



THE UNIVERSITY OF  
MELBOURNE

MELBOURNE  
LAW SCHOOL



CENTRE FOR  
COMPARATIVE  
CONSTITUTIONAL  
STUDIES

MELBOURNE LAW SCHOOL



**CENTRE FOR COMPARATIVE  
CONSTITUTIONAL STUDIES**

Annual Report 2013

## TABLE OF CONTENTS

Director's Report	1
About the Centre	2
Centre Members	3-9
Advisory Board	9
Visitors to the Centre	10
CCCS Graduate Research Students	11
Events	12-20
Funded Research Grants	21-22
Publications	23-24
Appendix	25-26

# DIRECTOR'S REPORT

## Activities

The CCCS year was marked by three important symposia in February, March, June and December. The first was a new kind of event at CCCS: an Expert Seminar on the topic “United States Constitutional Law for Australian Lawyers”. The seminar was designed to provide Australian judges and practitioners with a grounding in the fundamental principles of United States constitutional law and responds to a need for an opportunity for systematic and in-depth study of the constitutional law of other countries. It was a very popular event attracting federal and state judges and constitutional practitioners (including a number of Solicitors-General) from throughout Australia. The one-day seminar was led by Judge Albert M Rosenblatt of the New York Court of Appeals and the commentators included the Hon. Ray Finkelstein QC, Stephen McLeish SC and Professor Michael Crommelin AO. It is the first in series, with an Expert Seminar on South African Constitutional Law planned for 2014.

In the middle of the year CCCS co-hosted with the Centre for Resources, Energy and Environmental Law and the Institute for International Law and the Humanities, a symposium to mark 30 years since the High Court's decision in *Commonwealth v Tasmania*: the Tasmanian Dams Case. The Symposium speakers explored a series of overlapping themes: the interaction of constitutional and international law, the growth of federal power, constitutional meaning and constitutional change and the impact of those considerations on indigenous Australians. It explored also how questions about race and the environment operate in relation to each other; the nature of political activism in Australia, and transnationally, in the 1970s and 1980s; how and to what extent that activism turned political questions into legal questions; and the local context of Tasmania, with its specific and different cultural and political history of state authority, race and the environment. The Symposium speakers included key players in the *Tasmanian Dam Case*: **Sir Anthony Mason AC KBE GBM QC**, **the Hon. Michael Black QC** and **Bob Brown**. The papers from this Symposium will be published in the *Griffith Law Review*.

Finally, in December, the CCCS hosted a symposium, convened at the invitation of the *International Journal of Constitutional Law*, on Australasian Constitutionalism that brought together 12 scholars from Australia and New Zealand to explore common themes and points of divergence among these two constitutional systems. The speakers included CCCS and MLS scholars (Cheryl Saunders, Adrienne Stone, Kirsty Gover and Mark McMillan) as well as other leading scholars from throughout Australia and New Zealand.

In addition, the CCCS co-hosted a day long seminar with the Judicial College of Victoria on “The Constitutional Role of the Judge” jointly with the Judicial College of Victoria; hosted eight CCCS seminar and 13 Legal Theory Workshops.

## Visitors

Visitors during 2013 included **Professor Tonja Jacobi**, a judicial behaviour and strategy in public law specialist from Northwestern University Law School; **Associate Professor Daniel Meagher**, a constitutional and human rights law scholar from Deakin University Law School; **Associate Professor Ridwanul Hoque**, a constitutional law scholar from the Department of Law at University of Dhaka, Bangladesh; **Simon Wolfe** the Head of Research at Blueprint for Free Speech; **Carola Iglesias-Ramirez** a legal researcher at Blueprint for Free Speech; **Sandra Hoppe**, a fiscal federalism scholar from Germany and **YuTao Hu**, a PhD candidate from Peking University, China.

## Scholarship and Engagement

A busy year in public law saw extensive publications from CCCS scholars detailed later in this report. In addition we were very pleased to see the launch of the *Laws of Australia title Interpretation and Use of Legal Sources*. Perry Herzfeld, MLS alumnus is the author of the section on ‘Constitutional and Statutory Interpretation’ and completed the work while he was a research associate with CCCS. Cheryl Saunders is title editor. The Hon. Justice Susan Crennan formally launched the title.

Throughout all these activities, CCCS scholars remained active in the national media among other things in relation to the High Court's decisions in *Monis v The Queen*; the ‘Adelaide Preachers Case’ ([link here](#)) the constitutional challenge to the mining tax ([link here](#)) and on the election of Pope Francis I ([link here](#)).



Professor Adrienne Stone  
Director, CCCS

## ABOUT THE CENTRE

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

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

Professor Adrienne Stone has been Director of the Centre since 1 July 2008. CCCS members are drawn from the Law School's faculty. The Centre's Advisory Board consists of leading Australian and international public lawyers.

### Objectives

The objectives of the Centre for Comparative Constitutional Studies are:

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

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

### Activities

The activities of the Centre for Comparative Constitutional Studies include:

- conducting research, both independently and in collaboration with others,
- providing research training, at graduate and undergraduate levels,
- developing and conducting courses,
- hosting and contributing to public seminars and conferences,
- responding to inquiries from the Australian public and media and from individuals and organisations in other countries,
- collecting and disseminating constitutional materials and information,
- maintaining an active visitors' program,
- fostering and participating in networks within Australia and overseas,
- publishing books, articles, journals and newsletters, and having research results published,
- making submissions to public inquiries, and
- carrying out consultancies

## CENTRE MEMBERS



### Professor Adrienne Stone

Director, CCCS

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

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



### Professor Cheryl Saunders AO

Laureate Professor

Personal Chair in Law

Foundation Director of CCCS

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

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

Other positions presently held by Cheryl Saunders include President of the International Association of Centres for Federal Studies, member of the advisory board of International IDEA and member of the Program Committee of the Forum of Federations. She is an editor of the *Public Law Review*, a member of the advisory board of *I.CON* and a member of the editorial boards of a range of Australian and international journals, including *Publius*, *Jus Politicum* and the *Constitutional Court Review*, South Africa. She has held visiting positions at the universities of Oxford, Cambridge, Paris II, Indiana (Bloomington), Hong Kong, Copenhagen, Fribourg, Capetown and Auckland and has an honorary doctorate from the University of Cordoba, Argentina. She is President Emeritus of the International Association of Constitutional Law and a former President of the Administrative Review Council of Australia. In 2010, she will teach courses at Georgetown University on comparative constitutional law and constitution building.

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

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



### Professor Carolyn Evans

Dean, Melbourne Law School  
Harrison Moore Professor of Law

Carolyn Evans is Deputy Director of the Centre for Comparative Constitutional Studies. Her teaching and research are in the areas of constitutional law, human rights and religious freedom. Carolyn has degrees in Arts and Law from Melbourne University and a doctorate from Oxford University where she studied as a Rhodes Scholar and where she held a stipendiary lectureship for two years before returning to Melbourne in 2000. She also qualified to practice law and is a barrister and solicitor of the Supreme Court of Victoria. In 2010, Carolyn was awarded a Fulbright Senior Scholarship to allow her to travel as a Visiting

Fellow at American and Emory Universities to examine questions of comparative religious freedom.

Carolyn is the author of *Religious Freedom under the European Court of Human Rights* (OUP 2001) and co-author of *Australian Bills of Rights: The Law of the Victorian Charter and the ACT Human Rights Act* (LexisNexis 2008). She is co-editor of *Religion and International Law* (1999, Kluwer); *Mixed Blessings: Laws, Religions and Women's Rights in the Asia-Pacific Region* (2006 Martinus Nijhoff) and *Law and Religion in Historical and Theoretical Perspective* (CUP 2008). She is an internationally recognised expert on religious freedom and the relationship between law and religion and has spoken on these topics in the United States, United Kingdom, Russia, China, Greece, Vietnam, India, Hong Kong, Switzerland, Malaysia, Nepal and Australia.

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



### Professor Simon Evans

Pro Vice-Chancellor (International)

Simon Evans was Deputy Dean of Melbourne Law School from July 2007 to July 2010. His research and teaching are focused in the field of comparative public law. In late 2009 he was awarded an ARC Discovery Project grant to carry out research on the executive branch of government. He recently completed a major project with colleague Professor Carolyn Evans investigating the capacity of parliaments to protect human rights and the effectiveness of the Commonwealth model of human rights protection. He has also worked on the implementation of the Victorian Charter of Human Rights. Other interests include constitutional property rights, accountability of executive government and constitutional

theory. He was Australasian Recent Developments Correspondent for I.CON (the International Journal of Constitutional Law) from its establishment. He was Director of the Centre for Comparative Constitutional Studies from 2005 to 2007 and Director of Teaching from 2004 to 2006. He was a national finalist in the Australian Awards for University Teaching in 2005 and a Universitas 21 Teaching Fellow in 2006-7.

His latest working papers can be downloaded from SSRN.



### Professor Pip Nicholson

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

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

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



### **Professor Michael Crommelin AO**

Zelman Cowen Professor of Law

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

In addition, Michael has served as President of AMPLA (the Australian Mineral and Petroleum Law Association) and as a member of the Council of the Section on Energy and Resources Law of the International Bar Association. He has published extensively in the fields of energy and resources law, constitutional law and comparative law.

In 2009, Michael was made an officer of the Order of Australia for service to the law and to legal education, particularly as a tertiary educator and through the development of mining and petroleum law in Australia.



### **Associate Professor Kristen Walker**

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

Kristen's research interests are in constitutional law, law and sexuality, and international law, particularly human rights and refugee law. Kristen also practices at the Victorian Bar, where she specialises in constitutional law.



### **Associate Professor Michelle Foster**

Michelle Foster is a Senior Lecturer and Director of the International Refugee Law Research Programme in the Institute for International Law and the Humanities. Her teaching and research interests are in the areas of public law, international refugee law, and international human rights law.

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

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



#### Associate Professor Beth Gaze

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

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



#### Associate Professor Joo-Cheong Tham

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

He is currently working on two separate areas. The first concerns the challenges of temporary migrant work to labour regulation, a project he is undertaking with Dr Iain Campbell, Centre for Applied Social Research, RMIT University. In the area of political finance, Joo-Cheong's book, *Money and Politics: The Democracy We Can't Afford* was published by UNSW Press in 2010. He is also currently editing two books, both of which will be published in 2011: one to be published by Routledge is devoted to international perspectives on political finance while the other, which has the working title, 'Electoral Regulation and Prospects for Australian Democracy', will be published by Melbourne University Press. Together with Associate Professor Graeme Orr, University of Queensland and Professor Brian Costar, he is leading an Australian Research Council project, *Dollars and Democracy: The Dynamics of Australian Political Finance and its Regulation (2010-2013)*.

Joo-Cheong graduated with a LLB (Hons) from the University of Melbourne in 1998 and completed an LLM in 2003 with the same university. He was granted a doctorate of laws by the University of Melbourne on the basis of his thesis that examined the legal precariousness of casual employment. In 2007-2008, he was a British Academy Visiting Fellow at the Law School, King's College, University of London. He was also the Rydon Fellow for Australian Politics and History at the Menzies Centre for Australian Studies, King's College, University of London in 2008.



### Associate Professor Alison Duxbury

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



### Associate Professor Jeremy Gans

Jeremy Gans is an Associate Professor in Melbourne Law School, where he researches and teaches across all aspects of the criminal justice system. He holds higher degrees in both law and criminology. In 2007, he was appointed as the Human Rights Adviser to the Victorian Parliament's Scrutiny of Acts and Regulations Committee.

His early research focused on fact-finding in sexual assault trials, the subject of his doctoral thesis and a number of published articles, and criminal investigation, especially the technique of DNA identification. He is the co-author of an evidence law text and a forthcoming human rights text, and is currently working on a criminal law treatise. He has contributed to public debate on criminal justice in a number of forums. He publishes a running commentary on Victoria's Charter of Human Rights and Responsibilities at [charterblog.wordpress.com](http://charterblog.wordpress.com).



### Associate Professor Margaret Young

Margaret Young joined CCCS when she commenced as Senior Lecturer at MLS in 2009. She was previously the William Charnley Research Fellow in Public International Law at Pembroke College and the Lauterpacht Centre for International Law, University of Cambridge, where she also lectured in Cambridge's LLM course on WTO law. She has a PhD and LLM from the University of Cambridge and a BA/LLB (Hons) from Melbourne, and is a former associate to the Chief Justice of the Federal Court of Australia. Dr Young teaches international and public law classes in the Melbourne JD, LLB and MLM. Her monograph, *Trading Fish, Saving Fish: The Interaction between Regimes in International Law*, will be published by Cambridge University Press in early 2011. It examines the relationship between international trade law, environmental law and the law of the sea in efforts to achieve fisheries sustainability. Public law concepts, including the emerging discipline of global administrative law, are relevant to her analysis. Dr Young is currently editing *Regime Interaction in International Law: Facing Fragmentation*, which will be published by Cambridge University Press in 2011, and which was based on the successful conference she organized at the Lauterpacht Centre for International Law, Cambridge, in June 2009.



### Associate Professor Kirsty Gover

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

Dr Gover received her BA/LLB, from the University of Canterbury, New Zealand, and her LLM from Columbia University, United States. She was a Columbia University School of Law Human Rights Fellow and James Kent Scholar, and was the first full-time Institute Fellow at NYU Law School's Institute for International Law and Justice (IILJ). She received her doctorate from NYU Law School, where she was a Graduate Institute Scholar of the IILJ, and a New Zealand Top Achiever Doctoral Fellow. Dr Gover was a Senior Advisor and then consultant to the New Zealand government on international and domestic policy on indigenous

peoples, and taught in this field at the Canterbury Law School. She represented the New Zealand government at intergovernmental drafting sessions of the U.N. Declaration on the Rights of Indigenous Peoples.

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



### **Dr Lael Weis**

McKenzie Post-Doctoral Fellow

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



### **Mr Glenn Patmore**

Glenn Patmore studied law at Monash University, Australia and Queens University, Canada. He has been admitted to practice as a Barrister and Solicitor of the Supreme Court of Victoria.

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

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

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



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

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

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

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

Paula's current research is in the area of public health law. Her doctoral thesis is on the domestic and international legal regulation of the global alcohol industry. Her other area of health law expertise relates to health workers and she had researched and published on questions related to the global shortage of health workers. She has looked closely at the international regulatory environment in which the shortages occur. Paula is also involved in an inter-disciplinary

project on social justice and temporary migrant work, where the major case study is the Victorian nursing sector. This is, in part, an empirical project involving interviews with experts in the Victorian nursing industry, as well as nurses on 457 visas: see <http://www.socialjustice.unimelb.edu.au/Research/migrantwork3.html>. Paula's part in the project relates to the law regulating the international recruitment and registration of health workers.

### Ms Anna Dziedzic

Research Fellow (Comparative Constitutional Law)

Anna Dziedzic is a Research Fellow at the Centre for Comparative Constitutional Studies. She is working with Laureate Professor Cheryl Saunders on an Australian Research Council Discovery Project entitled 'Meeting the Challenges of Constitutional Comparison'.

Anna holds an MA in Human Rights from University College London and first class honours degrees in Arts and Law from the Australian National University. Prior to joining Melbourne Law School she worked at the Australian Law Reform Commission, the Department of the Prime Minister and Cabinet, and as an Associate at the Federal Court. She is also a volunteer legal analyst at the Samoa Law Reform Commission and has undertaken consultancy work for a Fijian Women's Rights NGO.

### Jean Goh

Centre Administrator

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

## ADVISORY BOARD

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

### **Professor Tonja Jacobi**

*School of Law, Northwestern University, United States of America* (7 January 2013 to 29 March 2013)

Tonja Jacobi is a Professor of Law at Northwestern University School of Law in Chicago. She specializes in judicial behavior and strategy in public law. Jacobi's work combines social science and legal methodologies – including doctrinal, empirical and formal analysis – to examine how judges respond to institutional constraints. These constraints include: vertical limitations, such as the possibility of review by a higher court; horizontal checks, such as how to craft a broad coalition on a multi-judge panel; as well as judicial role constraints, such as how can judges address an issue they are interested in if the parties have not argued that question before the court. Her work also addresses the flipside questions of how judges attempt to shape the incentives of parties before the court, particularly in the field of constitutional criminal procedure, and how the elected branches check the judiciary through the advice and consent nomination process.

Jacobi has a PhD in political science from Stanford University where she wrote her dissertation on separation of powers constraints on the judiciary. She also holds a Masters from the University of California, Berkeley, and a law degree with Honours from the Australian National University. She teaches constitutional criminal procedure, constitutional law, legislation, and law and political economy. She has published in over 20 peer review and law review journals and is currently working on a book on causes and mechanisms of constitutional stability.<sup>5</sup>

### **Associate Professor Daniel Meagher**

*Deakin University School of Law, Australia* (26 February 2013 to 31 May 2013)

Dan Meagher is an Associate Professor in law at Deakin University in Australia where he teaches and researches in constitutional law, human rights law and statutory interpretation. He has undergraduate degrees in law and economics from Monash University and an LL.M. from the same institution. In 2007 Dan was awarded a PhD from the University of New South Wales for his thesis on the intersection between freedom of speech and the regulation of racist speech in Australia.

### **Associate Professor Ridwanul Hoque**

*Department of Law, University of Dhaka, Bangladesh* (25 March 2013 to 30 May 2013)

Dr. Ridwanul Hoque is Associate Professor of Law at the University of Dhaka. He formerly taught in the Department of Law at the University of Chittagong in Bangladesh. Dr. Hoque was a Commonwealth Scholar at the University of London's School of Oriental and African Studies where he studied for his Ph.D. in Comparative Public Law. He studied Law at the University of Chittagong for his LL.B. Honours and LL.M., and went to Cambridge where he studied for an LL.M. in International Commercial Law. He has published in British, American, Indian, and Bangladeshi law journals.

### **Mr Simon Wolfe**

*Head of Research, Blueprint for Free Speech* (1 July 2013 to 30 June 2014)

### **Ms Carola Iglesias-Ramirez**

*Legal Researcher, Blueprint for Free Speech* (1 July 2013 to 30 June 2014)

### **Sandra Hoppe**

*University of Applied Sciences Ludwigsburg, Germany* (15 July 2013 to 13 September 2013)

Sandra Hoppe is a Lecturer at University of Applied Sciences Ludwigsburg and a PhD Student Humboldt University of Berlin. During the time at University of Melbourne Sandra intends to do research for her PhD thesis on fiscal federalism in Australia from a constitutional perspective as well as from the tax perspective. Some of the focus points will be: federalism in a common law system vs. statutory law system, intergovernmental agreements and Commonwealth and State revenue raising abilities.

### **Ms YuTao Hu**

*PhD Candidate, Peking University, China* (8 October 2013 to 2014)

YuTao's research interests lie in comparative constitutional law, fiscal federalism and power separation. A PhD candidate from Peking University, is working with scholars from the Centre of Comparative Constitutional Studies (CCCS) on research into her PhD dissertation on the fiscal federalism in Australia.

## CCCS GRADUATE RESEARCH STUDENTS

Student	Supervisor(s)
John Simpkins	Professor Adrienne Stone & Professor Cheryl Saunders AO
Getachew Woldemariam	Professor Cheryl Saunders AO & Professor Simon Evans
Tsegaye Ararssa	Professor Cheryl Saunders AO & Professor Michael Crommelin AO
Brian Opeskin	Professor Cheryl Saunders AO
Stewart Fenwick	Professor Carolyn Evans
Nurhafilah Musa	Professor Carolyn Evans
Leilani Elliott	Professor Carolyn Evans
My Anh Tran	Professor Simon Evans
Nimmith Men	Professor Pip Nicholson
Sally Low	Professor Pip Nicholson
Hai Ha Do	Professor Pip Nicholson
Joseph Kikonyogo	Professor Pip Nicholson
Samantha Hinderling	Professor Pip Nicholson
Hailegabriel Feyissa	Professor Pip Nicholson
Lan Phuong Pham	Professor Pip Nicholson
Vu Thu Trang	Professor Pip Nicholson
George Kailis	Professor Michael Crommelin AO & Associate Professor Kirsty Gover
Alice Ashbolt	Professor Michael Crommelin AO
Anthony Mihalopoulos	Associate Professor Beth Gaze

Student	Supervisor(s)
Tayechalem Moges	Associate Professor Beth Gaze
Kathy Adams	Associate Professor Beth Gaze
Andrew Newman	Associate Professor Joo-Cheong Tham
Monique Cormier	Associate Professor Alison Duxbury
Sasha Radin	Associate Professor Alison Duxbury
Apsari Dewi	Associate Professor Jeremy Gans
Daniel Hochstrasser	Associate Professor Jeremy Gans
Julia Dehm	Associate Professor Margaret Young
James Munro	Associate Professor Margaret
Joshua Paine	Associate Professor Margaret
Elizabeth Macpherson	Associate Professor Kirsty Gover
Robin Robinson	Associate Professor Kirsty Gover
Darren Parker	Associate Professor Kirsty Gover
Martin Clark	Associate Professor Kirsty Gover
Jan Mihal	Dr Dale Smith

# EVENTS

## CCCS Seminar Series

### CCCS Seminar: The Filibuster and Reconciliation: the Future of Majoritarian Lawmaking in the U.S. Senate

Thursday 28 February 2013, 1-2pm

In the United States, passing legislation has become a de facto super majoritarian undertaking, due to the gradual institutionalization of the filibuster – the practice of unending debate in the Senate. The filibuster is responsible for stymieing many legislative policies, and was the cause of decades of delay in the development of civil rights protection. Attempts at reforming the filibuster have only exacerbated the problem. However, a once obscure budgetary procedure known as reconciliation has created a mechanism of avoiding filibusters. Consequently, reconciliation is the primary means by which significant controversial legislation has been passed in recent years – including the Bush tax cuts and much of Obamacare. This has led to minoritarian attempts to reform reconciliation, particularly through the Byrd rule, as well as constitutional challenges to proposed filibuster reforms.

We argue that the success of the various mechanisms of constraining either the filibuster or reconciliation will rest not with interpretation by the Parliamentarian or judicial review by the courts, but in the Senate itself, through control of its own rules. As such, the battle between majoritarian and minoritarian power in the U.S. Congress depends upon individual incentives of senators and institutional norms. We show that those incentives are intrinsically structured toward minoritarian power, due to: particularism, arising from the salience of localism; institutionalized risk aversion, created by reelection incentives; and path dependence, produced by the stickiness of norms. Consequently, filibuster reform is likely to be continually frustrated, as the 2012-2013 skirmish recently illustrated, and minority dominance will continue unless there is significant institutional change in Congress. Meanwhile, reconciliation will become increasingly central to lawmaking, constituting the primary means of overcoming obstructionism and delay in U.S. policy making and social reform.



**Tonja Jacobi** is a Professor of Law at Northwestern University School of Law in Chicago. She specializes in judicial behaviour and strategy in constitutional law and constitutional criminal procedure. Jacobi's work combines social science and traditional legal methodologies – including doctrinal, empirical and formal analysis – to examine how judges respond to institutional constraints. Her constitutional work specializes in judicial behaviour and strategy in public law, combining social science and traditional legal methodologies to examine how judges respond to institutional constraints, including separation of powers, hierarchical review, coalition formation and judicial role limitations. Her constitutional criminal procedure analysis addresses the flipside question of how judges attempt to shape the incentives of others, particularly the impact of behavioural assumptions that the Supreme Court has made in this area of law.



### Constitution Making: Insights from the Latest Developments in Fiji

Tuesday 12 March 2013, 1-2pm

*This was an invitation only seminar.*

A round table discussion of the constitution development process in Fiji and the lessons that might be drawn from it. The presentation covered: the process for constitution-making laid down by government decrees; the work of the Constitution Commission of Fiji, over a period of seven months, during which it received public submissions and created a draft constitution; the decision of the Government of Fiji to amend the Commission's draft; and the pending meeting of a Constituent Assembly. The roundtable considered the possible futures for this process and the opportunities and challenges for sustainable democracy in Fiji. Lessons that might be drawn from these events for constitution making processes elsewhere include: the challenges of constitution-making in the context of transition from military rule; the design of a two-stage constitution making process; the nature and purpose of public participation in constitution-making; and international involvement in constitution-making.

Presenter:

**Ciaran O'Toole** is the Fiji Programme Director for Conciliation Resources (CR), an international peacebuilding NGO

based in London. CR works primarily with local people and organisations to help build peace, and has programmes in many conflict affected regions such as Central Africa, the Caucasus, Kashmir and the Philippines. Ciaran has spent over five years working on peacebuilding and governance in Fiji, initially with a local Fijian NGO, the Citizens' Constitutional Forum before moving to join Conciliation Resources. (CR). Over the past twelve months, he has been heavily involved in the Fiji constitution development process, with CR providing considerable support in the setting up and managing of the Constitution Commission secretariat, while providing ongoing support to CR's local civil society partners. Ciaran has been a visitor to Melbourne Law School since September 2012, as an associate of the CCCS.

Commentator:

**Cheryl Saunders** is a Professor of Law at Melbourne Law School, who has had intermittent involvement with constitution-making in Fiji since the 1997 constitution making process. Much of her work in Fiji has been carried out in collaboration with the Citizens' Constitutional Forum. Most recently, she delivered a public lecture in Suva on 'The nature of a Constituent Assembly' and participated on a panel of experts to provide advice on the Commission's draft Constitution.

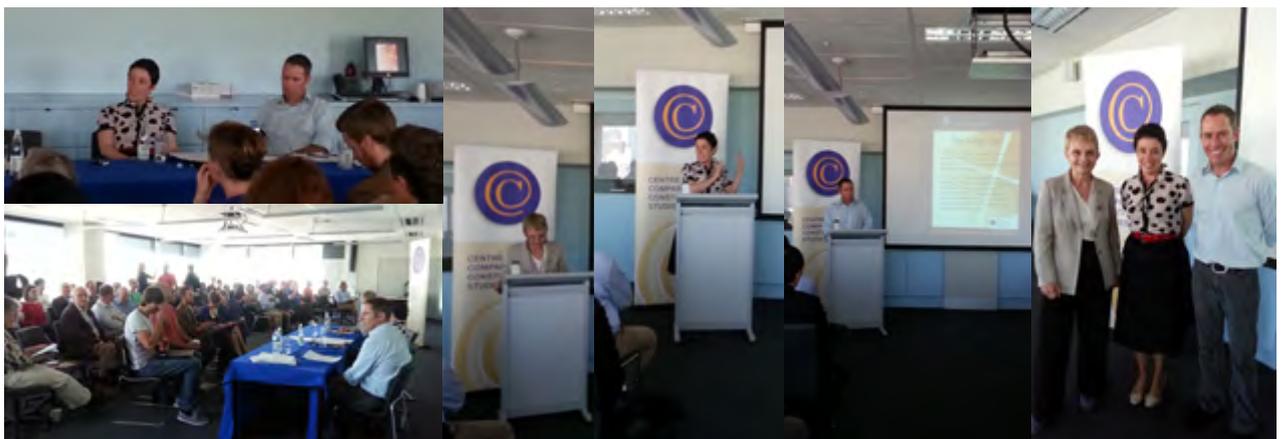
### **The High Court on Free Speech: Offensive Letter Writing , Public Preaching and the Constitution**

Wednesday 10 April 2013, 1-2pm

In this seminar Adrienne Stone and Dan Meagher reviewed the High Court's recent decisions in *Monis v The Queen* and *Attorney-General (SA) v Corporation of the City of Adelaide*, both delivered on 27 February 2013.

**Adrienne Stone** researches in the areas of constitutional law and constitutional theory. She has published extensively on freedom of expression, the legal and institutional questions surrounding bills of rights and on judicial method in constitutional cases. Her recent publications include *The Comparative Constitutional Law of Freedom of Expression in Comparative Constitutional Law*, (Rosalind Dixon, Tom Ginsburg, eds 2011); *Structural Judicial Review and the Judicial Role in Constitutional Law* (2010) 60 *University of Toronto Law Review* 109; *Comparativism in Constitutional Interpretation* [2009] *New Zealand Law Review* 45 and 'Judicial Review without Rights' (2008) 28 *Oxford Journal of Legal Studies* 1. She currently holds an Australian Research Council Discovery Grant for a four year project entitled "Freedom of Expression in Democratic States".

**Dan Meagher** is an Associate Professor in law at Deakin University in Australia where he teaches and researches in constitutional law, human rights law and statutory interpretation. He has undergraduate degrees in law and economics from Monash University and an LLM from the same institution. In 2007 Dan was awarded a PhD from the University of New South Wales for his thesis on the intersection between freedom of speech and the regulation of racist speech in Australia.



### **Judicial Use of Comparative Constitutional Law in Bangladesh: Method, Benefits and Perils**

Tuesday 7 May 2013, 1-2pm

Despite theoretical debates about whether judges may legitimately draw upon foreign sources while applying their respective constitution, crossfertilization of constitutional ideas in constitutional adjudication has come of age. South Asian appellate court judges do often engage in comparative constitutional studies, purportedly as a tool for increasing their agency. Post-colonial South Asian judiciaries not only exchange among themselves but also draw on other

judiciaries, mostly from common law traditions including, in the case of the Bangladeshi Supreme Court, Australia. In this paper, some select constitutional cases were presented, Associate Professor Hoque reviewed the use of comparative constitutional law by the Supreme Court of Bangladesh, in order to assess the style and methods of comparison as well as the benefits and perils of such use. Based on the view of distinction between constitutional rights and structural questions, Associate Professor Hoque argued for a differentiated judicial use of foreign experiences while adjudicating issues of constitutionalism rather than constitutional rights. While adjudicating structural issues, the judges should read their respective constitution not merely as a text but as an integrated structure of long-standing values, and must weigh the probable damaging consequences of misplacing comparative constitutional laws domestically. Associate Professor Hoque argued for a country-specific method of constitutional comparisons, which may help the judges avoid ‘invidious’ comparisons or the misuse of comparative law.

**Dr. Ridwanul Hoque** is Associate Professor of Law at the University of Dhaka. He formerly taught in the Department of Law at the University of Chittagong in Bangladesh. Dr. Hoque was a Commonwealth Scholar at the University of London’s School of Oriental and African Studies where he studied for his Ph.D. in Comparative Public Law. He studied Law at the University of Chittagong for his LL.B. Honours and LL.M. and went to Cambridge where he studied for an LL.M. in International Commercial Law. He has published in British, American, Indian, and Bangladeshi law journals.



### Judicial Loyalties: Assessing the Politicization of the Venezuelan Legal System

Thursday 16 May 2013, 1-2pm

*Co-hosted with the Asian Law Centre*

Why do Courts fail to uphold the rule of law in weakly institutionalized democracies? In part, this is due to the nature of the relationship between judges and politicians. Judicial decision-making may be largely conditioned by individual commitments based on particularistic goals, instead of public policy objectives. This negatively affects the judiciary’s ability to become influential and assertive in the political arena, and impairs the beneficial effect of changes directed to empower the judiciary in developing democracies. Raul’s research explores this argument in the context of Venezuela before and after Hugo Chávez’s arrival in power. In this presentation, he briefly explained the theory, and offer a discussion grounded on qualitative and quantitative empirical analysis of constitutional review decisions during the past two decades.



**Raul Sanchez Urribarri** is a Lecturer (Assistant Professor) in Legal Studies at the School of Social Sciences, La Trobe University (Melbourne, Australia). His teaching and research focus on judicial politics in comparative perspective, with an emphasis on Latin America. His work has been published in *Law and Social Inquiry*, *The Journal of Politics*, and edited volumes. He is currently writing a book on the politicization of courts through informal connections in developing democracies, covering Venezuela, Paraguay and Costa Rica.

### A Model of Legal Participation for Tribunal Users

Thursday 25 July 2013, 2-3PM

The speaker conducted two externally commissioned empirical research reports on the experiences of tribunal users in Northern Ireland, from 2010-12. The findings from this research feed into the existing research on access to justice for tribunal users in Great Britain, all of which evidence the intellectual, practical and emotional barriers faced by tribunal users in disputing decisions they disagree with and underline the importance of understanding and improving tribunal user experiences as a means of improving access to justice for tribunal users. Using this empirical research, the author explores how we can conceptualise the different forms of participation experienced by tribunal users and – drawing from Sherry Arnstein’s model of participation – uses the analogy of a ladder of participation to chart the different

categories of participation that exist. Applying this analogy, the author suggests a range of operational indicators for each of the rungs of the ladder of participation as part of a process of addressing participative gaps, to enhance the tribunal user's ability to access justice. This work reviewed in this seminar will be published in Public Law in July 2013.



**Gráinne McKeever** is a Senior Lecturer in Law and has published widely on issues of social security and social justice, focusing predominantly on social security fraud and access to justice for tribunal users. Gráinne is an Executive Director and Chair of Law Centre (Northern Ireland), a specialist not-for-profit legal advice organisation. She is Assistant Editor of the *Journal of Social Security Law*, an editor of *Frontline: Social Welfare Law Quarterly* and was sub-editor of the *Bulletin of Northern Ireland Law* from 1998-2011.

### Legislative Rights Review: The Perils of Constitutional Borrowing

Tuesday 27 September 2012, 1-2pm

Bills of rights in New Zealand, the United Kingdom and Australia have adapted and incorporated a bold idea that first originated in the 1960 Canadian Bill of Rights: the idea of conceiving a bill of rights as an instrument to alter the norms of legislative decision-making, by creating a new statutory requirement that legislative bills be accompanied by a statement outlining if they are not compatible with protected rights. The expectation was that this reporting obligation would force bureaucrats and cabinet to confront how government's legislative agenda implicates rights, the desire to avoid parliamentary criticism and judicial censure would encourage the use of more compliant ways to achieve the legislative objective in question, and parliament's increased attention to the rights-dimension of legislative bills would encourage parliamentarians to hold government to account for decisions that implicate rights. This idealistic expectation for bureaucratic, executive and parliamentary review of bills from a rights perspective can be referred to as legislative rights review.

On its face, the marriage of a bill of rights with an expectation for legislative rights review envisages a potentially far reaching way of guarding against rights infringements by conceiving of rights protection in proactive rather than reactive terms, and by subjecting all government bills to a form of rights-based review, and not just the relatively small sub-section of legislation that is litigated and subject to judicial review. This idea that parliament should play a more central role protecting rights is particularly attractive for those who are concerned about whether rights are given due consideration in legislative decision-making processes and yet are sceptical about the virtue of court-centric bills of rights.

However, proponents must guard against overly optimistic assumptions (such as those the author held in earlier works) that the concept of legislative rights review will substantially transform political behaviour and practices. In borrowing and adapting this idea from one parliamentary system to the other, reformers and scholars have not paid sufficient attention to the significance of the political and institution setting in which this idea is situated, and the challenges that a Westminster-based parliamentary system presents for this idealistic vision of rights protection.

This talk was based on a soon to be completed manuscript, *Parliamentary Bills of Rights. The Limits of Constitutional Engineering in New Zealand and the United Kingdom* (co-written with James Kelly).

**Janet Hiebert** is Professor in the Department of Political Studies, at Queen's University. She has been teaching in the Department of Political Studies since 1991, having received a B.A. (Hons) from UBC in 1985, and an M.A. (1986) and a Ph.D (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 is in the final stages of a manuscript with James Kelly, *Parliamentary Bills of Rights. The Limits of Constitutional Engineering in New Zealand and the*



## Why Modern Constitutionalism Rests on a Mistake

Thursday 26 September 2012, 2-3pm

As understood in orthodox liberal constitutional theory, the main goal of modern constitutional law is to limit state power. In this presentation, Associate Professor Ramraj will explain why this understanding of constitutionalism is flawed and what we could do to rehabilitate it. Associate Professor Ramraj's basic claim, which draws on his research for a larger book project, is that modern constitutionalism, in theory and practice, is unable to account for configurations of private power (particularly in the form of multinational corporations) that escape the regulatory reach of most nation-states, or for the rise of transnational regulatory bodies—whether intergovernmental, private, and hybrid (public and private). This presentation briefly explored these developments before showing: (a) how they challenge the basic assumptions of modern constitutionalism and (b) how modern constitutional law has failed, in practice, to adapt to these transformations of transnational private and public power. Associate Professor Ramraj then suggested how domestic constitutional law might adapt to these changes, both by claiming a non-exclusive public law role in the supervision of global regulators and by empowering non-state actors to engage in the regulation of global problems where states are unable or unwilling to do so.

**Victor V. Ramraj** is an Associate Professor in the Faculty of Law, National University of Singapore. He has qualifications in law (LLB, Toronto; LLM, Queen's University Belfast) and philosophy (BA, McGill; MA, PhD, Toronto) and is a member of the Law Society of Upper Canada. He twice served as the NUS law school's Vice-Dean for Academic Affairs (2006-2010, 2011-2012) and for one year, from 2010-2011, as a co-director of the Center for Transnational Legal Studies in London. Before joining NUS, he served as a judicial law clerk at the Federal Court of Appeal in Ottawa and as a litigation lawyer in Toronto. His current areas of research include constitutional law and theory, emergency powers, globalisation, and legal history. He has edited and co-edited several books for Cambridge University Press, including *Emergencies and the Limits of Legality* (2009) and *Emergency Powers in Asia: Exploring the Limits of Legality* (2010). His scholarly work has been published in, among others, the *Chicago-Kent Law Review*, *Hong Kong Law Journal*, *International Journal of Constitutional Law*, *International Journal of Law in Context*, *Singapore Journal of International and Comparative Law*, *Singapore Journal of Legal Studies*, *South African Journal on Human Rights*, and *Transnational Legal Theory*. He is working on a book on the future of domestic constitutions.



## CCCS Expert Seminar

### United States Constitutional Law for Australian Lawyers

Friday 8 February 2013



**Judge Albert M Rosenblatt** delivered a one day Expert Seminar on the topic United States Constitutional Law for Australian Lawyers. Judge Rosenblatt was formerly a Justice of the New York Court of Appeals (the State's highest court) and is currently a Judicial Fellow teaching constitutional law at New York University Law School.

The seminar provided Australian lawyers with a grounding in fundamental principles of United States constitutional law and familiarity with the case law in selected key areas. The seminar was designed to be of particular interest to practicing lawyers and judges, though some academics were involved as well.

The seminar addressed four areas of US constitutional law: "Federalism"; "Court, Judges and Judicial Review"; "Takings Clause" and "Freedom of Speech". The seminar included

an Australian constitutional lawyer as commentator on each topic who put the United States cases into some context and discuss points of similarity and difference between Australian and US law in the relevant area. The Hon. Ray Finkelstein QC, Stephen McLeish SC, Professor Michael Crommelin AO and Professor Adrienne Stone were among the commentators.

The seminar was limited to 25 people and attendance was by invitation only with a dinner in the evening that followed.

## Symposia

### ‘Turning Points: Remembering *Commonwealth v Tasmania* (1983) 158 CLR 1’

Friday 28 June 2013

Co-hosted with the Institute for International Law and the Humanities and Centre for Resources, Energy and Environment

2012 and 2013 mark the respective 30th anniversaries of the High Court’s decisions in *Koowarta* and in the *Tasmanian Dams* case. Each of these cases is understood to represent a turning point in Australia’s legal-political history: a shift to a different form of political engagement on complex questions about race, and the environment; and a shift in what those engagements could signify, nationally, and internationally. Cumulatively, the cases are also understood as marking a decisive jurisprudential turn, a consideration of a different engagement by the Court with both international law and the politics of constitutionalism.

Institute for International Law and the Humanities (IILAH), the Centre for Comparative Constitutional Studies (CCCS) and the Centre for Resources Energy and Environmental Law (CREEL) hosted the second of the two separate symposia to commemorate these anniversaries. Turning Points: Remembering *Commonwealth vs Tasmania* (1983) 158 CLR 1 on 28 June 2013 and Turning Points: Remembering *Koowarta v Bjelke-Petersen* (1982) 153 CLR 16 which was held on 11 May 2012 at Melbourne Law School.

The aim of this symposium is to review and reflect upon the judgment, its context, and its interpretations; with insights from legal, political, historical, and autobiographical perspectives.

Symposium speakers explored a series of overlapping themes. From a legal perspective, the judgment raised clear themes about the interaction of constitutional and international law, the growth of federal power, constitutional meaning and constitutional change and the impact of those considerations on indigenous Australians. They explored dimensions of those themes from other perspectives, such as how questions about race and the environment operate in relation to each other; the nature of political activism in Australia, and transnationally, in the 1970s and 1980s; how and to what extent that activism turned political questions into legal questions; and how the local context of *Tasmania*, with its specific and different cultural and political history of state authority, race and the environment interrupts the expected historical and legal narratives of what *Commonwealth v Tasmania* is thought to signify.

Although held a year apart, ‘Remembering *Commonwealth v Tasmania*’ and ‘Remembering *Koowarta*’ placed the cases into conversation with each other for the first time, and as such opened new ways of approaching and writing about law’s authority and narratives as constitutive of an evolving Australian national identity into the 21st century.

By reflecting on these decisions separately but by drawing them into conversation through shared themes, this symposium offered new insights into the local, national and international readings of the cases.



## I.Con Symposium on Australasian Constitutionalism

Friday to Saturday 13-14 December 2013

*This was an invitation only symposium*

The Centre for Comparative Constitutional Studies hosted a two-day Symposium at the invitation of the *International Journal of Constitutional Law* on the topic of 'Australasian Constitutionalism'.

Constitutional scholars and practitioners from Australia and New Zealand were invited to present their papers as the subject of the themes of 'The Constitutional Significance of Settlement', 'Written and Unwritten Constitutions', 'The Common Law Context', 'Parliamentary Government: Antipodean Adaptations', 'The Absence of Constitutional Rights' and 'Constitutional Identity and Political Culture'.

Participants included:

- Professor Cheryl Saunders AO (Melbourne Law School)
- Professor Adrienne Stone (Melbourne Law School)
- Dr Kirsty Gover (Melbourne Law School)
- Dr Carwyn Jones (School of Law, Victoria University of Wellington)
- Dr Mark McMillan (Melbourne Law School)
- Professor Janet McLean (Faculty of Law, The University of Auckland)
- Professor Jeffrey Goldsworthy (Faculty of Law, Monash University)
- Professor Paul Rishworth (New Zealand Centre for Human Rights, Policy and Practice, The University of Auckland)
- Professor Nicholas Aroney (TC Beirn School of Law, UQ)
- Professor Rosalind Dixon (UNSW School of Law)
- Professor Claudia Geringer (School of Law, Victoria University of Wellington)
- Professor Andrew Geddis (Faculty of Law, University of Otago)
- Dr Elisa Arcioni (Sydney Law School)
- Dr Matthew Palmer (Thorndon Chambers, New Zealand)



## Legal Theory Workshop

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

Guests presenters for Semester one 2013 includes:

### 8 March 2013

Dr. David Plunkett (Dartmouth, Philosophy), “Dworkin’s Interpretivism, Metalinguistic Negotiations, and the Pragmatics of Legal Disputes” (with Timothy Sundell)

Commentator: Dr Dale Smith (Monash).

### 22 March 2013

Professor Tonja Jacobi (Northwestern), “The Self-Stabilizing Constitution” (with Barry Weingast)

Commentator: Professor Cheryl Saunders (Melbourne)

### 12 April 2013

Professor John Tasioulas (UCL), “Human Dignity and the Foundations of Human Rights”

Commentator: Asspcoate Professor John Tobin (Melbourne)

### 26 April 2013

Dr. Farrah Ahmed (Melbourne), “A Coherent Autonomy-based Right to Religious Freedom”

Commentator: Professor Carolyn Evans (Melbourne)

### 3 May 2013

Professor Theunis Roux (UNSW), “American Ideas Abroad: A Conceptual Map for the Comparative Application of U.S. Judicial Decision-Making Models”

Commentator: Professor Adrienne Stone (Melbourne)

### 31 May 2013

Mr Andrew Roberts (Melbourne), “Definition, Disagreement, and the Value of Privacy”

Commentator: Professor Megan Richardson (Melbourne)

Guests presenters for Semester two 2012 includes:

### 9 August 2013

Dr Joel Colon-Rios (Victoria University, Wellington), “A New Typology of Judicial Review of Legislation”

Commentator: Professor Cheryl Saunders (Melbourne)

### 23 August 2013

Dr Adam Perry (Aberdeen), “The Internal Aspect of Social Rules”

Commentator: Dr Patrick Emerton (Monash)

### 6 September 2013

Dr. Devika Hovell (LSE), “A Dialogue Model: The Role of the Domestic Judge in Security Council Decision-making”

Commentator: Professor Adrienne Stone (Melbourne)

### 20 September 2013

Dr Kirsty Gover (Melbourne), “The Reasonable Settler Executive: The Honour of the Crown in New Zealand, Canada and Australia”

Commentator: Associate Professor Maureen Tehan (Melbourne)

### 27 September 2013

Dr. Michael Sevel (Sydney), “Obeying the Law and Doing the Right Thing”

Commentator: Dr Farrah Ahmed (Melbourne)

### 11 October 2013

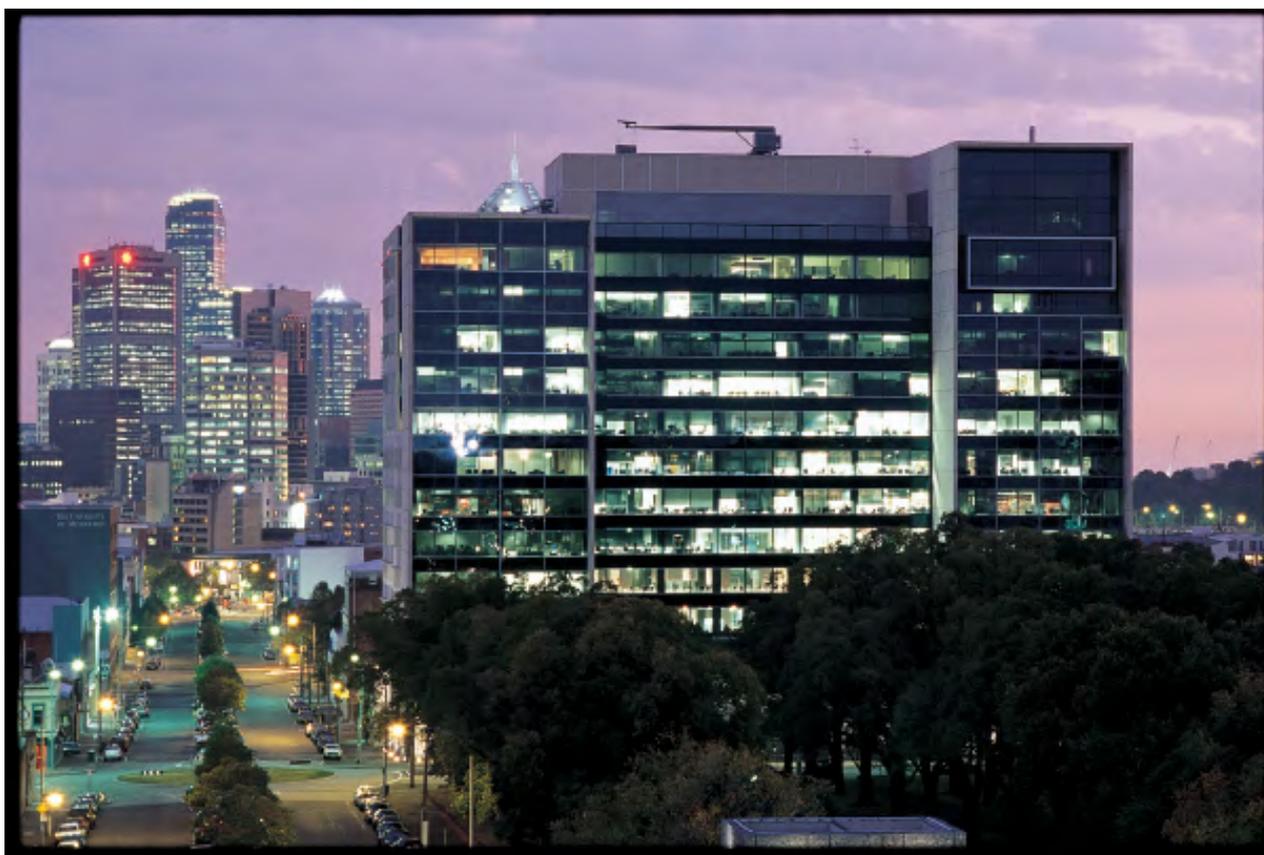
Associate Professor Anthony Connolly (ANU), “Naturalised Jurisprudence as an Experimental Philosophy of Law”

Commentator: Dr Dale Smith (Monash)

### 25 October 2013

Associate Professor Kit Barker (TC Beirne, QLD), “Damages without loss? What Hohfeld can offer”.

Commentator: Associate Professor Elise Bant (Melbourne)



# FUNDED RESEARCH GRANTS

## Australian Research Council (ARC)

### Discovery Projects in 2013

**Carolyn Evans** (2011-2013)

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

Funding: \$174,443

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

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

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

Funding: \$217,000

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

**Cheryl Saunders** (2011-2013)

*'Meeting the Challenges of Constitutional Comparison'*

Funding: \$235,000

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

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

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

Funding: \$305,000

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

**Joo-Cheong Tham**, Iain Campbell and Judy Fudge (2013-2015)

*'Precariousness in Law and Labour Markets: The Case of Temporary Migrant Workers'*

Funding: \$245,000

This project examines the situation of temporary migrant workers in Australia, focusing on the nature and extent of their precariousness both in law and in labour market practice. It offers a major contribution to current research and policy debates on the implications of temporary migrant labour.

## The University of Melbourne

### Melbourne Interdisciplinary Seed Funding in 2013

Sean Cooney, Martina Boese, Peter Gahan, Petra Mahy, Richard Mitchell, **Joo-Cheong Tham** and John Howe (2013-2015)

*How are Low Protection Workers Regulated? A Pilot Study in Australia and Indonesia*

Funding: \$40,000

This project is a preliminary investigation of the norms and rules that govern workers who lie outside the scope of labour standards laws (in either a legal or practical sense). Such workers generally receive lower levels of protection in respect of their remuneration, working time and leave entitlements than those covered by labour laws. They also have limited or no access to dispute resolution and enforcement processes that assist those covered by formal work law. There are many low protection workers in developed countries such as Australia and in developing countries, like Indonesia, low protection workers vastly outnumber those covered by labour laws.

### Melbourne School of Government (Research Cluster Grant) in 2013

Miranda Stewart, Brian Galligan, Scott Brenton, John Freebairn, Hielke Buddelmeyer, **Cheryl Saunders, Michael Crommelin**, Anne Tiernan, Jenny Menzies, Robyn Hollander, Justin Hanney, Philip O'Meara and David Burns (2013-2015)

*Renewing Australian Federalism*

Funding: \$146,000

This research cluster *Renewing Australian Federalism* takes up the challenge and opportunity to improve fiscal sustainability, democracy and innovation in Australia's federation in particular by strengthening the States. In Australia's federation, major policy areas are shared by the Commonwealth and States. The Commonwealth, through monopolising income taxation and using 'tied grants' has become a major player in State policy areas such as health and education. Australia's significant Vertical Fiscal Imbalance (VFI) has enabled strong national development but has produced a lop-sided system in which the Commonwealth is inclined to over-reach and centralise in ways that may be dysfunctional. Prime Minister-elect Tony Abbott has called for a White Paper on Federal State Relations. We will contribute to this policy process to end neglect of Australia's federal infrastructure, recently described as an 'unavoidable avenue to success of any Australian vision'.



# PUBLICATIONS

## Book Chapters

- Durham Jnr, W and **Evans C**, 'Freedom of Religion and Religion-State Relations' in M Tushnet, T Fleiner and C Saunders (eds), *Routledge Handbook of Constitutional Law*, Routledge, United Kingdom(2013), 243-256
- Evans, C**, 'Balancing Religious Freedom Rights and Other Human Rights' in P Gerber and M Castan (eds), *Contemporary Perspectives on Human Rights Law in Australia*, Thomson, Australia (2013), 475-493
- Evans, S** and Watson, J, 'Australian Bills of Rights and the 'New Commonwealth Model of Constitutionalism' in R Masterman and I Leigh (eds), *The United Kingdom's Statutory Bill of Rights*. Oxford University Press, United Kingdom (2013), 221-249
- Fleiner, T and **Saunders, C**, 'Constitutions Embedded in Different Legal Systems' in M Tushnet, T Fleiner and C Saunders (eds), *Routledge Handbook of Constitutional Law*, Routledge, United Kingdom (2013), 21-32
- Evans, S**, and Bosland, J, 'Plain Packaging of Cigarettes and Constitutional Property Rights' in T Voon, A Mitchell, J Liberman and G Ayres (eds), *Public Health and Plain Packaging of Cigarettes: Legal Issues*, Edward Elgar Publishing, United Kingdom (2012) 48-80
- Ewing, K, Rowbottom, J and **Tham, J**, 'Introduction' in K Ewing, J Rowbottom and J Tham (eds), *The Funding of Political Parties: Where Now?*, Routledge, United Kingdom (2012) 1-8
- Foster, M**, and Klaaren, J, 'Asylum and Refugees' in M Tushnet, T Fleiner, J and C Saunders (eds), *Routledge Handbook of Constitutional Law*, Routledge, United Kingdom (2013), 415-425
- Gaze, B**, 'Anti-discrimination Laws in Australia' in P Gerber and M Castan (eds), *Contemporary Perspectives on Human Rights Law in Australia*, Thomson Reuters, Australia (2013), 155-180
- Gover, K**, 'Indigenous Jurisdiction as a Provocation of Settler State Political Theory: The Significance of Human Boundaries' in L Ford and T Rowse (eds), *Between Indigenous and Settler Governance*, Routledge, United Kingdom (2013), 187-199
- Saunders, C**, 'Australia: An "integrated" Federation?' in J Loughlin, J Kincaid and W Swenden (eds), *Routledge Handbook of Federalism and Regionalism*, Routledge, United Kingdom (2013), 389-400
- Saunders, C**, 'Constitutional Pluralism: New Challenges for Constitutional Theory' in P Bhat (ed), *Constitutionalism and Constitutional Pluralism: One Supreme Law Many Communities: Contemporary Issues in India, South-East Asia, China & Europe*, LexisNexis, India (2013), 149-157
- Saunders, C and Stone, A**, 'Reference to Foreign Precedents by the Australian High Court: A Matter of Method' in T Groppi and M Ponthoreau (eds), *The Use of Foreign Precedents by Constitutional Judges*, Hart Publishing, United Kingdom (2013), 13-38

## Refereed Journal Articles

- Boese, M, Campbell, I, Roberts, W and **Tham, J**, 'Temporary Migrant Nurses in Australia: Sites and Sources of Precariousness' (2013) *24 Economic and Labour Relations Review* 316-339
- Campbell, I and **Tham, J**, 'Labour Market Deregulation and Temporary Migrant Labour Schemes: An Analysis of the 457 Visa Program' (2013) *26 Australian Journal of Labour Law* 239-272
- Chalmers, J, Carragher, N, Davoren, S and **O'Brien, P**, 'Real or Perceived Impediments to Minimum Pricing of Alcohol in Australia: Public Opinion, the Industry and the Law' (2013) *24 International Journal of Drug Policy* 517-523
- Gans, J**, 'Extra-bodily DNA Sampling by the Police' (2013) *21 Journal of Law and Medicine* 364-369
- Gaze, E** and Chapman, A, 'The Human Right to Non-discrimination as a Legitimate Part of Workplace Law: Towards Substantive Equality at Work in Australia?' (2013) *29 International Journal of Comparative Labour Law and Industrial Relations* 355-373

Gollan, P and **Patmore, G**, 'Perspectives of Legal Regulation and Employment Relations at the Workplace: Limits and Challenges for Employee Voice' (2013) 55 *Journal of Industrial Relations* 488-506

Jukic, E and **Young, M**, 'Country Report: Australia' (2013) 23 *Yearbook of International Environmental Law* 512-523

**Nicholson, P** and Hinderling, S, 'Japanese Aid in Comparative Perspective' (2013) 5 *Hague Journal on the Rule of Law* 274-309

**Nicholson, P**, and Low, S, 'Local Accounts of Rule of Law Aid: Implications for Donors' (2013) 5 *Hague Journal on the Rule of Law* 1-43

**O'Brien, P**, 'A Risk-based Approach to Harm Minimisation in Liquor Licensing Decisions' (2013) 32 *Drug and Alcohol Review* 536-538

**O'Brien, P**, 'Australia's Double Standard on Thailand's Alcohol Warning Labels' (2013) 32 *Drug and Alcohol Review* 5-10

**O'Brien, P**, 'The International Right to Health: State Obligations and Private Actors in the Health Care System' (2013) 21 *Journal of Law and Medicine* 194-209

**O'Brien, P**, and Gleeson, D, 'Retaining Our Right to Regulate Alcohol Warnings' (2013) 199 *Medical Journal of Australia* 447-447

**Saunders, B**, 'Democracy, Liberty and the Prerogative: The Displacement of Inherent Executive Power by Statute' (2013) 41 *Federal Law Review* 363-392

**Saunders, C**, 'Constitutional Reasoning as Legitimacy of Constitutional Comparison: Comment on Konrad Lachmayer' (2013) 14 *German Law Journal* 1493-1499

**Tham, J**, 'Deliberative Democracy and Electoral Management Bodies: The Case of Australian Electoral Commissions' (2013) 12 *Election Law Journal: Rules, Politics, and Policy* 386-400

**Weis, L**, 'What Comparativism Tells Us About Originalism' (2013) 11 *International Journal of Constitutional Law* 842-869

## Other Journal Contributions

**Crommelin, M**, 'The Mining Tax Court Challenge Explained' (2013) March *The Conversation*

**Crommelin, M**, 'The MRRT Survives, for Now: *Fortescue Metals Group Ltd v Commonwealth*' (2013) September *Opinions On High*

Dharmadasa, N, **Duxbury, A** and May, J, 'Australian Correspondents' Report' (2013) 15 *Yearbook of International Humanitarian Law* 1-9

**Gaze, B**, 'Damages for Discrimination: Compensating Denial of a Human Right' (2013) 116 *Precedent* 20-23

**Gaze, B**, 'Fair Work Ombudsman's Regulatory Powers: The Use of Enforceable Undertakings' (2013) 20 *Australian Journal of Administrative Law* 180-183

**Gaze, B**, 'Workplace Gender Equality Act 2012: Setting Standards through Delegated Legislation' (2013) 20 *Australian Journal of Administrative Law* 113-116

Gleeson, D and **O'Brien, P**, 'Trans-pacific Partnership Rules could Block Alcohol Warnings' (2013) July *The Conversation*

**Nicholson, P**, 'Book Review: Legitimacy, Legal Development and Change' (2013) 13 *Australian Journal of Asian Law* 1-5

**O'Brien, P**, 'Alcohol Warning Labels and "Valuable Label Real Estate"' (2013) March *The Conversation*

**Stone, A**, 'Tasmania's Abortion Protest Law is probably Constitutionally Valid' (2013) November *The Conversation*

# APPENDIX

## Advisory Board Profiles

### Ian Cunliffe

Ian Cunliffe has had a long career as a solicitor in private practice and a senior federal public servant. He has been a partner of some of Australia's largest legal partnerships, and also practised under his own name. Earlier, Ian was successively head of the Legal Section of the Department of Prime Minister and Cabinet, Secretary and Director of Research of the Australian Law Reform Commission and chief executive of the Australian Constitutional Commission. At the beginning of his career, Ian was Associate to Sir Cyril Walsh at the High Court of Australia. He holds degrees in Arts and Law from the Australian National University. His constitutional interests focus on the role of the Constitution as a brake on government and as a guarantor of freedom of interference by government. He was the unsuccessful litigant (3:4) in the implied rights case *Cunliffe v. The Commonwealth* (1994) 182 CLR 272.

### Dr Stephen Donaghue

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

### Dr Gavan Griffith AO QC

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

### Peter Hanks QC

Peter Hanks practices predominantly in public law; administrative law and constitutional law. He appears regularly for Commonwealth and State government agencies, and against those agencies, in the Federal Court, High Court, State and Territory Supreme Courts, Commonwealth AAT and VCAT. He has published several books on constitutional law and administrative law. He is a consultant to Butterworths' 'High Court and Federal Court Practice'.

### Wendy Harris SC

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

### Justice Chris Maxwell

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

### Justice Debbie Mortimer

Justice Mortimer was appointed to the Federal Court in July 2013, based in Melbourne. Prior to her appointment,

she was a member of the Victorian Bar and was appointed Senior Counsel in 2003. She remains a Senior Fellow at Melbourne Law School and a member of the Advisory Board of the Centre for Comparative Constitutional Studies.

Justice Mortimer's practice was principally in public law, together with anti discrimination and extradition law, and in all areas she acted for both applicants and respondents, and for and against government, in state and federal jurisdictions including in the High Court.

Justice Mortimer has had a substantial public interest practice, particularly in migration law, environmental law and anti-discrimination law, and was involved in many ground-breaking cases over the last 20 years. She has received a number of awards in respect of this work, including the 2011 Law Council of Australia President's Medal, the Victorian Bar's Pro Bono Perpetual Trophy and the Australian Human Rights Commission Law Award.

### Mark Moshinsky SC

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

### Stephen McLeish SC

Stephen McLeish was appointed Solicitor General for Victoria in April 2011. He was formerly Associate to Chief Justice Sir Anthony Mason (High Court of Australia) and a Solicitor with Arthur Robinson & Hedderwicks. He completed a Master of Laws Degree at Harvard in 1991 concentrating on Constitutional Law and Jurisprudence and has published articles on Public and Corporate Law.

### Professor Brian Opeskin

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

### Jason Pizer SC

Admitted to the Victorian Bar in 1999, Jason's areas of practise include Administrative Law (Judicial Review) and Administrative Law (Merits Review). From May 1994 until April 1995, prior to completing his articles at Mallesons Stephen Jaques, Jason worked as an associate to Sir Anthony Mason, the then Chief Justice of the High Court. Jason is currently the co-editor of *Kyrou and Pizer, Victorian Administrative Law*, the author of the chapter entitled 'Applications to the Victorian Civil and Administrative Tribunal' in the *Lawyers Practice Manual*, and has published articles in numerous journals on various areas of the law, including the Victorian Civil and Administrative Tribunal, freedom of information, company law, intellectual property law, torts law and equity.

### Justice Richard R S Tracey

Justice Tracey was appointed to the Federal Court of Australia in July 2006. A former student and senior lecturer at the University of Melbourne, Richard Tracey was Queen's Counsel in Victoria, Tasmania and New South Wales. His civil practice concentrated on administrative law and industrial law. He also had a long and distinguished military practise including as Judge Advocate and Reviewing Judge Advocate (Defence Force Magistrate). Since 2007 he has been the Judge Advocate General of the Australian Defence Force. He is also President of the Defence Force Discipline Appeal Tribunal.

He was a member of various Commonwealth tribunals and was senior counsel assisting the Royal Commission into the Building and Construction Industry.



To join our mailing list and receive notice of CCCS events and publications, please send an email to [law-cccs@unimelb.edu.au](mailto:law-cccs@unimelb.edu.au)

**Postal Address**

Centre for Comparative Constitutional Studies  
Melbourne Law School  
The University of Melbourne  
VIC 3010 Australia

**General Enquiries**

Telephone +613 8344 1011  
Facsimile +613 8344 1013

**[www.law.unimelb.edu.au/cccs](http://www.law.unimelb.edu.au/cccs)**