dr Joo-Cheong Tham
Daniel Baker, Emily Long, Stephen Sempill
EVENTS

International Conference

CCCS 21ST Anniversary Conference:
International and Comparative Perspectives on Constitutional Law
Friday 27 November 2009

This year the Centre for Comparative Constitutional Studies marked its 21st Birthday with a major Conference held on Friday 27 November at Melbourne Law School.

The Conference was attended by constitutional law scholars, practitioners and judges from around Australia and the region.

Left to right: The opening session of the conference featured papers by Chief Justice the Hon Robert French on ‘The Future of Australian Constitutionalism’ and Founding Director Professor Cheryl Saunders AO on ‘The Internationalisation of Constitutional Law’.

There followed a lively panel on which Professor Sujit Choudhry, Scholl Chair, Faculty of Law, University of Toronto, presented his paper ‘Comparative Constitutional Law: The Rights Revolution and Beyond’ which was commented on by Professor Carolyn Evans (CCCS) and Dr Alison Young (Oxford).

After lunch, the conference split into two parallel sessions featuring papers on recent developments in constitutional law in Australia and a range of other countries (including South Africa, Canada, the United Kingdom and Fiji). The speakers in these sessions included Justice Rachel Pepper, Land and Environment Court, Professor Theunis Roux, University of New South Wales, Professor Simon Evans, Deputy Dean, Melbourne Law School, Associate Professor Kris Walker, Melbourne Chambers, and Ed Santow, University of New South Wales.

The conference closed with a final plenary session on Constitutional Comparativism in the Court which featured Stephen Gageler SC, Solicitor General for the Commonwealth of Australia, and Centre Director Professor Adrienne Stone.


**CCCS 21ST Anniversary Dinner**

The Conference was followed by a dinner which provided an occasion to celebrate the Centre’s 21 years and its contributions to comparative constitutional studies. Sir Anthony Mason, who launched the Centre in 1988, returned to give a keynote speech which noted the outstanding achievements of Foundation Director Professor Cheryl Saunders AO.

Left to right: Professor Michael Crommelin AO, Professor Simon Evans, Professor Adrienne Stone, Professor Cheryl Saunders AO, The Hon Sir Anthony Mason

**Public Lectures, Seminars and Roundtables**

**Seminar: Legislating Like Judges? A Preliminary Assessment of Parliamentary Bills of Rights**

**Professor Janet Hiebert**, Department of Political Studies, Queen’s University, Canada

Tuesday 10 February 2009

In the seminar Professor Hiebert discussed her findings from a comparative project that examines recently introduced bills of rights in Canada, New Zealand, the United Kingdom and Australia, and what impact they are having on governing, broadly defined. More specifically, she addressed the conditions that influence bureaucratic and governmental willingness to draw upon case law when developing and evaluating legislation.

Professor Hiebert has been teaching in the Department of Political Studies at Queen’s University since 1991, having received a BA (Hons) from UBC in 1985 and MA (1986) and PhD (1991) from the University of Toronto. She is the author of two books about the Canadian Charter of Rights and Freedoms, *Charter Conflicts: What is Parliament’s Role?* (McGill-Queen’s University Press, 2002), and *Limiting Rights: The Dilemma of Judicial Review* (McGill-Queen’s University Press, 1996), along with numerous papers and chapters on the politics of rights and on campaign finance laws in Canada. She has served as a member of the Ontario Electoral Boundaries Commission, an independent, non-partisan body with responsibility to readjust the electoral boundaries in the province of Ontario. Her current research project examines how the recent adoption of bill of rights in several parliamentary jurisdictions (Canada, New Zealand, the United Kingdom and Australia) affects political practices, policy development and legislative behaviour.
Public Lecture: Creating a Constitutional Court For a New Democracy
Seabrook Chambers Lecture
CCCS/Asian Law Centre Public Lecture

Professor Dr Jimly Asshiddiqie, Foundation Chief Justice of the Constitutional Court of the Republic of Indonesia, Jakarta.

Wednesday 11 March 2009

Indonesia’s dramatic transition to democracy after the fall of Soeharto in 1998 led to the creation of a new court to safeguard the new system. At this lecture, Professor Dr Jimly Asshiddiqie spoke on the major challenges he faced as Indonesia’s first Chief Justice of the Constitutional Court, covering new approaches pioneered in relation to protecting human rights, writing judgments and the role of dissent, judicial reasoning, defining constitutional powers and combating judicial corruption. Please find a link to Professor Asshiddiqie’s paper here: Creating a Constitutional Court for a New Democracy.

Roundtable: Transnational Judging – A Judicial Conversation on Foreign and International Law in Domestic Courts

Professor Dr Jimly Asshiddiqie
Chief Justice French
Justice Hayne
Chief Justice Black
Justice Weinberg
Justice Vickery

Friday 13 March 2009

The Centre for Comparative Constitutional Studies and the Asian Law Centre hosted six leading jurists – including three Chief Justices’ – in a Judicial Roundtable. The Roundtable occurred during the visit of Professor Dr Jimly Asshiddiqie, the Foundation Chief Justice of the Constitutional Court of the Republic of Indonesia. Professor Dr Asshiddiqie was joined by Chief Justice French and Justice Hayne of the High Court of Australia, Chief Justice Black of the Federal Court, Justice Weinberg of the Court of Appeal of Victoria and Justice
Vickery of the Supreme Court of Victoria. The theme of the Roundtable was ‘Transnational Judging: A Judicial Conversation on Foreign and International Law in Domestic Courts’.

The Roundtable was observed by a small invited audience drawn from the profession and the academy. The use of foreign and international materials is highly topical, and occasionally controversial, in Australia. Each judge offered a unique perspective on the practice including Chief Justice Asshiddiqie who, among many innovations made as Chief Justice of the Constitutional Court of the Republic of Indonesia, has encouraged the extensive reference to foreign sources. A robust discussion followed the presentations by the panel Judges.

Book Launch: Challenging Women: Towards Equality in the Parliament of Victoria by Dr Madeline Grey

Launched by The Minister for Women’s Affairs, The Hon Maxine Morand MP

Tuesday 24 March 2009

The Centre for Comparative Constitutional Studies, together with the School of Historical Studies hosted the launch of Dr Madeline Grey’s book Challenging Women: Towards Equality in the Parliament of Victoria (Australian Scholarly Publishing 2009) by the Victorian Minister for Women’s Affairs, the Hon Maxine Morand MP.

Dr Grey is an Honorary Fellow in the School of Historical Studies at the University of Melbourne. She has a PhD in history on ‘Second-wave feminism and women’s political representation in Victoria, 1972-1997’ and an MA in women’s studies. She is the Administrator of the Centre for Comparative Constitutional Studies, Melbourne Law School.

Seminar: Politicians’ Influence over Regulatory Decisions Ostensibly Based on Sound Science.

Professor Peter Strauss, Columbia Law School, New York, USA

Tuesday 7 April 2009

In the seminar Professor Strauss argued that common to all developed legal systems is the frequency with which agencies (ministries, departments, and independent commissions) are legislatively authorised to adopt subsidiary legislation that, if valid, enjoys statutory force. In areas such as health, safety and environmental regulation, these authorisations typically imagine that decisions using this authority will be based on sound scientific
judgment, and judicial inquiry into their validity will be considerably more exacting than any inquiry that might be made for legislation. The political responsibility of legislators, their ‘will’, answers for their decisions, but for subsidiary legislation political responsibility is more attenuated and ‘judgment’ is expected, and its exercise may be enforced on judicial review.


In 1987 the Section of Administrative Law and Regulatory Practice of the American Bar Association presented to Professor Strauss its third annual award for distinguished scholarship in administrative law. In 1992 and 1993, he served as Chair of the Section. He has been reporter for rulemaking on its APA and European Union Administrative Law projects, and was a member of its E-Rulemaking task force. He has twice been Vice Dean at Columbia. Professor Strauss has visited at the European University Institute, Harvard and NYU, and lectured widely on American administrative law abroad, including programs in Argentina, Belarus, Brazil, China, Germany, Italy, Japan, the Netherlands, Mexico, Turkey and Venezuela. In 2008, the American Constitution Society awarded him the first Richard Cudahy prize for his essay ‘Overseer or ‘The Decider? The President in Administrative Law.’ During 2008 to 2009 he was Fernand Braudel Senior Fellow at the European Law Institute and Parsons fellow at the University of Sydney Law School.

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**Public Lecture: The Constitution and a Human Rights Act**

CCCS/Australian Human Rights Commission Public Seminar

**Chair:** The Hon Catherine Branson QC, President, Australian Human Rights Commission

**Speakers:** Mark Moshinsky SC, Professor Adrienne Stone, Associate Professor Kristen Walker

**Tuesday 28 April 2009**

In late 2008, the Commonwealth Government established the National Human Rights Consultation to consider the following:

- Which human rights (including corresponding responsibilities) should be protected and promoted?
- Are these human rights currently sufficiently protected and promoted?
• How could Australia better protect and promote human rights?

Though the terms of reference rule out an entrenched constitutional bill of rights, the possibility of a National Human Rights Act remains open. This seminar considered how such an Act would relate to the existing Constitution, whether the Constitution provides any obstacles to the enactment of such an Act and how any potential constitutional problems might be overcome.

Seminar: Interrogating Birthright Citizenship

Professor Peter Spiro, Charles Weiner Professor of Law Temple University - Beasley School of Law, Philadelphia, USA

Friday 15 May 2009

In the seminar Professor Spiro argued that in the United States absolute territorial birthright citizenship has been guarded as a matter of constitutional faith in the face of assaults relating to undocumented immigration. But considered outside that politicised context it is not clear that jus soli makes sense, even from a liberal perspective. Assuming a goal of mapping citizenship status onto organic community, birth location no longer supplies a reliable proxy for life trajectories. The existing rule risks the detachment of citizenship from community, which in turn could undermine the foundations of the liberal state. The paper suggested a case for modifying birthright citizenship, but concludes that fixes are unlikely to reverse the declining salience of membership in the state.

Professor Spiro joined the Temple Law School faculty in 2006 as the inaugural holder of the Charles R Weiner Professorship in international law. Before going to Temple, Professor Spiro was the Rusk Professor of Law at the University of Georgia Law School, where he also served as Associate Dean for Faculty Development. A former law clerk to Justice David H Souter of the US Supreme Court, Spiro specialises in international law, the constitutional aspects of US foreign relations, and immigration and nationality law. Professor Spiro is the author of Beyond Citizenship: American Identity after Globalization (Oxford University Press 2008).

Seminar: Inglis Clark, Edmund Barton, Marbury v Madison, and the familiar story about the deletion and re-insertion of section 75(v) of the Commonwealth Constitution. A longer ending.

Professor William G Buss, OK Patton Professor of Law, University of Iowa, College of Law, Iowa City, Iowa, USA
Thursday 18 June 2009

Professor Buss discussed the American influence on the making of the Australian Constitution, including Australian framers' detailed consideration of American Constitution and American constitutional law – what they knew, what they borrowed, what they avoided, and what they replaced. Focus of most finished work to date is Chapter III and Andrew Inglis Clark's American-based constitution submitted at the 1891 Constitutional Convention.

Professor Buss is the OK Patton Professor of Law at the University of Iowa. Prior to joining the law faculty in 1967, Professor Buss clerked for Judge Bailey Aldrich on the United States Court of Appeals for the First Circuit, practiced law with Foley, Hoag & Eliot in Boston, and served as Lecturer on Education and Assistant to the Dean of Education at the Harvard Graduate School of Education. Since going to Iowa, Professor Buss has specialised in the fields of constitutional law and education law. He has written on the law of special education in England and Wales and, in 1982 to 1983, taught a course on the Bill of Rights for the United Kingdom at Durham University in England. In 1994, he taught New Zealand Constitutional Law and Comparative Constitutional Law at Victoria University at Wellington in New Zealand. At Iowa, Professor Buss’ research and teaching areas include Constitutional Law, Comparative Constitutional Law, Education Law. His article on 'Australia’s Implied Freedom of Political Communication' was published in 2007 in the Federal Law Review.

Seminar: The Regulatory Constitution

Associate Professor Michael Dowdle,
National University of Singapore

Monday 20 July 2009

In this seminar, Associate Professor Dowdle demonstrated how this regulatory model actually offers a more complete accounting of Western constitutional history than does the Montesquieuan model. Looking outside the West, he also argued that this model helps us better understand what he has elsewhere called 'the curious case of constitutional development in China', a case that defies Montesquieuan explanation. He concluded with a brief investigation into what this model might have to tell us about recent constitutional developments in the EU, Thailand and Malaysia.

Associate Professor Dowdle is a Distinguished Visiting Scholar at the Department of Business Law and Taxation, Monash University and Visiting Associate Professor on the Faculty of Law, National University of Singapore.
Seminar: Backlash Against Judicial Activism: The Case of Israel

Professor Claude Klein, The Hebrew University of Jerusalem, Israel

Friday 4 September 2009

Beginning in the mid 1980s, the Supreme Court of Israel, under the leadership of Chief Justice Aharon Barak, adopted a very activist policy. This culminated in 1995 in a ‘coup’ according to which the Basic Laws (the status of which had previously been controversial) were to be considered as ‘higher law’ and the Courts could exercise judicial review. At the same time, the Court has continued its policy, according to which ‘everything is justiciable’. It is no wonder that the backlash was equally as strong as this ‘judicial activism’. This seminar reviewed this debate and its consequences.

Professor Klein was born in France, where he studied law and political science at Strasbourg University. He taught there and subsequently joined the Law School of the Hebrew University in 1968. He has served as Professor and also as Dean. He has visited many foreign law schools (France, Switzerland, Canada and USA) and has written extensively on matters relating to Israel’s constitutional law and to the theory of Law and State (mainly on the theory of the constituent power).

Seminar: The Constitutionalisation of South African Administrative Law: Has it Worked?

Professor Hugh Corder, Professor of Public Law, University of Cape Town, South Africa

Monday 21 September 2009

South Africa’s process of reform of administrative law mirrors and was heavily influenced by Australia’s experience in the 1970s. Yet it differs in several important respects, most noticeably the inclusion in the Bill of Rights of rights to ‘just administrative action’. The courts have been interpreting and enforcing such rights for a decade now. This seminar sought to describe and analyse the changes made in this area of the law, and evaluated their success in achieving ‘administrative action which is lawful, reasonable and procedurally fair’. Reference was also made to developments in comparable jurisdictions in the British Commonwealth.

Professor Corder was born and educated in Rondebosch, Cape Town. He has a BCom LLB (Cape Town), LLB (Cantab), DPhil (Oxon) and is an Advocate of the High Court.
of South Africa. He has been Professor of Public Law at UCT since 1987 and held the position of Dean of the Faculty of Law at UCT from 1999 to 2008. A graduate of the universities of Cape Town, Cambridge and Oxford, his main teaching and research interests fall within the field of Constitutional and Administrative Law, particularly judicial appointment and accountability and mechanisms to further administrative accountability. Professor Corder has been widely involved in community work since his student days, concentrating on popular legal education, race relations, human rights and the abolition of the death penalty. He served as a technical adviser in the drafting of the transitional Bill of Rights for South Africa. He has written two books and edited a further three, and has contributed many articles and chapters in books. Recent books include Realising Administrative Justice (SiberInk, Cape Town, 2002 with Linda van de Vivjer); and Comparative Administrative Justice in the Commonwealth (Juta, Cape Town, forthcoming).

Conference: 2009 Protecting Human Rights Conference
Hosted by the CCCS, Gilbert + Tobin Centre for Public Law (UNSW), Human Rights Act Project, Regulatory Institutions Network (ANU)
Friday 2 October 2009
Art Gallery of New South Wales, Sydney

This one day event co-hosted by the CCCS discussed developments in the legislative protection of human rights in Australia. The conference considered the National Human Rights Consultation, and provided an update of developments in the Victorian Charter of Human Rights and Responsibilities, the ACT Human Rights Act and in NSW human rights law. Leading Australian and international speakers considered the National Consultation process, and what reforms it might lead to in Australia. The conference also addressed the constitutional dialogue model that is a feature of the human rights statutes in many countries of the British Commonwealth. Finally, the conference considered some crucial further challenges in relation to human rights protection, including: the rights of Indigenous people, the protection of economic, social and cultural rights, and the intersection between human rights and religion.

Father Frank Brennan AO, chair of The National Human Rights Consultation, was a keynote speaker and provided his reflections on the process and outcomes of the report from both his perspective and that of his fellow committee member, Mary Kostakidis.
Seminar: Reassessing the New Commonwealth Model of Constitutionalism

Professor Stephen Gardbaum, Professor of Law, University of California, Los Angeles, USA

Monday 5 October 2009

In this seminar Professor Gardbaum presented an overall and comparative assessment of what eight years ago he termed ‘the new Commonwealth model of constitutionalism’ in light of subsequent experience and sustained academic attention to it in each of Canada, New Zealand and the United Kingdom. The aim was to evaluate the extent to which practice is living up to theory. His assessment also took into account the model’s expansion into this country and had something to say that may be relevant to the current debate on whether to adopt a parliamentary bill of rights at the national level.


Seminar: The High Court versus Military Justice: Where to Next?

CCCS/Asia Pacific Centre for Military Law

Speakers: Alexander Street SC, Dr Matthew Groves, Associate Professor Alison Duxbury

Tuesday 6 October 2009

In August 2009 the High Court held that the Australian Military Court (AMC) was unconstitutional. The AMC, established in October 2007, was a key aspect of the reforms to the military
justice system implemented following a 2005 report by the Senate Committee on Foreign Affairs, Defence and Trade. This seminar, presented by the Asia Pacific Centre for Military Law (APCML) and the Centre for Comparative Constitutional Studies, discussed:

- the High Court’s ruling in *Lane v Morrison*,
- the consequences of the ruling for both the past decisions of the AMC and the future military justice system, and
- the potential implications of a federal Charter of Rights for military discipline.

Alexander Street SC has appeared before federal and state courts as well as the Defence Force Discipline Tribunal and military Boards of Inquiry. He is the Deputy Head of the Sydney Naval Legal Panel and was counsel for the plaintiff in *Lane v Morrison*.

Dr Matthew Groves is a Senior Lecturer in the Faculty of Law at Monash University who specialises in public law and has written on the civilianisation of military justice.

Associate Professor Alison Duxbury is the Associate Director of the APCML.

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**Seminar: The Grammar of Customary Law**

**Professor Jeremy Webber**, Canada Research Chair in Law and Society and Trudeau Fellow, Faculty of Law, University of Victoria, Canada

**Wednesday 21 October 2009**

In this seminar, Professor Webber argued for the customary nature of law, all law. He built on the pragmatist conception of law developed by Lon Fuller and Gerald Postema. He substantially modified their approach, however, arguing that concerns of facilitation and efficiency are less responsible for the content of law and that the various conceptual languages of the law play a much greater role. In doing so, he offered an understanding of how law is related to its various societies. His argument has important implications for the value of comparative law, for how one should do comparative law, and for how one should structure societies that contain more than one legal order. Although the paper’s argument is not limited to customary legal orders in the narrow sense, it does draw upon comparisons across indigenous and non-indigenous orders to make its arguments.

Professor Webber holds the Canada Research Chair in Law and Society at the University of Victoria and is a Trudeau Fellow. He went to Victoria in August 2002 after four and a half years as Dean of Law at the University of Sydney in Australia and eleven years on the Faculty of Law at McGill University. Professor Webber’s current work is in the fields of legal and political theory, constitutional law, and indigenous rights. His principal work is *Reimagining Canada: Language, Culture, Community, and the Canadian Constitution* (McGill-Queen’s University Press, 1994).
Public Lecture: The National Human Rights Consultation: Outcome from the AHRC Perspective

CCCS/Australian Human Rights Commission
Public Lecture

The Hon Catherine Branson QC, President, Australian Human Rights Commission

Wednesday 21 October 2009

In 2009, an independent committee led by Jesuit priest Father Frank Brennan AO conducted more than 66 roundtables and received approximately 35,000 submissions. People from all around Australia told the Committee how they thought human rights should be protected in Australia.

This seminar, chaired by Professor Adrienne Stone and with Professor Carolyn Evans as commentator, considered the findings and recommendations of the Committee as contained in the Report of the National Human Rights Consultation.

Book Launch: Choosing the Republic by Glenn Patmore

Launched by Peter Van Vliet, Secretary of the National Committee of the Australian Republican Movement.

5 November 2009

On the eve of the 10th anniversary of the 1999 republican referendum, the Centre for Comparative Constitutional Studies was pleased to host the launch of Glenn Patmore’s book, Choosing the Republic (UNSW Press 2009) by the Secretary of the National Committee of the Australian Republican Movement, Peter Van Vliet.

The republic is one of the great unfinished stories of Australian politics. It is a history of initiative, failure and a deep desire for change. Glenn Patmore’s book tells the fascinating story of political republicanism, as well as placing the debate about the republic in the politics of the 21st century. This is not just a story of the recent past; it charts the present and imagines a new future for Australia.

After speaking to the key players, Mr Patmore argues that it is democracy itself that continues to shape the debate. The book asks a number of vital questions. How will the people in a Constitutional monarchy choose to become a republic? What are the practicalities of constitutional change, and the politics of the popular debate?

Choosing the Republic seeks the answers, offering a fresh way of thinking about Australian democracy.
Seminar: Women’s Autonomy - Religion on Trial.
CCCS/ Institute for International Law and the Humanities

Professor Frances Raday, Hebrew University, Jerusalem, Israel

19 November 2009

The Institute for International Law and the Humanities (IILAH) and the Centre for Comparative Constitutional Studies co-hosted a seminar by Professor Frances Raday on ‘Women’s Autonomy - Religion on Trial.’

Each of the monotheistic religions - Christianity, Judaism and Islam - restricts women’s autonomy. Multi-culturalist and anti-secular critiques within the human rights literature have ignored or marginalised the impact of organised religion on women. The Human Rights Council’s ‘traditional values’ resolution in October 2009 has injected this marginalisation of women’s harm into the United Nations human rights machinery.

In this seminar Professor Raday examined various ways in which women have perceived and formulated their claims to constitutional protection for their human rights as regards the patriarchal restrictions of religion. The selected issues discussed were abortion, women’s religious identity claims and the veil.

Professor Raday is Lieberman Chair in Labour Law at the Hebrew University, Jerusalem and Expert Member for the UN Committee for the Elimination of Discrimination Against Women (2001-2003)

Roundtable: CCCS Constitutional Theory Colloquium

26 November 2009

On 26 November, the CCCS hosted a small workshop, the first in a series of colloquia on constitutional theory. The aim of these workshops is to provide constitutional law scholars an opportunity for in-depth discussion of aspects of constitutional theory.

This colloquium opened with a paper by Professor Jeffrey Goldsworthy entitled ‘Justice Windeyer on the Engineers’ case’ and a commentary on that paper by Sir Anthony Mason. Other papers at the Colloquium were presented by Dr Patrick Emerton, Associate Professor Nicholas Aroney, Dr Alison Young, Professor Geoff Lindell, Dr Katie Young and Professor Theunis Roux.
Visiting Positions held by Centre Members

Cheryl Saunders

Professor Cheryl Saunders spent six months at the University of Oxford, United Kingdom as part of the Melbourne/Oxford Faculty Research Exchange. During this secondment, Professor Saunders finalised a volume on The Australian Constitution: A Contextual Analysis for Hart Publishing, and she undertook preparatory work for a volume on Comparative Constitutional Law. She delivered a keynote address to the Oxford Graduate Legal Research Conference on the implications of the rise of comparative law for legal research. At the request of Professor Endicott, the Dean of the Oxford Law Faculty, Professor Saunders supervised a group of about 15 postgraduate students preparing a pro bono submission to the Australian Human Rights Consultation. The submission was well received and has been well referenced in the Report of the Consultation handed down in October 2009.

During her time in Oxford, Professor Saunders also made some progress on other research commitments, including:

- An edited book on Global Values in National Constitutions (with Dennis Davis, Alan Richter) to be published by Hart in 2010,
- A volume in the Global Dialogue Series on Intergovernmental Relations in Federal States (with Johanne Poirier) scheduled for publication by McGill-Queen’s University Press in late 2010 or early 2011,
- A chapter on the 'Interaction between International Regimes and Domestic Arrangements', prepared originally for a conference in Cambridge on ‘Regime Interaction in International Law’, with a view to publication in a volume of essays in 2010 (Margaret Young as organiser and editor).

Professor Saunders also made the following addresses and conference papers:

- To the Centre de Droit Public, Brussels, on ‘Federations in the Common Law and Civil Law Traditions’
- To the Centro de Estudios Politicos y Constitucionales, Madrid, ‘Role of a Constitutional Court in a Federation’
- To a seminar series at the University of Edinburgh on ‘Challenges for a Constitutional Court in a Multi-Layered Constitutional System’
- To an IDEA conference on ‘Constitution Building Processes’, South Africa
- To a planning meeting for the ‘Fifth International Conference on Federalism’, Addis Ababa

Selected Presentations at International Conferences by Centre Members

Carolyn Evans

In February Professor Evans travelled to Nepal to participate in a workshop on Constitution Building. Nepal is in the process of writing a new Constitution and the workshop brought together local constitution drafters, law professors, NGOs and international experts. She participated in sessions on federalism, secularism and women’s rights.

In March Professor Evans made several presentations in the United Kingdom and the United States. On 17 March she presented a paper on ‘Religious Freedom under the European Convention: Cracks in the Intellectual Architecture?’ to the human rights group at the Oxford Law School and later participated in a roundtable on the same theme with the Law and Religion group. She presented the same paper to the Law and Religion programme
at the Emory Law School in Atlanta on 25 March. On 20-21 March she participated in an invitation-only roundtable on Rescuing Rights at King’s College, London where she presented at paper on ‘Enhancing Parliamentary Scrutiny of Human Rights’. On 23 March she presented a Distinguished Public Lecture on ‘Constitutional Narratives: the Religion Clauses in the Australian and Malaysian Constitution’. The public lecture was one in a series of four to launch the new Centre for International and Comparative Law at Emory.

Michelle Foster

In January 2009 Dr Foster was invited to attend the International Association of Refugee Law Judges’ 8th World Conference in Cape Town where she provided a commentary on a paper entitled ‘Violations of Socio-economic Rights as a Form of Persecution and as an Element of Internal Protection’ by Kate Jastram, Anne Mactavish, and Penelope Mathew.

Pip Nicholson

Associate Professor Nicholson was overseas from December 2008 to January 2009 and visited four Institutes in the United Kingdom to present on a range of topics:

- ‘The Under-explored Challenges of Court-oriented Legal Reform: A Southeast Asian Account’, at Staff Seminar, Warwick University, Warwick, United Kingdom, 15 January, 2009
- ‘Vietnamese and Cambodian Court Reform in Comparative Perspective’ (with Camille Cameron), at Staff Seminar, Faculty of Laws, University College, London, January, 2009

Associate Professor Nicholson travelled to Vietnam in May. She was working as the facilitator with the Judicial Reform Steering Committee looking to commission comparative research on the organisation and activities of agencies within the justice system. This was the first time this party committee entrusted with direct legal reform in Vietnam has worked with a foreigner and consulted with the Vietnamese legal community and the profession. In Hanoi, Associate Professor Nicholson continued work on a UNDP Project looking at the right to counsel in Vietnam. She also undertook sample interviews for ARC funded research on comparative judicial reform in Vietnam and Cambodia.

Associate Professor Nicholson co-hosted and participated in a conference in Prato, Italy entitled International Legal Transfers: A Comparative Analysis, held on 15-16 October. She presented a paper on ‘The Discourses of Court-Oriented Legal Reform in Vietnam’ (with Mr Simon Pitt).

Cheryl Saunders

Professor Saunders spent the first six months of 2009 carrying out research in Oxford, United Kingdom (see Visiting Positions held by Centre Members).

On the 25 and 26 September she delivered a key-note address to the Third Asian Forum of Constitutional Law, Taipei on ‘Towards a Global Constitutional Gene Pool’.
Professor Saunders was moderator of the final session in the South-South Symposium on *Constitutional Design for Diversity and Conflict in Asia* in Jakarta, 12-15 October, in her capacity as a member of the Advisory Board of International IDEA.

In Dehli (29-30 October), she participated in an International Round Table on *Intergovernmental Relations* in her capacity as one of the two international editors of the forthcoming volume on intergovernmental relations in the Global Dialogue series.

She also presented a paper on ‘Implications of Globalisation for the Methodology of Comparative Constitutional Law’ to an International Round Table on Globalisation and Constitutionalisation, held under the auspices of the International Association of Constitutional Law (IACL), in Seoul, 19-21 November, where she also attended a meeting of the Executive Committee of the IACL.

**Adrienne Stone**

Professor Stone presented a paper on 26 June entitled ‘Democratic Objections to Structural Judicial Review’ at an invitation only international forum entitled The Judicial Role in Constitutional Law held at the University of Glasgow. The paper from the forum were later published in a Symposium issue of the *University of Toronto Law Journal*.

**Margaret Young**

Dr Young organised an international conference held at the University of Cambridge's Lauterpacht Centre for International Law on 26-27 June 2009. Sponsored by the Lauterpacht Centre for International Law and Melbourne Law School’s Institute for International Law and the Humanities (IIlAH), the conference was of particular interest for those interested in the fragmentation of international law, and included legal pluralist, critical, new-governance, constitutionalist and practice-based perspectives from trade law, environmental law, investment law, humanitarian law, human rights and constitutional law. The conference featured addresses by Georges Abi-Saab (formerly Appellate Body Member, World Trade Organisation), James Crawford (University of Cambridge), Jeff Dunoff (Temple University), James Flett (European Commission), Francoise Hampson (University of Essex), Stephen Humphreys (International Council on Human Rights Policy), David Kennedy (Brown University), Martti Koskenniemi (University of Helsinki), Andrew Lang (London School of Economics), Nele Matz-Luck (Max-Planck-Institute, Heidelberg), Sol Picciotto (Lancaster University Law School), Cheryl Saunders (University of Melbourne), Joanne Scott (University College London), Eleanor Sharpston (European Court of Justice) and Gunther Teubner (University of Frankfurt/Main), as well as her own paper. Dr Young is currently editing a collection based on the work of the conference, which will be published as *Regime Interaction in International Law: Facing Fragmentation* by Cambridge University Press in 2011.

**Kris Walker**

Associate Professor Walker spent two weeks in Nauru, advising the Committee of the Whole of the Parliament of Nauru on proposed amendments to the Constitution. Associate Professor Walker was accorded temporary recognition as Parliamentary Counsel, which enabled her to sit and speak in Parliament, by way of answering questions and also to clarify matters as they arose in debate. Also involved in the proposed amendments to Nauru’s Constitution was Melbourne Law School alumna and member of the CCCS, Katy Le Roy, currently on the permanent Parliamentary Counsel of Nauru. Ms Le Roy has had a long involvement in the process of constitutional reform in Nauru: She was retained as a consultant adviser by the United Nations in 2006 to advise Nauru on the design of their constitutional review process, and then conducted the initial public awareness and public
consultation phases of the review. Ms Le Roy also served as counsel to the Constitutional Review Commission that produced the recommendations for reform, and as counsel to the Constitutional Convention in 2007.

**Selected Presentations at National Conferences by Centre Members**

**Carolyn Evans**

Professor Evans, together with **Professor Simon Evans**, spoke at a panel discussion on ‘Whether Australia needs a Bill of Rights’ on Wednesday 13 May at an Amnesty International meeting in Eltham.

She presented a paper ‘Religious Schools, Discrimination Law and Bills of Rights’ at a conference on Religious and Cultural Freedom under a Bill of Rights (Research Unit for the Study of Society, Law and Religion) in Canberra on 14 August.

Professor Evans, provided commentary on Professor Sujit Choudhry’s paper ‘Comparative Constitutional Law: The Rights Revolution and Beyond’ at the CCCS Conference entitled International and Comparative Perspectives on Constitutional Law (27 November).

She also presented a paper on ‘Religious schools and discrimination exemptions: views from the coal-face’ at the annual conference of the Australian Association for the Study of Religion held in Melbourne on Tuesday 1 December.

**Simon Evans**

Professor Evans presented a paper on ‘The Prerogative and the Forced Exile of the Chagos Islands: The Bancoult Case [2008] UKHL 61 (House of Lords)’ to the CCCS Conference on International and Comparative Perspectives on Constitutional Law, 27 November. He also participated in the The Commonwealth Bill of Rights model and Australian democracy session of the 2009 Protecting Human Rights Conference held in Sydney on 3 October, and wrote a response (delivered by Carolyn Evans) to Professor Stephen Gardbaum’s paper ‘The new Commonwealth Bill of Rights model in Australia’. With Professor Michael Crommelin, he gave a seminar on the decision of the High Court in *Pape v Commonwealth* at the Victorian Department of Premier and Cabinet.

**Michelle Foster**

On 24 February Dr Foster participated in a roundtable discussion with the United Nations High Commissioner for Refugees, Mr António Guterres in Melbourne, in which she presented a paper on 'Interception and Reception in the Asia-Pacific Region'.

**Jeremy Gans**

Associate Professor Gans participated in a panel discussion on *Kracke v Mental Health Review Board* at the LIV Human Rights Conference 2009.

**Beth Gaze**

Associate Professor Gaze gave a presentation ‘Appellants Impressions and Experiences in the Social Security Appeals Tribunal: A Preliminary Report’ (with Ruth Quibell and Belinda
Fehlberg) at the Australian Institute of Judicial Administration / Council of Australian Tribunals Conference, held on 4-5 June in Sydney.

Geoffrey Lindell

Professor Lindell delivered a paper entitled ‘Parliamentary Privilege-Reflections’ at the closing Plenary Session of the Professional Development Seminar organised on Parliamentary Privilege by the Australian and New Zealand Association of Clerks at the Table and held on Norfolk Island 28-30 January 2009.

He also presented a paper, ‘Responsible Government and the Australian Constitution – Conventions transformed into Law’, at the Constitutional Theory Colloquium, convened by the Centre for Comparative Constitutional Studies at the Melbourne Law School on Thursday 26 November.

At a meeting of Clerks of Australian Houses of Parliament held in Parliament House Canberra on Friday 3 December 2009 Professor Lindell presented ‘Parliamentary Scrutiny of Legislation for Compliance with a National Statutory Bill of Rights’.

He also delivered 3 one hour lectures on parliamentary privilege in Australia and New Zealand for Australian New Zealand Association of Clerks at the Table Parliamentary Law Powers and Privileges Course held in Hobart on 20 July.

Cheryl Saunders

Professor Saunders delivered a key note address on ‘Protecting Rights in the Early 21st Century: Germany and Australia Compared’ in events organised for German Day at the University of Melbourne. She also presented a paper on ‘The Internationalisation of Constitutional Law’ to the CCCS Conference on International and Comparative Perspectives on Constitutional Law, 27 November and participated in the Centre’s Constitutional Theory Colloquium on 26 November.

Adrienne Stone

On 5 June, as part of the Australian Society of Legal Philosophy’s Annual Conference (held at Melbourne Law School), Professor Stone chaired a Public Conversation on Judicial Reasoning between the Hon Michael Kirby (former Justice of the High Court) and Professor James Allan (Garrick Professor of Law the University of Queensland). The following day, she presented a paper as part of the Australian Society of Legal Philosophy’s Conference entitled ‘Democracy, Rights and Structural Judicial Review.’

On 2 July, Professor Stone spoke at the Public Hearings of the National Human Rights Consultation at Parliament House in Canberra as a participant in ‘The Great Debate’.

On 14 October, Professor Stone participated in a Roundtable hosted by the House of Representatives Legal and Constitutional Affairs Committee on The Machinery Referenda. Professor Stone convened the CCCS 21st Anniversary Conference entitled International and Comparative Perspectives on Constitutional Law, held on Friday 27 November and chaired the first CCCS Constitutional Theory Colloquium held on Thursday 26 November. She presented a paper on ‘Australian Anti-Comparativism: A Critique’ to the CCCS Conference.

Kristen Walker

Associate Professor Walker participated in a roundtable organised by the Australian Human Rights Commission in Sydney at which a group of constitutional experts agreed that the


She presented a paper at the 2009 Law Institute Victoria Human Rights Conference held on Friday 21 August on the National Human Rights Consultation and at the Fourteenth Annual Public Law Weekend held in Canberra on 12-13 November entitled ‘Constitutional Change in Nauru’.

She also gave a paper at the 2009 Protecting Human Rights Conference held in Sydney on 2 October on the topic of human rights protection in Australia ‘Victorian Charter of Human Rights and Responsibilities.’
RESEARCH AND PUBLICATIONS

Publications edited in the Centre

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

Publications

Books


Book Chapters


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


Journal Articles


Foster M. 2009. 'An ‘alien’ by the barest of threads - The legality of the deportation of long-term residents from Australia’ Melbourne University Law Review. 33 (2) : 483-541.


Saunders C. 2009. ‘Asian constitutions in comparative perspectives’ National Taiwan
University Law Review. 4 (1) : 187-211.


Young M. 2009. ‘Fragmentation or interaction: the WTO, fisheries subsidies, and international law’ World Trade Review. 8 (4) : 477-515.

Major Reports and Working Papers


Tham J. 2009. Donations, Funding and Expenditure (Electoral Reform Green Paper)

Selected Media Commentary / Opinion Pieces

Carolyn Evans

Professor Evans appeared on Sunday Nights on ABC radio programme with John Cleary, a live national discussion from 10pm to 11pm, on the proposed Bill of Rights, with particular emphasis on the religious dimensions of such an issue.

Michelle Foster

Dr Foster was interviewed by The World Today program, ABC 702 Sydney on Wednesday 22 April regarding the legality and consequences of the excision of parts of Australian territory from Australia’s migration zone.

Dr Foster also appeared on the David and Kim program on Friday 24 April and spoke about Australia’s international obligations towards refugees and how Australia’s refugee program compares with other countries.

Dr Foster had an article published in The Age on Monday 1 June 2009 ‘An unjust burden on the traumatised’ arguing that the Opposition is wrong to oppose moves to waive detainees’ debt. To view this article please click on the following link:

Professor Lindell provided background information and comments which were subsequently published in the article written by Sue Dunlevy, ‘This blind injustice taxes our intolerance’ which appeared in the Daily Telegraph dated 27 March.

Adrienne Stone

Professor Stone was quoted in MX (Melbourne) ‘Censor requires tuning’ (22 January) about iTunes censors and the Sydney Morning Herald ‘States likely to intervene in bonus court case’ (20 March) regarding the High Court hearing about the legality of the planned tax bonus.

On 19 May she was interviewed on the Law Report, Radio National (Canberra) in relation to the Federal Court trial of holocaust denier Frederic Tobin, who has been sentenced to three months’ jail for contempt of court, the first such case to arise from breaches of federal anti-vilification laws. To listen to the interview please click on the following link: http://www.abc.net.au/rn/lawreport/stories/2009/2573443.html

In November, Professor Stone was interviewed by ABC Radio Gippsland on constitutional issues posed by compulsory voting.

She was also interviewed by the Sydney Morning Herald on religious freedom questions arising out of the tax exempt status of Scientology and quoted in an article entitled ‘Struggle between a church and the state’ on 21 November.

Joo-Cheong Tham

Dr Tham wrote an article entitled ‘Public has a right to know who give how much to whom’, which was published in The Age, 2 February. He was quoted on the topic of political funding regulation in Matt Johnston and Ben Butler, ‘Mayor faces pub crawl’, Herald Sun, 4 February.

Dr Tham wrote an article on the need for rules to protect the integrity of the public office in The Age, Tuesday 23 June.

He was also interviewed on Future Tense, Radio National Program, on 3 December.

Significant Publications

Examining Practice, Interrogating Theory: Comparative Legal Studies in Asia

Edited by Penelope Nicholson and Sarah Biddulph

Legal transplantation and reform in the name of globalisation is central to the transformation of Asian legal systems. The contributions to Examining Practice, Interrogating Theory: Comparative Legal Studies in Asia analyse particular legal changes in China, Indonesia, Malaysia, Singapore, Thailand, Taiwan, and Vietnam. The contributions also concurrently critically analyse the utility of scholarly developments in comparative legal studies, particularly discourse analysis, regulatory theory, legal pluralism, and socio-legal approaches, in the study of Asian legal systems. While these approaches are regularly invoked in the study of transforming
European legal systems, the debate of their relevance and explanatory capacity beyond the European context is recent. By bringing together these diverse analytical tools and enabling a comparison of their insights through Asian empirical case studies, this book makes an invaluable contribution to the debates concerning legal change and the methods by which it is analysed globally, and within Asia.

**Associate Professor Pip Nicholson** directs the Comparative Legal Studies Program of the Asian Law Centre where she is Associate Director (Vietnam). She is also the Associate Dean (JD) of the Melbourne Law School. Her current research focus is on aid, development and Vietnamese legal reform.

**Dr Sarah Biddulph** is Associate Director (China) of the Asian Law Centre in the Melbourne Law School. Dr Biddulph's research focuses on legal change in China, and in particular to police coercive powers, labour regulation and administrative law.

**Major Reference Works**


**Grants Held and Awarded**

- **Carolyn Evans and Beth Gaze** hold a three year Australian Research Council Discovery Project grant of $162,000 for the project 'Non-Discrimination Laws and Religious Freedom: Current Conflicts and Future Directions' 2007-2009.

- **Simon Evans** was awarded an Australian Research Council Discovery Project grant of $213,000 for the project 'Executive Power under the Australian Constitution: Definition, Delimitation and Accountability' (2010)

- **Michelle Foster** holds a University of Melbourne Early Career Researcher Grant 2008 for the project 'One's Own Country: Changing Concepts of Nationality in International Law'.

- **Michelle Foster** holds an Ian Potter Travel Grant 2008 to fund participation at the International Association for Refugee Law Judges' 8th World Conference, Cape Town, in January 2009.

- **Pip Nicholson** was awarded an Australian Research Council Discovery Project Grant of $281,000 for the project 'Drugs, Law and Criminal Procedure in Southeast Asia: A Comparative Analysis' (with Professor Tim Lindsey, 2010-12)


- **Joo-Cheong Tham**, together with Professor Brian Costar, Swinburne University and Dr Sally Young, Melbourne University, received a grant worth $19,000 by the Melbourne
University Social Justice Initiative for a project entitled ‘Electoral Regulation and the Prospects for Australian Democracy’.

- Joo-Cheong Tham was awarded an Australian Research Council Discovery Grant for the ‘Dollars and Democracy: The Dynamics of Australian Political Finance’ project, 2010-2012.

**Consultancies**

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

**Carolyn Evans**


**Beth Gaze**

- Member, Advisory Committee on the *Review of the Equal Opportunity Act (Vic)*, Department of Justice (2007-2008).


**Geoffrey Lindell**

- Department of the House of Representatives (notes prepared on Con s57 on various issues which arose in 2009)

**Pip Nicholson**

- International Consultant, UNDP, Right to Legal Counsel in Vietnam (2009-2010)

- International Consultant, UNDP, Comparative Research on the Organisation and Activities of Agencies within the Justice Sector, (2009)

**Research Supervision – Graduate Research Students 2009**

**Adrienne Stone, Simon Evans and Cheryl Saunders**

**PhD** Emily Hammond ‘Judicial Review and Chapter III of the Australian Constitution’

**Carolyn Evans and Cheryl Saunders**

**PhD** Nurhafilah Musa ‘Administration of religion in the federal structure of Malaysia’

**Cheryl Saunders and Adrienne Stone**

**PhD** John Simpkins ‘Courts and Constitutionalism: The judicial branch in constitution-making and the promotion of a culture of constitutionalism’
Carolyn Evans

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

PhD Clancy Kelly ‘Is Australia in violation of the international human right to non-discriminatory and equitable access to primary medical services for Aboriginal and Torres Strait Islander Peoples? Possibilities and limitations of national and international legal procedures’

PhD Kaisa Lach ‘Concepts of sovereignty in Europe’


Michelle Foster

PhD Co-supervision of Vasko Nastevski, ‘The Enactment of War Crimes Legislation in Australia without offending the Prohibition on Retrospective Legislation’ (Principal Supervisor: Professor Tim McCormack)

PhD Co-supervision of Olivera Simic, ‘The Zero Tolerance Policy on Sex in UN peacekeeping operations: critical analyses and responses’ (Principal Supervisor: Professor Di Otto)

Beth Gaze

PhD Dominique Allen ‘Improving the Effectiveness of Australian Anti-Discrimination Law’ (with Professor Jenny Morgan).

PhD Marco Bini ‘Duties of Directors on Public Sector Boards’ (with Professor Ian Ramsay)

PhD Tony Mihalopoulos ‘Recognition Space for Ethno-Cultural Minorities and Indigenous People in Australia’ (with Lisa Sarmas)

Pip Nicholson

PhD Jothi Saunthararajah ‘Legislation Illiberalism: Law, Discourse & Legitimacy in Singapore’

Cheryl Saunders

PhD Susi Harijanti ‘The Indonesian Ombudsman System and good governance 2000-2005: proposals for reform’

PhD Katy Le Roy ‘Democratic participation in constitution making: emerging best practice’
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.

Simon Evans

Professor Evans made a submission to the National Human Rights Consultation in July 2009.

Jeremy Gans

Associate Professor Gans testified at a NSW Parliament inquiry in ‘The use of victims’ DNA’ on 30 October:

Geoffrey Lindell

Professor Lindell made submissions to:

- The Western Australian Legislative Council Select Committee inquiring into the appropriateness of powers and penalties for breaches of parliamentary privilege and contempts of parliament, dated 25 March 2009

- The National Human Rights Consultation dated 14 April 2009 on the technical legal aspects of enacting a national statutory bill of rights

- The Standing Committee on Procedure House of Representatives new inquiry on the effectiveness of House of Representatives Committees dated 30 June 2009 (by invitation)

- The SA Legislative Council Select Committee. Oral evidence was presented on 29 July 2009 to on Tax-payer Funded Government Advertising Campaigns; on 27 July 2009

- SA Law Society Ad Hoc Sub – Committee, regarding the implications of the Constitution Reform of Legislative Council and Settlement of Deadlocks on Legislation) Amendment Bill 2009 (SA) dated 24 August 2009. Professor Lindell also had an important role in compiling the Report of the same Committee dated 4 September 2009

- The House of Representatives Standing Committee on Legal and Constitutional Affairs Inquiry on Machinery of Referendums (by invitation) dated 17 September 2009. On the same matter Professor Lindell made a contribution to a joint submission dated 9 October 2009 sent by Professor Rosemary on behalf of six constitutional lawyers at the Law School.

Glenn Patmore

Mr Patmore made an oral submission to the Referendum Inquiry conducted by the House of Representatives Standing Committee on Legal and Constitutional Affairs.

Cheryl Saunders

Professor Saunders gave evidence to the Machinery of Referendums Inquiry of the House of Representatives Standing Committee on Legal and Constitutional Affairs, 5 November.

Adrienne Stone

Professor Stone was invited to address the public hearings of the National Human Rights Consultation at Parliament House in Canberra on 2 July 2009. She also appeared before the House of Representatives Legal and Constitutional Affairs Committee as part of its Machinery of Referenda Inquiry on 14 October.

Joo-Cheong Tham

Dr Tham made a 72-page submission on the federal government’s Electoral Reform Green Paper: ‘Donations, Funding and Expenditure’ in February 2009.
TEACHING PROGRAMS

Centre members have teaching responsibilities in the Faculty’s wide range of public law subjects across all Faculty programs. In 2009 these included:

**The Melbourne JD**
Administrative Law
Constitutional Law
Principles of Public Law
Legal Method and Reasoning

**The Melbourne LLB**
Advanced Constitutional Law
Discrimination, Law and Equality
Australian Bills of Rights
Comparative Constitutional Law
Refugee Law
Rethinking Australian Democracy and Law

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

Professor Brian Opeskin
Brian Opeskin 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 practice 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.