<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>DIRECTOR'S REPORT 2008</td>
<td>3</td>
</tr>
<tr>
<td>ABOUT THE CENTRE</td>
<td>6</td>
</tr>
<tr>
<td>OBJECTIVES/GOALS</td>
<td>6</td>
</tr>
<tr>
<td>ACTIVITIES</td>
<td>6</td>
</tr>
<tr>
<td>PEOPLE</td>
<td>7</td>
</tr>
<tr>
<td>DIRECTORS AND ADMINISTRATOR</td>
<td>7</td>
</tr>
<tr>
<td>CENTRE MEMBERS</td>
<td>8</td>
</tr>
<tr>
<td>ADVISORY BOARD</td>
<td>12</td>
</tr>
<tr>
<td>VISITORS TO THE CENTRE</td>
<td>13</td>
</tr>
<tr>
<td>RESEARCH ASSISTANTS FOR 2008</td>
<td>14</td>
</tr>
<tr>
<td>EVENTS</td>
<td>15</td>
</tr>
<tr>
<td>PUBLIC LECTURES</td>
<td>16</td>
</tr>
<tr>
<td>SEMINARS AND ROUNDTABLES</td>
<td>17</td>
</tr>
<tr>
<td>VISITING POSITIONS HELD BY CENTRE MEMBERS</td>
<td>27</td>
</tr>
<tr>
<td>SELECTED PRESENTATIONS AT INTERNATIONAL CONFERENCES BY CENTRE MEMBERS</td>
<td>27</td>
</tr>
<tr>
<td>SELECTED PRESENTATIONS AT NATIONAL CONFERENCES BY CENTRE MEMBERS</td>
<td>27</td>
</tr>
<tr>
<td>RESEARCH AND PUBLICATIONS</td>
<td>28</td>
</tr>
<tr>
<td>PUBLICATIONS EDITED IN THE CENTRE</td>
<td>29</td>
</tr>
<tr>
<td>2008 PUBLICATIONS BY CENTRE MEMBERS</td>
<td>29</td>
</tr>
<tr>
<td>GRANTS</td>
<td>32</td>
</tr>
<tr>
<td>RESEARCH SUPERVISION – RESEARCH HIGHER DEGREE STUDENTS</td>
<td>ERROR! BOOKMARK NOT DEFINED.</td>
</tr>
<tr>
<td>RESEARCH SUPERVISION – ADVANCED LEGAL RESEARCH &amp; LEGAL INTERNSHIP PROJECTS (LLB)</td>
<td>ERROR! BOOKMARK NOT DEFINED.</td>
</tr>
<tr>
<td>PUBLIC POLICY AND LAW REFORM</td>
<td>33</td>
</tr>
<tr>
<td>SELECTED SUBMISSIONS TO INQUIRIES AND OTHER INVOLVEMENT IN LAW REFORM</td>
<td>33</td>
</tr>
<tr>
<td>TEACHING PROGRAMS</td>
<td>34</td>
</tr>
<tr>
<td>OTHER ACTIVITIES</td>
<td>35</td>
</tr>
<tr>
<td>APPENDIX – ADVISORY BOARD</td>
<td>36</td>
</tr>
</tbody>
</table>
DIRECTOR’S REPORT 2008

2008 was another very busy and successful year with the Centre for Comparative Constitutional Studies delivering a full and engaging program of research, teaching, publication and public events.

On 1 July I was pleased to take up the role of Centre Director. I am privileged to follow in the footsteps of Professor Cheryl Saunders, the Foundation Director of CCCS and Associate Professor Simon Evans. I am especially grateful to Professor Saunders for assuming the Directorship from July 2007-July 2008 while I was on leave.

Research and Knowledge Transfer

In 2008 Centre members were actively engaged in research work on key topics in Australian and comparative public law.

During the year I participated in a meeting of the International Association of Constitutional Law (IACL) held at the Constitutional Court of Andorra to discuss the issue of International Law and national constitutions in the jurisprudence of constitutional courts. I attended a joint International Association of Constitutional Law (IACL)/United Kingdom Constitutional Law Group Round Table on The Regulatory State: Constitutional Implications in London. I participated in the executive committee meeting, the roundtable on regulation and participated in the meeting of the interest group on the use of foreign law in constitutional interpretation. In November, I gave my Inaugural Professorial Lecture “Foreign Law and Constitutional Interpretation: Cautious Comparativism or Judicial Activism?” The lecture sought to defend the use of foreign law in constitutional cases and explored how these sources are best employed.

Professor Cheryl Saunders, Foundation CCCS Director, participated in a Forum of Federations two-day International Seminar: Comparing High Courts in Federal Countries. The Seminar was held at the Faculty of Law of the University of Buenos Aires and brought together Constitutional Law experts from around the world to debate compare the way constitutional courts work in federal systems on five different continents and to debate the merits of different approaches to interpretation. Professor Saunders also participated in the Australia 2020 Summit convened by the Prime Minister of Australia, Kevin Rudd, at Parliament House to help shape a long term strategy for the nation’s future. She participated in The Future of Australian Governance stream which was concerned with democratic renewal, a more open government (including the role of the media), the structure of the Federation and the rights and responsibilities of citizens. Professor Saunders travelled to Vanuatu to give the keynote address at the Australasian Law Reform Agencies Conference (ALRAC) hosted by the University of the South Pacific, School of Law USP, Port Vila. She then went to Barcelona to chair a meeting of IACFS and spoke at the IACFS conference.

Associate Professor Carolyn Evans, CCCS Deputy-Director, gave a presentation ‘Religious Freedom and Equality: Principled Approaches to Religious Exemptions from Discrimination Law’ at the Research Unit for the Study of Society, Law and Religion, Roundtable on the Relationship between Law and Religion in Contemporary Society, held at the University of Adelaide. A/Prof Evans also joined the Board of Management of the Research Unit. Associate Professor Evans brought out a co-edited book: Cane, P, Evans, C M & Robinson, Z (eds) Law and Religion in Theoretical and Historical Context (Cambridge University Press, 2008) to which she also wrote the Introduction. Associate Professor Evans has been asked to prepare a supplemental paper on Freedom of Religion and Belief and the Law for the Australian Human Rights Commission’s National Report on Freedom of Religion and Belief in Australia. The report will cover issues such as Australia’s
international obligations, the constitutional protection of religious freedom, the relationship with discrimination law, religious vilification law and religious law in the Australian legal system.

**Associate Professor Simon Evans**, former CCCS Director, visited the National University of Singapore and the University of Cambridge. He also attended a planning conference for the Centre for Transnational Legal Studies (CTLS). Associate Professor Evans spoke at the *Human Rights Law & Policy 2008 Shaping the National Stage for a New Era of Rights* Conference held in Melbourne. His presentation was about reasonable limits on human rights and building a culture of human rights.

**Associate Professor Beth Gaze** attended a Joint Annual Meeting of the Canadian Law and Society Association and the (US) Law and Society Association in Montréal, Canada. She presented at a Roundtable on *Transnational Feminisms*, speaking about equality issues relating to women’s work in Australia, and in particular on whether reforms to WorkChoices can or are likely to reverse its detrimental impact on women, who are overrepresented among the casual and low paid workers whose conditions were worst affected. A/Prof Gaze is a member of the Advisory Committee of the Review of the Equal Opportunity Act (Vic) being conducted for the Department of Justice (appointed September 2007). She also made several submissions as follows: Submission in response to the Equal Opportunity Review Issues Paper, January 2008; Submission to the Exceptions Review, April 2008; and Submission in response to the Equal Opportunity Review Options Paper, May 2008.

**Dr Michelle Foster** was invited to attend a workshop organised by the Minerva Centre for Human Rights at Tel Aviv University entitled ‘Designing an Asylum System in Israel’. Dr Foster was invited to present a paper on the ‘Social and Economic Rights of Asylum Seekers and Refugees’, which analysed Israel’s international obligations towards refugees and discussed examples of international ‘best practice’ on which Israel may model a system of refugee protection. Dr Foster also spoke at a public forum entitled “Are We There Yet? Where we are up to in the struggle for refugee rights” in Melbourne. Dr Foster, together with Julian Burnside and Paris Aristotle, assessed the new government’s record to date in complying with Australia’s international obligations in. Together with Professor Saunders Dr Foster wrote a joint report for the meeting of the IACL in Mexico. The 1st Intermediate Congress of the International Academy of Comparative Law concerning "The Impact of Uniform Law on National Law. Limits and Possibilities" hosted by the Mexican National Committee took place in Mexico.

**Associate Professor Pip Nicholson** was invited, in her capacity as a Vietnamese court system expert, to Hanoi, Vietnam, on a research consultancy mission. She worked with the Supreme People’s Court to establish a pioneering public searchable database of Vietnamese Court Judgements. A/Prof Nicholson also carried out research on her Australian Research Council Discovery Project ‘Testing Court Reform Projects in Cambodia and Vietnam’.

**Associate Professor Jeremy Gans** had two publications: “Evidence Law Under Victoria’s Charter: Rights and Goals – Part 1” in the Public Law Review and “Charter of Frights” at inside.org.au which asks the question ‘Has fear of upsetting the public caused Victoria’s new human rights charter to lose its way?’ A/Prof Gans argues that it’s a question with national implications. A/Prof Gans also gave two speeches: “The Fear Factor: Criminal Justice in the Charter’s First Year” at the Protecting Human Rights conference at Melbourne Law School and “Litigation under Victoria’s Charter of Human Rights” at a Deakin Law School conference held in Warrnambool.
Dr Joo-Cheong Tham was a British Academy Visiting Fellow at King's College, University of London, where he undertook a comparative study of control orders in Australia and the United Kingdom in relation to the protection of human rights. He is also writing a book on Australian political finance law that will be published by UNSW Press in 2009.

**Major Centre Research Projects**
A number of Australian Research Council Grants were awarded to Centre Members for projects including:

- Freedom of Expression in Democratic States, Professor Adrienne Stone.
- Non-Discrimination Laws and Religious Freedom: Current Conflicts and Future Directions, Associate Professors Carolyn Evans and Beth Gaze

**Major Centre Events**
In addition to a full program of public seminars and roundtables, the 2008 Protecting Human Rights Conference, co-hosted by the CCCS on 3 October 2008, was a very successful and well attended event. This one day event discussed developments in the protection of human rights by Australian charters and human rights acts. Over 220 people including many MPs from the states’ legislative review committees, all of the Commissioners for Equal Opportunity and Anti-Discrimination Commissioners from around Australia, members of the legal fraternity, academia, government and human rights and indigenous communities attended. They listened to leading Australian and international speakers discuss the role of judges in assessing limitations on rights and the use of international and comparative law, the intersection of anti-discrimination laws with human rights legislation, the effect of human rights protection on the private sector and the relevance of human rights in criminal trials. The conference provided an important opportunity to examine the Victorian Charter of Human Rights and Responsibilities and the Australian Capital Territory’s Human Rights Act and other charters of rights.

**Significant Publications**
Centre members have published numerous books, articles and chapters on constitutional law during 2008. Some highlights include:


**Advisory Board**
Pamela Tate SC, Solicitor-General for Victoria, resigned from the CCCS Advisory Board on 16 October 2008. We are very grateful to Ms Tate for her service to the Centre.

**Looking forward**
In 2009, a full and exciting program of events is planned including a major national conference to celebrate the Centre's 21st Birthday. Over 2009, 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.

The Directorship of the Centre was Professor Cheryl Saunders (July 2007 to July 2008) and Professor Adrienne Stone (1 July 2008 onwards) and its members are drawn from the Law School's faculty. The Centre’s advisory board consists of leading Australian and international public lawyers.

Objectives
The objectives of the Centre for Comparative Constitutional Studies are:

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

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

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

**Directors and Administrator**

**Professor Adrienne Stone**  
*Director CCCS*

Adrienne Stone joined the Faculty and the CCCS at the end of 2006 from the Research School of Social Sciences at ANU. Her research interests lie in constitutional law, comparative constitutional law and constitutional theory. She has published extensively on Australian constitutional law, with a special focus on freedom of political communication, comparative constitutional law of freedom of speech and the legal and institutional questions surrounding bills of rights. Adrienne Stone was appointed to a Chair in Law in 2007. She was previously a Fellow in the Law Program at the Research School of Social Sciences at the Australian National University where she was also a Senior Lecturer in the Faculty of Law. Previous positions include Associate-in-Law at Columbia Law School, a solicitor at Malleson Stephen Jaques in Sydney and Associate to the Hon. Justice M.H. McHugh of the High Court of Australia. She has also taught as a visitor at Tulane Law School and the University of Western Ontario (Canada).

Her research interests lie in constitutional law, comparative constitutional law and constitutional theory. She has published extensively on Australian constitutional law, with a special focus on freedom of political communication, comparative constitutional law of freedom of speech and the legal and institutional questions surrounding bills of rights. Her recent publications include an edited collection *Hate Speech and Freedom of Speech in Australia* (co-edited with Dr Katharine Gelber, Federation Press, 2007) and an article 'Judicial Review without Rights' forthcoming in the *Oxford Journal of Legal Studies*.

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

**Associate Professor Carolyn Evans**  
*Deputy-Director CCCS*

Associate Professor Carolyn Evans is Associate Dean (Research) of the Melbourne Law School and a Deputy Director of the Centre for Comparative Constitutional Studies. Her teaching and research are in the areas of constitutional law, human rights and religious freedom. Carolyn has degrees in Arts and Law from Melbourne University and a doctorate from Oxford University where she studied as a Rhodes Scholar and where she held a stipendiary lectureship for two years before returning to Melbourne in 2000. She also qualified to practice law and is a barrister and solicitor of the Supreme Court of Victoria.

between law and religion and has spoken on these topics in the United States, United Kingdom, Russia, China, Greece, Vietnam, India, Hong Kong, Switzerland and Australia. From 2007-2009 she is undertaking a joint ARC Discovery Project with Beth Gaze on the topic of religious freedom and non-discrimination 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. She is currently completing an ARC Discovery Grant on this topic with Associate Professor Simon Evans. Papers from the project can be found on the website of the Centre for Comparative Constitutional Studies.

Dr Madeline Grey
Administrator

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

Centre Members

Professor Cheryl Saunders AO
Foundation Director CCCS

Cheryl Saunders is a laureate professor at the University of Melbourne, with a personal chair in law. She was the founding director of the Centre for Comparative Constitutional Studies and has been a Fellow of the Academy of the Social Sciences in Australia since 1994. During 2008, she was the Associate Dean (JD) in the Faculty, responsible to the Dean for its transition to a fully graduate law school.

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 Judicial Remuneration Tribunal of Victoria. She is an editor of the Public Law Review, a symposium editor of I.CON, and a member of the editorial boards of a range of Australian and international journals, including Publius and Jus Politicum. She has held visiting positions at the universities of Cambridge, Paris II, Indiana (Bloomington), Hong Kong, Copenhagen, Fribourg, Capetown and Auckland and has an honorary doctorate from the University of Cordoba, Argentina.

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

Beth Gaze has a BSc from the University of Melbourne, an LLB (Hons) from Monash University, an LLM from the University of California, Berkeley and a PhD from Monash University. Her interests are in anti-discrimination and equality law, feminist legal thought, and administrative law including tribunals, and on empirical legal research generating knowledge about the actual operation of the legal system. She has 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 2007-8. 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 Associate Professor Carolyn Evans). During 2009, she is 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.

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

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 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 BComm (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 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 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.

**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. 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, Wurridjal v Commonwealth and The Queen v Tang. She has also appeared in cases concerning the Victorian Charter of Human Rights and Responsibilities.

Mr Glenn Patmore
Senior Lecturer

Glenn Patmore has an LLB (Hons) and a BA from Monash University, and an LLM from Queens University, Canada. 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 & Labour Relations Law.

Dr Joo-Cheong Tham
Senior Lecturer

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. He speaks English, Malay and Cantonese. His key research areas are the regulation of non-standard work, anti-terrorism laws and political finance law. He has published over 25 book chapters and refereed articles. His research has also been published in print and online media with Joo-Cheong having written more than 30 opinion pieces. He has also given evidence to parliamentary inquiries into terrorism laws and political finance law. He is currently working on three separate areas. The first focuses on the role of political parties in the protection of rights and will result in a chapter in a book edited by Tom Campbell, Keith Ewing and Adam Tomkins and the second deals with the legal protection of temporary migrant work. In the area of political finance, Joo-Cheong is writing a book on Australian political finance law that will be published by UNSW Press in 2010. He is also currently editing two books, both of which will be published in 2010: 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.

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 Jeremy Gans**

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

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

**Mr John Waugh**

*Senior Lecturer*

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

**Professor Geoffrey Lindell**

*Professorial Fellow*

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

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

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

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

Advisory Board

- Ian Cunliffe
- Dr Stephen Donaghue
- Dr Gavan Griffith AO QC
- Peter Hanks QC
- Wendy Harris
- Justice Chris Maxwell, President, Court of Appeal
- Debbie Mortimer SC
- Mark Moshinsky SC
- Stephen McLeish
- Professor Brian Opeskin
- Jason Pizer
- Justice Richard Tracey, Federal Court of Australia
- Pamela Tate SC, Solicitor-General for Victoria (resigned 16 October 2008)

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

Visitors to the Centre

During 2008, the Centre hosted the following International scholars in short and long research visits:

Professor Heping Dong, Director, International Exchange Centre of NUPL, Northwest University of Politics and Law, People’s Republic of China, 2 January – 30 June 2008

Professor Ian Leigh, Professor of Law, University of Durham, 28 January – 7 March 2008

Associate Professor James Kelly, Associate Professor, Department of Political Science, Concordia University, Montreal, Quebec, 4 February – 3 March 2008
Mr Roger Masterman, Human Rights Centre, Department of Law, University of Durham, 4 March – 28 March 2008

Professor Aniceto Masferrer, Professor of Comparative Legal History, Law School, University of Valencia, 15 July – 15 October 2008

Professor Christina Murray, Professor of Constitutional and Human Rights Law & Head of the Department of Public Law, University of Cape Town, South Africa, 17 July – 15 August 2008

Ms Kylie Evans, Human Rights Specialist, 11 August – 22 December 2008

Professor Graeme Austin, J Byron McCormick Professor of Law, University of Arizona, USA, 8 September 2008 – 28 February 2009

Dr Harshan Kumarasingham, Research Fellow, School of Government, Victoria University of Wellington, 12 October – 9 November 2008

Professor Peter Leyland, Professor of Public Law, London Metropolitan University, the United Kingdom, 12 November – 27 November 2008

Professor Alex Graser, Professor of Comparative Public Law and Social Policy, Hertie School of Governance, Berlin, Germany, 17 November 2008

Professor Brice Dickson, Professor of International and Comparative Law and Director of the Human Rights Centre, Queen’s University Belfast, 24 November – 19 December 2008

Professor Janet Hiebert, Department of Political Studies, Queen’s University, Canada, 15 December 2008 – 16 February 2009

Assistant Professor Rosalind Dixon, Assistant Professor, University of Chicago Law School, 16 December 2008

Research Assistants for 2008

This is a partial list of the research assistants who worked with Centre members on research projects during 2008:

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

Associate Professor Simon Evans
David Hume, Katy Le Roy, Katie Mitchell, Elizabeth Sheargold

Dr Michelle Foster
Anne Kallies, Nawaar Hassan, Kat Brazenor

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

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

Professor Cheryl Saunders
Gabrielle Appleby, Megan Donaldson, Zach Meyers, Hal Tileman

Professor Adrienne Stone
Michael Power, Christopher Tran

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

EVENTS

International Conference

The 2008 Protecting Human Rights Conference, co-hosted by the CCCS, was a very successful and well attended event. This one day event discussed developments in the protection of human rights by Australian charters and human rights acts. Over 220 people including many MPs from the states' legislative review committees, all of the Commissioners for Equal Opportunity and Anti-Discrimination Commissioners from around Australia, members of the legal fraternity, academia, government and human rights and indigenous communities attended. They listened to leading Australian and international speakers discuss the role of judges in assessing limitations on rights and the use of international and comparative law, the intersection of anti-discrimination laws with human rights legislation, the effect of human rights protection on the private sector and the relevance of human rights in criminal trials. The conference provided an important opportunity to examine the Victorian Charter of Human Rights and Responsibilities and the Australian Capital Territory's Human Rights Act and other charters of rights.

Papers presented at the conference discussed:
- Human Rights Acts in Australia: Current Developments
- The Victorian Charter of Human Rights and Responsibilities
- The ACT Human Rights Act
- The State of Play in other Australian Jurisdictions
- Limiting Rights under Human Rights Acts
- A New Zealand Perspective
- A United Kingdom Perspective (via DVD)
- A Comparative Law Perspective on Human Rights Acts
- Human Rights Acts in Practice
- Equality Rights and the Relationship with Anti-discrimination Legislation
- Human Rights in the Criminal Trial
**Featured speakers included:**

- The Right Hon Chief Justice Dame Sian Elias, New Zealand
- Lord Justice Sir Stephen Sedley, Judge of the Court of Appeal of England and Wales (via dvd)
- Professor Johannes Chan SC, Dean of the Faculty of Law, University of Hong Kong
- The Hon Justice Marcia Neave, Court of Appeal, Victoria
- Debbie Mortimer SC, the Victorian Bar
- Joanna Davidson, Special Counsel Human Rights, Victorian Government Solicitor’s Office
- Associate Professor Carolyn Evans, Deputy Director CCCS, Associate Dean (Research), the Melbourne Law School
- Associate Professor Jeremy Gans, the Melbourne Law School, Human Rights Adviser to the Victorian Parliament’s Scrutiny of Acts and Regulations Committee
- Professor Hilary Charlesworth, RegNet and Director of the Centre for International Governance and Justice (CIGJ), ANU
- Edward Santow, Senior Lecturer, Faculty of Law and Project Director, Australian Human Rights Centre, Gilbert + Tobin Centre of Public Law, UNSW

Most of the papers presented at the Conference are available from the Centre’s [website](#).

### Public Lectures

**Inaugural Professorial Lecture**

**Foreign Law and Constitutional Interpretation: Cautious Comparativism or Judicial Activism?**

*Professor Adrienne Stone, Director of the Centre for Comparative Constitutional Studies, Melbourne Law School 26 November 2008*

Judges throughout the world routinely refer to the judgements of courts in other countries for guidance however the practice remains sharply contested. Some judges and scholars go so far as to claim that reference to foreign law amounts to an unethical activism. In her inaugural Professorial lecture, Professor Stone defended the practice against claims of judicial activism and considered the following questions:

- Is it legitimate to refer to foreign law in interpreting the Australian Constitution?
- Is foreign law relevant to the Australian Constitution?
- How should judges use foreign law in constitution cases?

**Professor Adrienne Stone** is the Director of the Centre for Comparative Constitutional Studies at Melbourne Law School and an elected member of the AACL Council. She researches in the areas of constitutional law and constitutional theory. She has published extensively on freedom of expressions, the legal and institutional questions surrounding bills of rights and on judicial method in constitutional cases.
Seminars and Roundtables

Pictured left to right: Associate Professor Simon Evans, Professor Cheryl Saunders, Professor Ian Leigh

Professor Ian Leigh, Professor of Law at the University of Durham, UK.
19 February 2008

In this seminar, Professor Leigh explored the application of the Human Rights Act 1998 to criminal trials, especially in the treatment of improperly obtained evidence and of appeals against unsafe convictions.

Ian Leigh is a Professor of Law at the University of Durham and Co-Director of the Durham Human Rights Centre. He has published widely in the fields of public law and human rights, including books dealing with religious liberty, with local government law and democracy, and the oversight of security and intelligence agencies, as well as many journal articles. His current research includes a book on remedies under the Human Rights Act 1998 (with Roger Masterman) Making Rights Real (published by Hart Publishing in 2008) and a Handbook on the Human Rights of Members of the Armed Forces for the Organization for Security and Cooperation in Europe (with Hans Born).

Pictured: Associate Professor Carolyn Evans and Associate Professor James Kelly

Twenty-Five Years under the Canadian Charter of Rights: Problematic Dialogue and an Unfinished Rights Revolution.
Associate Professor James Kelly, Department of Political Science at Concordia University, Montreal, Quebec.
28 February 2008

Professor Kelly challenged the position that the Victorian Charter preserves parliamentary supremacy by considering intra-parliamentary relationships that are affected by the introduction of a statutory bill of rights. While the Victorian Charter has succeeded in preventing the emergence of judicial supremacy, it has further empowered the Cabinet at the expense of members of parliament outside of the executive on both the government and opposition benches. Indeed, the introduction of a statutory Charter of Rights can undermine parliamentary supremacy because of the Cabinet’s decision on how to govern with a Charter of Rights – from the centre, to the exclusion of Parliament, and in a manner that leads to a further distortion of the principle of responsible government.

James Kelly is an Associate Professor, Department of Political Science, Concordia University, Montreal, Quebec. Dr Kelly’s research involves the judicialization of politics associated with the introduction of the Canadian Charter of Rights and Freedoms and its impact on parliamentary and bureaucratic institutions. He has published Governing with the Charter: Legislative and Judicial Activism and Framers Intent. Vancouver: University of British Columbia Press, 2005.
The co-operative constitution? Inter-institutional ‘dialogue’ and the separation of powers after the Human Rights Act 1998.

Roger Masterman, Lecturer in Law at the University of Durham, UK
13 March 2008

In this seminar, Roger Masterman explored the constitutional impact of the Human Rights Act and its effect on the separation of powers in the UK - assessing the effectiveness of the politicised method of rights protection in practice.

Roger Masterman is a Lecturer in Law at the University of Durham. His teaching and research interests lie in constitutional law and reform – particularly in the Human Rights Act 1998 and in the doctrine of separation of powers – and he has published articles on these topics in Public Law, The International and Comparative Law Quarterly and the European Human Rights Law Review. He is co-editor of Judicial Reasoning under the UK Human Rights Act (Cambridge University Press, 2007), and is currently working, with Professor Ian Leigh, on a book for Hart Publishing entitled, *Making Rights Real: Enforcing the Human Rights Act*.

The Kable Principle: After Forge and Gypsy Jokers.

Jonathon Redwood, Victorian Bar
31 March 2008

In this seminar Jonathon Redwood examined the scope and limits of the High Court’s decision in *Kable v DPP* (1996) 189 CLR 51 in light of two recent decisions of the High Court: *Forge v ASIC* (2006) 228 CLR 45 (the acting judges case) and *Gypsy Jokers Motorcycle Club Incorporated v The Commissioner of Police* [2008] HCA 4. The former decision although not invalidating the legislation in that case, may be seen as breathing some life into a principle that had seemed somewhat of a “dead letter” and confined to extreme facts of the type in *Kable* itself. While in *Gypsy Jokers* the Court considered application of *Kable* to the difficult issue of the withholding of confidential and sensitive evidence from a party to a criminal proceeding.

Jonathon Redwood is a member of the Victorian Bar and List A Barristers. He holds an LLM from Harvard University and was previously a senior associate at Sullivan & Cromwell LLP from 1999-2005 and prior to that was associate to Chief Justice John Doyle of the Supreme Court of South Australia.

Between the Devil and the Deep Blue Sea?

Administrative Law in an Age of Rights.

Dr Thomas Poole, London School of Economics, UK
1 April 2008

Dr Poole examined the impact of the new jurisprudence of rights on administrative law. He argued that commentators tend to conceptualise this development in terms of constitutionalisation and internationalisation. He will examine the effects of this process in two jurisdictions – the UK.
and Australia – which present sharply opposed responses. Australian courts seem by and large to have rejected the international discourse of rights, retreating to the apparent safe haven of old-fashioned Dixonian legalism. Rules are preferred to principles, and strict textual exegesis prized above context-sensitive adjudication. The situation in the UK presents a radically different picture: courts seemingly awash on a sea of principles, and pre-existing rules partially abandoned or downgraded. The courts have opened themselves up to the influence of international law and the decisions of foreign courts. All this has resulted in a complicated stew in which the new principles have not been given anything like coherent shape. In this seminar questions such as whether, absent the discovery of coherent limiting devices, the prospect of ‘judicial lawlessness’ can be avoided in the application of rights-based administrative law will be raised and discussed.

Dr Thomas Poole studied Law at University College London, St. John’s College, Oxford and the University of Manchester. He taught at the University of Nottingham for 6 years before joining the LSE in September 2006. Tom has also held Visiting Fellowships at the University of New South Wales (2004-6) and the European University Institute (2007).

Tom’s main teaching and research interests lie in the field of constitutional and administrative law and theory. He currently teaches Public Law, Administrative Law, and Civil Liberties & Human Rights at LSE. His doctoral thesis on common law constitutionalism has since been published in a series of articles. He has also published articles on emergency constitutionalism, the constitutional thought of John Griffith and the political theory of John Locke.

Launch of a book by Carolyn Evans and Simon Evans
Australian Bills of Rights
By Justice Chris Maxwell, President, Victorian Court of Appeal
9 April 2008

Justice Chris Maxwell launched this new authoritative work Australian Bills of Rights: the Law of the Victorian Charter and ACT Human Rights Act (Lexis Nexis 2008) which guides the reader through the complex statutory provisions in the Australian human rights Acts and provides detailed analysis of the key issues. This text will help lawyers, government agencies and all those whose rights are protected to rethink the role of human rights in law and government action.

Carolyn Evans and Simon Evans have written a significant book which provides a detailed examination of the Victorian Charter and the ACT Human Rights Act and draws on international law and comparative material from the United Kingdom, New Zealand, South Africa and many other countries to provide an essential guide to using the new rights Acts. Further information for academics is available (click) here and for practitioners (click) here.

Associate Professor Carolyn Evans BA, LLB (Hons) (Melbourne), DPhil (Oxford) is the Associate Dean (Research) and Deputy Director at the Centre for Comparative Constitutional Studies, Melbourne Law School, and a barrister and solicitor of the Supreme Court of Victoria.

Associate Professor Simon Evans BSc (Hons), LLB (Hons) (Sydney), PhD (Cambridge) is the Deputy Dean at the Melbourne Law School, University of Melbourne, a legal practitioner admitted in NSW, and a barrister and solicitor of the High Court of Australia.
Legitimate Expectations in Administrative Law.
Mr Richard Gordon QC, Barrister, United Kingdom 16 April 2008

The seminar explored the different ideas that underpin the doctrine of legitimate expectation in various common law jurisdictions. Mr Gordon focussed on the creative tension that substantive legitimate expectation engenders between the judiciary and the executive and examined whether or not substantive expectation accords to judges a constitutional role for which they are properly equipped.

Richard Gordon QC is a public law specialist whose work encompasses all areas of Judicial review and Public Law (including human rights). These include (but are by no means confined to) public law cases in the fields of regulatory, disciplinary, commercial, environmental, telecommunications, European Community, local authority, environmental, pharmaceuticals etc. He is the author of many leading works on judicial review, human rights law and EC law and is currently lecturing in Australia and New Zealand as a Visiting Fellow at Melbourne and Auckland Universities.

Amongst his many cases in public law he successfully represented Mrs Coughlan in the landmark decision in R v. N&E Devon Health Authority, ex p. Coughlan which has been endorsed as the authoritative ruling on legitimate expectation in many common law jurisdictions (though not Australia). He has recently successfully represented the British Medical Association in their judicial review over the Government’s reneging over pension awards for GPs, and has also just successfully represented Ian Norris CEO of Morgan Crucible before the House of Lords resisting extradition over allegations in respect of price fixing in the USA.

He has also appeared in many foreign jurisdictions and earlier this year represented Michael Rowse Director-General of Invest Hong Kong in his judicial review before the Hong Kong courts against the Hong Kong Government alleging breach of natural justice in a high profile disciplinary inquiry over Mr Rowse’s handling of the Harbour Fest.

In the field of human rights law he has appeared in many landmark cases in domestic and international courts. His recent successes before the European Court of Human Rights in Strasbourg include Roch v. UK (a challenge to Crown immunity in resisting damages claims by service personnel) and HL v. UK (a challenge to the legality of informal detention of incapacitated patients).

Giving Teeth to International Human Rights Treaties: Commissions, Courts and Corporations - A Practitioner’s Perspective.
Professor Brian Burdekin, Visiting Professor at the Raoul Wallenberg Institute, Sweden 17 July 2008

In the last two decades the international order has changed dramatically - and institutions designed to protect human rights have evolved. New institutions, in particular National Human Rights Commissions, have (with Australia’s assistance) been created in over 50 countries, in part to address the significant inadequacies of judicial systems in redressing violations by the Executive or forces it controls. Governments have increasingly “privatised” or “out-sourced” many essential services - but, in breach of international law, have frequently failed to ensure the private sector is appropriately regulated.
In this seminar Professor Burdekin considered recent international developments in protecting human rights with reference, in particular, to developments in Australia, Africa, Europe, China, India, Indonesia, Korea and other Asian countries where he has recently been advising Governments, Commissions and civil society.

Professor Brian Burdekin AO is a leading international expert on National Human Rights Institutions. He is currently Visiting Professor at the Raoul Wallenberg Institute in Sweden, teaches in the post-graduate programme at Melbourne Law School, and is International Adviser to a number of National Human Rights Institutions in Africa, Asia and Central and Eastern Europe.

From 1995 to 2003, as Special Adviser on National Institutions to the first three United Nations High Commissioners for Human Rights, he conducted over 200 missions to 55 countries in Africa, Asia, Europe and Latin America where governments or civil society had expressed interest in creating an independent Human Rights Commission or similar institution.

Previous positions include Federal Human Rights Commissioner of Australia (1986 to 1994) and adviser to a former Australian Prime Minister, Deputy Prime Minister and Federal Attorney General (1978 to 1986). Prior to this he was a diplomat and lawyer.

"Constitutional dictatorship" no doubt strikes most people as an oxymoron (at least if we are talking about liberal constitutions), inasmuch as the very definition of constitutionalism for most analysts is the creation of institutions designed to protect against tyranny or even arbitrary government. Yet there is a tradition of political (and constitutional) theory going back at least to ancient Rome that addresses the potential desirability of dictatorship, especially in times of emergency, and attempts in effect to "constitutionalize" it by embedding it within a variety of procedural constraints, including, very importantly, a time limit.

The most ominous defender of sovereign prerogative, of course, is the German (and Nazi) theorist Carl Schmitt, which for some people is enough to discredit the entire idea. Yet there are also less-theoretical examples of possible "dictatorship" within the American legal tradition, the most notable examples involving Abraham Lincoln during the American Civil War, though one can certainly point as well to more contemporary presidents from FDR to the current President, George W. Bush.

The American political scientist Clinton Rossiter argues that any complete theory of constitutional government must include a place for "constitutional dictatorship." From the perspective of constitutional designers, this obviously raises the question of 'suspension clauses' during times of ostensible emergencies. For established systems without suspension clauses, this involves questions of "constitutional interpretation," such as the fact that Article II, fails to include the magic words "herein granted" when specifying that the President holds "executive power," in contrast to Article I setting our "legislative power." In any event, "constitutional dictatorship" presents an important way of understanding the enterprise of constitutional government.

Professor Sanford Levinson, who holds the W. St. John Garwood and W. St. John Garwood, Jr. Centennial Chair in Law, joined the University of Texas Law School in 1980. Previously a member of the Department of Politics at Princeton University, he is also a Professor in the Department of Government at the University of Texas. The author of over

**The party and the judges: Threats to the independence of the judiciary in South Africa.**

*Professor Christina Murray, University of Cape Town, South Africa*

*13 August 2008*

In 1993, when South Africa’s transition to democracy was negotiated, there was agreement that the independence of the judiciary should be strongly protected in a future constitution. The contentious points were the appointment of judges, the jurisdiction of the top court and the structure of the courts. Once these matters were settled it was assumed that, although legislation was needed to tidy up some details, the position of the judiciary and the independence of courts were secure. Since then, however, South African courts and particularly the Constitutional Court have been embroiled in controversy. The two central issues are (i) the promulgation of a draft constitutional amendment which seeks to regulate the relationship between the executive and the judiciary, and which appears to give the executive undue control over the courts and (ii) the apparent failure of procedures for dealing with judicial misconduct (leading, inter alia to a Cape High Court judge instigating legal action against the Constitutional Court). A recent split in the governing African National Congress and criminal proceedings against the Jacob Zuma, the national “president-in-waiting” have complicated matters.

**Christina Murray** is Professor of Human Rights and Constitutional Law at the University of Cape Town. Between 1994 and 1996 she served on a panel of seven experts advising the South African Constitutional Assembly. Since then her work has focused on constitution making, constitutional design and the implementation of constitutions.

**Codification system in the Anglo-American Legal Tradition: The case of New York.**

*Professor Aniceto Masferrer, Professor of Comparative Legal History, University of Valencia, Spain*

*27 August 2008*

Codification has been a perennial issue in the American legal tradition. However, the codification movement does not belong to the past centuries, particularly to the nineteenth and twentieth centuries. It is still a current issue which continues to concern both American law and American legal historiography. It is difficult, if not impossible, to find another topic in American legal history with so many and such different implications and consequences for the development of American law and jurisprudence.

The codification controversy arose in the nineteenth century at two different moments: the antebellum period (1820s and 1830s) and the postbellum period (1870s and 1880s). While the former constituted the first sustained challenge to the democratic legitimacy of the common law, in the latter the American legal profession engaged in a heated debate about the wisdom of replacing the substantive common law with a written civil code. Legal historiography has paid more attention to the postbellum codification debate rather than to the antebellum one, especially in the last two decades.
The seminar explored this controversy and how it arose. Some of the key issues that were discussed included who were the main protagonists, what their main views were and how they argued to defend their legal theories.

**Aniceto Masferrer** is currently Professor of Comparative Legal History, University of Valencia, Spain, and was a Visiting Scholar at Melbourne Law School. He is the author of four books and more than thirty articles published in Spanish, European and American law journals. Professor Masferrer’s research focuses on legal reform in the Anglo-American legal tradition, and particularly on the Codification movement in Australia. This subject constitutes part of a wider research project which led him to work at the Universities of Cambridge (2005) and Harvard (2006), where he dealt with the Codification issue in the United Kingdom and the United States. At Harvard Law School he worked on the codification of American law.

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**The Evolution of a Revolution: The Singapore Constitution after 40 Years.**

**Professor Li-ann Thio, Faculty of Law, National University of Singapore**

24 September 2008

After seceding from the Federation of Malaysia in 1965, Singapore had the perfect opportunity to craft a popularly-endorsed constitution. Instead, bowing to the exigencies of nation-building, it pragmatically retained the 1958 State Constitution, augmenting it with Malaysian constitutional provisions. Distinct alterations representing a ‘rupture’ from the Malaysian model were made in relation to the constitutional management of race and state-religion relations. The general decision to retain the existing government structure, which favoured stability, belied the revolutionary changes to Singapore’s Constitution over the next 40 years, transforming its erstwhile Westminster-style constitution into something quite unique. This included the creation of an elected presidency with limited executive powers, non-elective parliamentarians and a multi-member electoral constituency designed to guarantee legislative representation for racial minorities. None of the constitutional amendments have enlarged the scope of fundamental liberties and indeed, in an age of transnational judicial conversation, Singapore courts have exhibited a distinctive rejection of rights-oriented discourse in valorising public order arguments. Amendments have also substantially truncated judicial review in relation to national security, realigning institutional checks and balances in favour of the political branches of government.

In Hebrew tradition, 40 years marks the passing of a generation. It also marks the attainment of maturity and coming of age. With respect to Singapore, the passage of her first 40 years marks an evolution from a self-professed ‘third world’ state to a ‘first world nation’. This seminar evaluated salient developments in the making, re-making and interpretation of Singapore constitutional law and practice, to shed light on the evolution/revolution of the Constitution, in the continuing project of developing an autochthonous basic law.

**Professor Li-ann Thio** teaches and researches public international law, international human rights law, constitutional and administrative law at the Faculty of Law, National University of Singapore. She holds a BA (Hons) from the University of Oxford, a LL.M from Harvard Law School and a Ph.D. from the University of Cambridge. She is a barrister (Gray’s Inn UK) and is currently a Nominated Member of the Singapore Parliament (Eleventh Session). Formerly Chief Editor of the *Singapore Journal of International & Comparative Law*, she is currently General Editor, *Asian Yearbook of International Law*, *Editor, Journal of East Asia and International Law* and the *Australian Journal of Asian Law*, and sits on the Advisory Board of the *New Zealand Yearbook of International Law and International Human Rights and Legal Discourse*
Her publications include the leading casebook Constitutional Law in Malaysia & Singapore (Butterworths, 1997, with Kevin YL Tan) and Managing Babel: The International Legal Protection of Minorities in the Twentieth Century (Brill, 2005). She has published numerous law review articles in her fields of research.

**Bicameralism and the British House of Lords.**

*Dr Meg Russell, Reader in British and Comparative Politics, Constitution Unit, Department of Political Science, University College, London, United Kingdom.*

*21 October 2008*

The seminar examined the changing role of the British House of Lords since a reform in 1999 which changed its composition by removing most hereditary peers. The chamber remains wholly unelected, and so should be expected to still be weak and lacking in democratic legitimacy. However since the reform it has grown stronger and more assertive. The seminar asked why, and what this tells us more widely about bicameralism.

**Dr Meg Russell** is a Reader in British and Comparative Politics and has been a Senior Research Fellow at the Constitution Unit, University College London, since August 1998. She is largely responsible for the Unit's research work on parliament and has a particular interest in bicameralism. In 2000 she published *Reforming the House of Lords: Lessons from Overseas* (OUP). She has also written on political party organisation, candidate selection and women's representation in politics. Dr Russell has worked closely with policy makers throughout her career, including spells working in parliament, for the Labour Party and as a government adviser. In 1999 she was a consultant to the Royal Commission on Reform of the House of Lords, and she has given evidence to several parliamentary committees. From 2004-2007 she led a major project investigating the impact of the 1999 reform on the House of Lords.

**Political responsibility for rights protection in New Zealand.**

*Dr Petra Butler, Associate Director of the New Zealand Centre for Public Law at the Victoria University of Wellington, NZ*  
*28 October 2008*

**The seminar** explored the Attorney-General's duty to report to Parliament under section 7 of the New Zealand Bill of Rights Act 1990.

**Dr Petra Butler** is qualified as a lawyer in Germany and New Zealand. She obtained her LLM from Victoria University of Wellington, New Zealand, in 1992 and her PhD from Goettingen, Germany, in 1998. She was a judge's clerk at the South African Constitutional Court in 1995/1996 and has worked as an advisor in the Bill of Rights/Human Rights team at the New Zealand Ministry of Justice. Dr Butler started her academic career as a researcher at the Institute for Private International Law and Comparative Law at the University of Goettingen, Germany, and worked later as a researcher at the Research Centre of Public Administration at the University of Speyer, Germany. Since 2000 she teaches and researches at Victoria University of Wellington, New Zealand. Her main research interest is human rights. She has co-authored the Law of New Zealand part on the New Zealand Bill
of Rights Act 1990 and a commentary on that 1990 Act. Since 2007 she is the Associate Director of the New Zealand Centre for Public Law.

**Disintegration through Law? - On the Decomposition of Citizenship in Europe.**

**Professor Dr Alexander Graser, Professor of Comparative Public Law and Social Policy, Hertie School of Governance, Berlin**

17 November 2008

The law is widely seen as contributing to the integration of political communities and to the legitimation of political power. The concept of citizenship has long been said to play a vital role in this respect. In recent times, however, the legal content of citizenship has undergone significant changes – a “decomposition”, as will be argued, which may in turn undermine the law's integrative and legitimatory capacity. This development is particularly advanced in “postnational” Europe, and the talk focussed on this region. But the same concerns may also become relevant outside of Europe, as similar trends are discernible in other regions, as well.

**Professor Alexander Graser** teaches Comparative Public Law and Social Policy at the Hertie School of Governance. He completed both German state exams in law and holds degrees from the Oxford University and Harvard Law School. Before he joined the Hertie School, he had for nine years been a research fellow at the Max Planck Institute for Foreign and International Social Law in Munich. During this time he obtained his doctorate and his postdoctoral lecture qualification for the fields of public law, comparative law, legal sociology and theory, both from the Ludwig-Maximilians-Universität, Munich. He was awarded the Max Planck Society's Otto-Hahn Medal for outstanding achievements by young scholars in 2001 and the Bavarian prize for the advancement of postdoctoral theses (Bayerischer Habilitationsförderpreis) in 2003.

**The Office of Lord Chancellor, the Judiciary and the Constitutional Reform Act 2005: ‘... a new and original plan?’**

**Professor Peter Leyland, Professor of Public Law, London Metropolitan University, U K**

24 November 2008

The UK government decided in 2003 to change the role of the Lord Chancellor, introduce a Supreme Court in place of the Appellate Committee of the House of Lords, and radically reform the system of judicial appointments. After a short period of consultation these proposals in amended form were enacted as the Constitutional Reform Act 2005. Against the backdrop of a wider debate over the increasing judicialisation of the UK constitution there will be an attempt in this talk to consider the significance of these changes especially in regard to the following questions: What is the significance of creating a Ministry of Justice in place of the Lord Chancellor’s department/Department of Constitutional Affairs? Will the new judicial appointment procedure based on a Judicial Appointments Commission provide a relatively independent bench at all levels and at the same time broaden the membership of the higher judiciary? How will the new Supreme Court when it begins its work in 2009 differ from the House of Lords? Finally, to what extent have these changes taken as a whole consolidated the principle of separation of powers in the United Kingdom?
Professor Leyland is currently Professor of Public Law at London Metropolitan University and visiting Professor of Public Law at the School of Oriental and African Studies, University of London. Peter has published widely in the field of UK constitutional and administrative law, comparative constitutional law and on Thailand’s constitutional system. The subject matter of his research has included: devolution particularly in comparative perspective, freedom of information, utility regulation, executive accountability. He has written the first volume on the Constitution of the United Kingdom (2007) in the Hart series ‘Constitutional Systems of the World’, which he co-edits with Professor Andrew Harding.

PhD Confirmation Seminar: Pakistan’s Islamic Identity, its Blasphemy Law and the International Law of Human Rights.
Ms Hajrah Saboor, PhD candidate, Melbourne Law School
3 December 2008

Pakistan’s blasphemy law incorporated in the Pakistan Penal Code 1860 has been extensively criticized for its vague language and faulty procedure that leaves it wide open to misuse and abuse. The offence of blasphemy in Pakistan carries a harsh penalty that includes hefty fines and up to ten years imprisonment. But the position became worse when in 1990 the Federal Shariat Court of Pakistan declared that penalty for desecrating the name of the Holy Prophet is death, and the law was thus amended accordingly. This notorious law is considered to affect the minorities the most. However, over the years, it appears that it has become a source of concern for Muslims as well. There has been an unfortunate growing trend where the number of blasphemy cases has risen against the Muslim citizens of Pakistan as well as the minority citizens. The period from 1979 to 1989 is a time when ‘islamization of laws’ was declared to be a prime objective of the state by General Zia ul Haq’s regime and laws were promulgated to that effect. Although the process of islamization began as early as the creation of Pakistan, General Zia’s government brought some significant amendments to Pakistan’s legal system, including the blasphemy law. This has resulted in some grave violations of human rights that continue to date. However, when looking at Pakistan’s blasphemy laws, it is important that these laws are not seen and analyzed only in the context of the Zia era, in isolation from other political forces in Pakistan. These laws are not part of an abrupt islamization process. They must be understood in the backdrop of the history of Pakistan and the religious, social and political trends that followed after its creation. Pakistan’s blasphemy laws must be analyzed within the broader context of its religious politics and islamization for a better understanding of the political and legal realities that surround the law and for a practical and realistic recommendation for its reformation.

Hajrah Saboor is a law graduate from the International Islamic University Islamabad, Pakistan (2004). She completed her LLM in International Law from the same university in July 2007. In February 2006 she joined the faculty of law at the International Islamic University as a visiting lecturer and continued to teach LLB courses till June 2007. She is currently a PhD candidate at Melbourne Law School, working under the supervision of CCCS Deputy Director Associate Professor Carolyn Evans and Dr Amanda Whiting on Pakistan's blasphemy law.
Real Constitutional Dialogue: From Canada to Australia.
Assistant Professor Rosalind Dixon, University of Chicago Law School
16 December 2008

In the seminar Rosalind Dixon discussed her recent paper on Canada, and the implications of the approach developed in this paper for constitutional design and the bill of rights debate in Australia. The idea of dialogue has become ubiquitous in Canadian constitutional discourse, yet still largely fails to persuade skeptics about the compatibility of judicial review under the Charter with broader constitutional commitments to democracy. The reason for this is the subject of this paper, which argues that existing accounts of dialogue tend to take either radically too “strong” or “too weak” an approach to the scope of judicial review: they assume either much too narrow a scope for reasonable disagreement about court decisions, or take too narrow a view of the proper role for courts in enforcing the Charter, from a Canadian perspective. This paper offers an alternative “real” theory of dialogue, based on a truer compromise between these extremes.

Rosalind Dixon is Assistant Professor at the University of Chicago Law School. She earned her B.A. in government and economics, and her first law degree (with highest honors) from the University of New South Wales, Sydney, in 2001. She earned her L.L.M. and S.J.D. from Harvard Law School in 2004 and 2008, respectively. While at Harvard, Rosalind served as a Fellow in the Justice, Welfare, and Economics Program, and a Teaching Fellow in Constitutional Law, Constitutional History, Comparative Constitutional Law, and Comparative Constitutional Engineering. Before her time at Harvard, she clerked for the Chief Justice of Australia, the Hon. A. M. Gleeson A.C., taught at the University of New South Wales, and practiced as a solicitor in the dispute resolution group at Mallesons Stephen Jaques. Her teaching and research interests include constitutional law, comparative constitutional law and design, international human rights, and law and gender.

Selected Presentations at International Conferences by Centre Members

Carolyn Evans

- ‘The Uneasy and Under-theorised Relationship between Non-discrimination Laws and Religious Schools’ at the International Conference on Law, Religion and the State: South Asia and Beyond, New Delhi, 14-16 February 2008


Michelle Foster


Joo-Cheong Tham


‘Parliamentary Deliberation and the Tyranny of the National Security Executive: The Case of Control Orders in Australia and the United Kingdom’, the Law School, Glasgow University, 5 March 2008. This paper was also presented at the Law School, Edinburgh University, 12 March 2008; the Law School, Oxford University, 22 April 2008; the Law School, London School of Economics, 7 May 2008; the Melbourne Law School, 1 September 2008.

‘Australian Control Orders and the Logic of Pre-emption’, Scottish Centre for Crime and Justice Research, 6 March 2008. This paper was also presented at the Menzies Centre for Australian Studies, King’s College London, 4 June 2008.

Selected Presentations at National Conferences by Centre Members

Simon Evans


Jeremy Gans


Beth Gaze

Joint Annual Meeting of the Canadian Law and Society Association and the American Law and Society Association, Montréal, Canada, May 29-June 1 2008. Panel Member for Roundtable on Transnational Feminisms.
Joo-Cheong Tham

- 'Subverting Law and Liberty? The House of Lords, Control Orders and the UK Human Rights Act', Castan Centre for Human Rights Public Lecture, Melbourne, 5 August 2008

RESEARCH AND PUBLICATIONS

Publications edited in the Centre

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

Publications¹

Books


Book Chapters


Saunders C. 2008. The constitutional, legal and institutional foundations of Australian

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


Journal Articles


**Selected Media Commentary / Opinion Pieces**

**Carolyn Evans**

- Panel member for a discussion on religion and the proposed Australian Bill of Rights, Sunday Night with John Cleary, broadcast nationally through regional ABC stations, 10-11pm, 14 December 2008

- Interviewed on charges brought against Scientologists in France, on Sunrise, Channel 7 (8.15am), 10 September 2008.

- Interviewed on the extension of the intervention in Aboriginal communities to the State, on JJJ radio, ‘Hack’ programme (5-6pm), 28 February 2008.

**Michelle Foster**

- Interview with 3CR radio on 18th June concerning Australia’s refugee law and policy.

- On 17th June Michelle spoke at a public forum entitled “Are We There Yet? Where we are up to in the struggle for refugee rights” at BMW Edge in Federation Square, attended by
several hundred guests. Together with Julian Burnside and Paris Aristotle, she assessed the new government’s record to date in complying with Australia’s international obligations in respect of refugees.

**Jeremy Gans**

- Charterblog: [http://charterblog.wordpress.com/](http://charterblog.wordpress.com/)

**Joo-Cheong Tham**


**Other Publications**

**Major Reference Works**


**Grants**

- **Carolyn Evans** and **Beth Gaze** were awarded 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’ 2007-9.

- **Michelle Foster** was awarded 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** was awarded 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.

- **Adrienne Stone** was awarded an Australian Research Council Discovery Project Grant for the project ‘Freedom of Expression in Democratic States: A New Theoretical Direction’.

**Consultancies**

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

- Member, Advisory Committee on the Review of the Equal Opportunity Act (Vic), Department of Justice (2007-8).

Research Supervision – Graduate Research Students 2008

Adrienne Stone, Simon Evans and Cheryl Saunders

Emily Hammond 'Judicial Review and Chapter III'

Carolyn Evans

Ph.D.: Hajrah Saboor (blasphemy law in Pakistan), Nurhafilah Musa (administration of religious law in Malaysia), Clancy Kelly (health rights of indigenous people), Kaisa Lach (concepts of sovereignty in Europe), Leilani Uvjari (children's rights in Timor Leste), Takele Bulto (human right to water in Africa)

Michelle Foster


Beth Gaze

Ph.D.: Dominique Allen: Improving the Effectiveness of Australian Anti-Discrimination Law (passed 2009, with Professor Jenny Morgan), Marco Bini (duties of directors on public sector boards, with Professor Ian Ramsay),

SJD: Lee Adams 'Work and Family legislation’ (with Professor Jenny Morgan)

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 2008. Many of the submissions had a significant impact on these processes, as well as contributing to Centre members’ own research.
Michelle Foster

- Submission on Inquiry into Immigration Detention in Australia, Joint Standing Committee on Migration, 25th July 2008.

- Submission to Senator Chris Evans, Minister for Immigration, regarding his Review of Section 501 of the Migration Act, 21st August 2008 (6000 words).

Beth Gaze


- Submission to the Equal Opportunity Exceptions Review, April 2008


- Contributor to Combined Submission to the Senate Legal and Constitutional Committee Inquiry into The effectiveness of the Commonwealth Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality July 2008

- Submission to the Productivity Commission (Cth) Annual Review of Regulatory Burdens on Business: Manufacturing and Distributive Trades (research report August 2008) on equal opportunity reporting. Reference was made to my submission in the final report (Oct 2008 at 192).

Joo-Cheong Tham

- Submission to Joint Standing Committee on Electoral Matters’ Inquiry into 2007 Federal Election, June 2008, 52 pp (including supplementary submission) (note: invited to appear as witness before committee and appeared).

- Submission to Victorian Electoral Matters Committee’s Inquiry into Political Donations and Disclosure, June 2008, 8 pp (note: invited to appear as witness before committee and appeared).


- Submission to the New South Wales Legislative Council’s Inquiry into Electoral and Party Funding, February 2008, 65 pp (note: invited to appear as witness before committee and appeared).

TEACHING PROGRAMS

Centre members have teaching responsibilities in the Faculty’s wide range of public law subjects across all Faculty programs. In 2008 these included:
Bachelor of Laws
Constitutional Law
Administrative Law
Advanced Constitutional Law
Discrimination, Law and Equality

Postgraduate Courses
Graduate Diploma of Government Law
Master of Public and International Law

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

The Melbourne JD
Administrative Law
Constitutional Law
Principles of Public Law

OTHER ACTIVITIES

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

Australian Association of Constitutional Law

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

Forum of Federations, Canada

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

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

International Association of Centres for Federal Studies

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

APPENDIX – ADVISORY BOARD

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

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

Dr Gavan Griffith AO QC
Gavan Griffith AO, QC., was Solicitor-General of Australia from 1984 to 1997 and practices as counsel and as an international arbitrator from chambers in Melbourne and at Essex Court Chambers, London.
Peter Hanks QC
Peter Hanks practises predominantly in public law - administrative law and constitutional law. He appears regularly for Commonwealth and State government agencies, and against those agencies, in the Federal Court, High Court, Supreme Court, Commonwealth AAT and VCAT. He has published several books on constitutional law and administrative law. He is a principal contributor to Butterworths' ‘High Court and Federal Court Practice’ and ‘Administrative Law Service’.

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

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

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

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

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

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

**Jason Pizer**

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

**Justice Richard R S Tracey**

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

**Pamela Tate SC, Solicitor-General for Victoria (resigned October 2008)**

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