



THE UNIVERSITY OF
MELBOURNE

MELBOURNE
LAW SCHOOL

Centre for Comparative Constitutional Studies

ANNUAL REPORT 2015

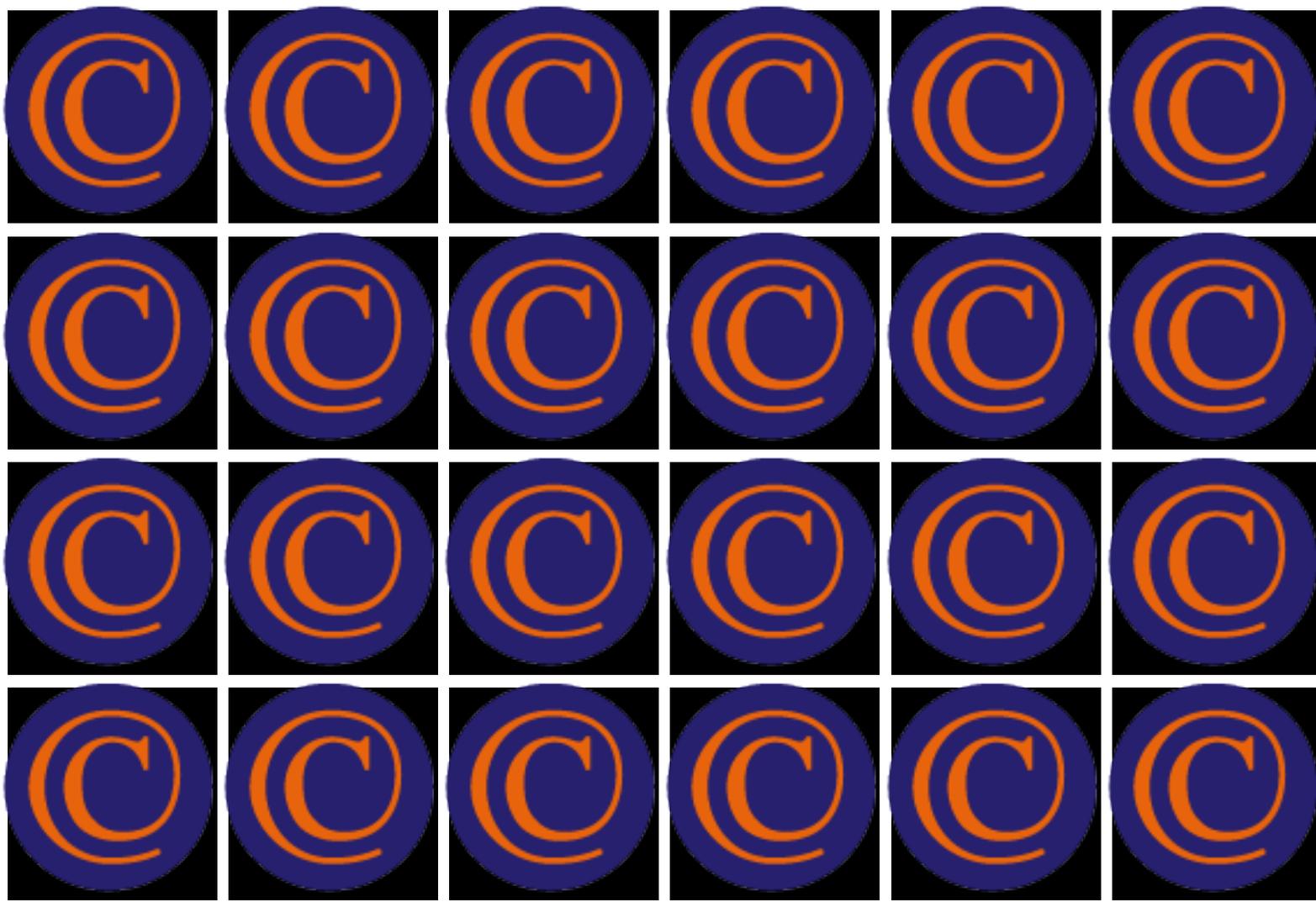


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Director's Report

2015 was a year of renewal for the Centre for Comparative Constitutional Studies. We welcomed four new academic colleagues: Dr Lulu Weis joined CCCS as a permanent member of the academic staff after three years as a McKenzie Fellow; Dr Kristen Rundle, a legal theorist and administrative lawyer who previously taught at the London School of Economics and the University of New South Wales; Dr Scott Stephenson who joined us after completing doctoral work in comparative constitutional law at Yale and (in July) Dr William Partlett, a comparative constitutional lawyer with an expertise in Russia and post Socialist societies joined us from the Chinese University of Hong Kong (having previously taught as an Associate in Law at Columbia Law School). We also welcomed as new PhD students Arturo Villagran, Anne Carter, Anna Dziejcz, Osayd Awada and Troy Keily.

During this time, the CCCS maintained an active schedule of events, and pursued new research projects and collaborations.

Among the highlights were:

- A joint workshop on 'The 'Soft' and the 'Fuzzy' in Public and International Law'. The workshop, convened by **Cheryl Saunders** and our Melbourne Law School colleague **Jurgen Kurtz**, is the first in a series of collaborations with colleagues at the Hebrew University.
- A national constitutional law conference, which brought 200 participants to Melbourne for two days of constitutional law. The Conference opened with a Public Conversation with **the Hon Kenneth Hayne AC**. In his first major event since joining Melbourne Law School as a Professorial Fellow, Justice Hayne reflected upon his years on the High Court in a conversation with our Dean, **Professor Carolyn Evans**. The Conference featured a panel devoted to Justice Hayne's contribution to Australian public law as well as panels on Executive Power, Contracting and Spending, Constitutional Dimensions of Statutory Interpretation and Proportionality in Constitutional Law. The program featured leading practitioners, academics and judges.
- **Public Law in Three Nations**: The third in a series of seminars held jointly since 2010 with Auckland Law School and the University of Witwatersrand. Over 9 and 10 December over 20 public lawyers from these three law schools gathered for a in-depth discussion of works in progress and recent developments in public law.

Over this period, the CCCS Brown Bag series continued and has become the central forum for academic engagement in the Centre. The regular meetings canvassed diverse topics presented by CCCS members and also guests. Among the highlights was a guest appearance from **Lady Hale, the Baroness of Richmond** and Deputy President of the Supreme Court of the United Kingdom. Lady Hale was in Melbourne to deliver the Caldwell Lecture jointly hosted by Melbourne Law School and Trinity College. In addition, she found time to attend a regular CCCS 'Brown Bag' meeting. While her Caldwell lecture discussed the Human Rights Act 1998 (UK), with CCCS Lady Hale discussed a recent trend toward greater judicial attention to common law rights.

In addition to these academic events, the CCCS (through its relationship with the Australian Association of Constitutional Law) played a key role in the **Sir Harry Gibbs Constitutional Law Moot**, an event co-sponsored with the Australian Association of Constitutional Law. Centre members were involved at all levels from assisting the MULSS with organization, coaching and judging.

Research Projects

The year has also seen the start of a number of new research projects. We were excited to announce that CCCS has received a grant under the Melbourne Law School Major Collaborative Research Fund for a project on Constitution Making in the Asia-Pacific jointly with colleagues from the **Asian Law Centre** and the **Asia Pacific Centre for Military Law**. This project aims to understand the relationship between constitution-making and the construction of constitutionalism. To do this, the project will take a broad theoretical framework for the global phenomenon of constitution-making and engage with constitution-making as it is occurring including as an aspect of peace building.

In addition, **Dr Farrah Ahmed** commenced a project on 'Constitutional Boundaries' funded by the Melbourne-Oxford Research Partnership jointly with **Dr Adam Perry** (Oxford) and **Professor Richard Albert** (Boston College).

Engagement Activities

Over the course of 2015 CCCS members continued extensive engagement activities including a submission to the Australian Law Reform Commission's Inquiry into Traditional Rights and Freedoms; a submission to the 2015 Review of the Charter of Human Rights ; a submission to the Parliamentary Committee for Intelligence and Security Committee's Inquiry into the Australian Citizenship Amendment (Allegiance to Australia) Bill 2015 to which Professors Cheryl Saunders and Jeremy Gans subsequently gave evidence; and a submission to the Legal and Constitutional Affairs References Committee on the Inquiry into the matter of a popular vote, in the form of a plebiscite or referendum, on the matter of marriage in Australia.

Congratulations

CCCS colleagues have had many fine achievements during 2015 and their research publications, presentations and other activities are found in the newsletters but I would especially like to note a few

- **Dr Scott Stephenson** was awarded the Inaugural Holt Prize by Federation Press for his work 'From Dialogue to Disagreement in Comparative Rights Constitutionalism' which was his SJD dissertation at Yale University. The dissertation will be published by Federation Press in 2016.
- **Dr Elizabeth Southwood** whose PhD thesis, supervised by myself and Cheryl Saunders, was passed in April. Elizabeth examined the separation of judicial power under the Australian Constitution, graduated as a Doctor of Philosophy on 31 July.

Finally, we extend our sincere congratulations to CCCS Advisory Board members **Justice Stephen McLeish** on his appointment to the Court of Appeal of Victoria and to **Justice Mark Moshinsky** on his appointment to the Federal Court of Australia.



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.

In 2014 she was elected as First Vice President of the International Association of Constitutional Law. She is also on the Council of the Australian Association of Constitutional Law and is an elected Fellow of the Australian Academy of 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 foundational 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 the Dean of Melbourne Law School. 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 undertook 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.

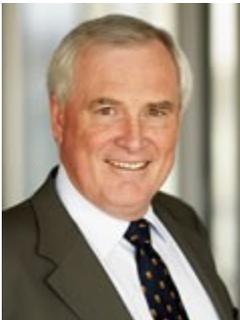


Professor Pip Nicholson

Pip Nicholson is the Director of the Asian Law Centre, which she joined in 1997, and has been a Senior Fellow of the Faculty since 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 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.



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.

Her first book, *International Refugee Law and Socio-Economic Rights: Refuge from Deprivation*, was published by Cambridge University Press in 2007, and has been widely and favourably reviewed. Michelle is co-author, with James Hathaway, of *The Law of Refugee Status*, Second Edition, published by CUP in 2014.



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.



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 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 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.



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 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 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 LL.M from the University of Cambridge and a BA/LLB (Hons) from Melbourne, and is a former associate to the Chief Justice of the Federal Court of Australia. Dr Young teaches international and public law classes in the Melbourne JD, LLB and MLM. Her monograph, *Trading Fish, Saving Fish: The Interaction between Regimes in International Law*, will be published by Cambridge University Press in early 2011. It examines the relationship

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



Dr 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.



Dr Dale Smith

Dale Smith's research focuses primarily on analytic legal philosophy, especially on the jurisprudential writings of Ronald Dworkin. His recent publications include 'Law, Justice and the Unity of Value' (2012) 32 Oxford Journal of Legal Studies 383, 'Must the Law Be Capable of Possessing Authority?' (2012) 18 Legal Theory 69, 'The Role of Conventions in Law' (2011) 2 Jurisprudence 451, and 'Theoretical Disagreement and the Semantic Sting' (2010) 30 Oxford Journal of Legal Studies 635. Dale is currently working on issues in analytic legal philosophy, statutory interpretation and (with Dr Colin Campbell from Monash University) discrimination law.

Dale graduated from the University of Melbourne in 1998 with first class honours degrees in Law and Arts. He also holds a Masters of Arts in Philosophy from the University of Melbourne. Dale's doctoral thesis at the University of Oxford was on the implications for adjudication of the debate between moral objectivists and anti-objectivists. Prior to joining Melbourne Law School as a Senior Lecturer in 2014, Dale was a Senior Lecturer in the Faculty of Law at Monash University, as well as a Visiting Academic at the Faculty of Laws, University College London in October 2012.



Dr Coel Kirkby

BA (Hons) & LLB (Queen's), LL.M (McGill), PhD (Cambridge) Dr Kirkby has published on comparative constitutional law, legal theory and British imperial history. He has two current projects. The first is a monograph on the history of the political and practice of 'native' rule in the late British Empire. The second, his McKenzie project, is a comparative study of the colonial legacies shaping indigenous self-government in the modern constitutions of Australia and Canada compared with India and South Africa. He has also assisted in constitution-making processes for Fiji and the Democratic Republic of Congo. Before joining Melbourne, Dr Kirkby was an Endeavour Fellow at the University of New South Wales.



Dr Scott Stephenson

Dr Scott Stephenson's research focuses on topics of Australian and comparative constitutional law and theory, including the migration of constitutional ideas, models of rights protection, federalism, and international law's effects on domestic constitutional doctrines. After receiving his BA and LLB(Hons) with the University Medal in Law from the Australian National University, he worked at the High Court of Australia, first as the Court's Legal Research Officer and then as Associate (Law Clerk) to Justice Virginia Bell AC. He then obtained his LL.M and J.S.D from Yale University. While at Yale, he held the position of Tutor-in-Law for two years, was awarded the Fox International Fellowship to spend a year undertaking research at the University of Cambridge, and visited the University of Copenhagen's Centre of Excellence for International Courts (iCourts).

His doctoral dissertation, *From Dialogue to Disagreement in Comparative Rights Constitutionalism*, was awarded the inaugural Holt Prize in 2015 and will be published by Federation Press. He has, or will soon have, published in a number of Australian, Irish, UK and international journals, including the Dublin University Law Journal, the International Journal of Constitutional Law, the Melbourne University Law Review, and Public Law.

Dr Kristen Rundle



Kristen Rundle joined Melbourne Law School in 2015 and teaches in the areas of administrative law and legal theory. She has held appointments at the University of New South Wales, the London School of Economics and Political Science, and the University of Sydney, as well as adjunct, visiting and honorary appointments at the University of Toronto, Erasmus University, the University of Ottawa, and the Whitlam Institute, University of Western Sydney.

Kristen's research is located at the interface of legal theory and public law in its effort to trace the conditions of form and agency necessary for law to act as a limitation on power. This has informed her research into the connections between law and the Holocaust, and the legal and institutional attributes of British child migration to Australia. It is also central to her current research into questions of legal theory and practice arising from the neoliberal redesign of the administrative state, especially with respect to contracted-out public functions.

Dr Anna Hood



Anna is a lecturer at the University of Auckland. Anna's research focuses on international law and security issues, the law of international organisations, and international law and disarmament. She also has a keen interest in international legal history as well as the intersection between public international law and domestic public law matters. Anna's PhD was entitled *The Security Council's Legislative Phase and the Rise of Emergency International Law-Making*. She is currently exploring how the Security Council understands the concept a 'threat to the peace' in Article 39 of the UN Charter and what role law has in the construction of threats to the peace in the Council's practice. She is also researching how the role the Security Council assumes in international affairs has changed over the last 70 years.

Dr William Partlett



Dr Partlett joined Melbourne Law School in 2015 as a Senior Lecturer. Before coming to Melbourne, Dr Partlett was an Assistant Professor at the Faculty of Law of Chinese University Hong Kong, a Postdoctoral Research Fellow and Lecturer at Columbia University Law School, and a Fellow at The Brookings Institution. Dr Partlett holds a JD from Stanford Law School as well as a DPhil in Soviet History and MPhil in Russian and East European Studies from the University of Oxford (where he was a Clarendon Scholar). He also holds an honors bachelors degree in International Affairs and Public Policy from Princeton University and speaks Russian.

Dr Partlett's research focuses on the role of institutions in comparative public law. His work is currently focused on two projects: the institutional dimensions of constitution-making, and the distinctive institutional legacies of the socialist system of law in the former Soviet Union and Asia.

Mr Julian Sempill



Senior Lecturer, Melbourne Law School. LLB (Hons), BA (University of Melbourne), DPhil graduand (University of Oxford). Researcher, Centre for Socio-Legal Studies (University of Oxford). Solicitor (Supreme Court of England & Wales). Barrister & Solicitor (Supreme Court of Victoria).

Julian Sempill's research focuses on moral, political, and legal philosophy, and, in particular, on the relationship between law, social power, and human rights. In "Ruler's Sword, Citizen's Shield: the Rule of Law & the Constitution of Power" (forthcoming, *Journal of Law & Politics*, University of Virginia School of Law), sets out the core themes and arguments that will be addressed in a longer work on the historical, moral, and political significance of the leading conceptions of the Rule of Law and the contest between them.

The article and the longer work provide, in turn, the foundations for a project exploring possible new frontiers for constitutionalism, the Rule of Law, and human rights, with a particular focus on the relationship between law, economic power, and human rights.



Ms Anna Dziejdzic

Anna Dziejdzic is a Research Fellow at the Centre for Comparative Constitutional Studies. 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.

She is currently 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.

Centre Administrators

Ms Jean Goh

Ms Cathryn Lee

Ms Cindy Halliwell

Advisory Board

- Ian Cunliffe
- Dr Stephen Donaghue QC
- 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
- Justice Mark Moshinsky, Federal Court of Australia
- Justice Stephen McLeish
- Professor Brian Opeskin
- Jason Pizer QC
- 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

The Centre for Comparative Constitutional Studies is a place where colleagues from around the world come to work and to share ideas. The Centre has hosted numerous visitors over the years, and met with, and provided briefings to, many others. This year, the Centre hosted the following visitors:

Associate Professor Ridwanul Hoque (1 October 2014 – 31 March 2015)

Faculty of Law, University of Dhaka, Bangladesh

Dr Ridwanul Hoque is Associate Professor of Law at the University of Dhaka, and 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 (SOAS) 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 was a Fulbright Visiting Scholar at Cornell Law School (October 2013 to June 2014), and was a Visiting Scholar at the CCCS, Melbourne Law School, in 2013 (March-June). Dr. Hoque has published in British, American, Singaporean, Indian, Pakistani and Bangladeshi law journals. He is the author of a book titled *Judicial Activism in Bangladesh: A Golden Mean Approach* (2011)

Dr Patrick Emerton (2 March – 27 July 2015)

Faculty of Law, Monash University, Australia

Dr Patrick Emerton is a Senior Lecturer in the Monash University Faculty of Law and an Associate in the Castan Centre for Human Rights law. His research interests include constitutional, political and human rights theory, international justice, just warfare and terrorism. In 2010 the *Federal Law Review* awarded him the inaugural Leslie Zines Prize for Excellence in Legal Research. His recent work includes (with Mark Davison) "Rights, Privileges, Legitimate Interests, and Justifiability: Article 20 of TRIPS and Plain Packaging of Tobacco", and (with Toby Handfield) the entry on humanitarian intervention in the forthcoming *Oxford Handbook of the Ethics of War*. He is currently working on the ARC-funded research project "Construing Statutes", using analytic philosophy of language to understand how statutes generate legal content.

Professor David Sloss (17 - 23 June 2015)

David Sloss is a Professor of Law at Santa Clara University School of Law, where he served as the Director of the Center for Global Law and Policy. He is the editor of *The Role of Domestic Courts in Treaty Enforcement: A Comparative Study* (Cambridge Univ. Press, 2009), and co-editor of *International Law in the US Supreme Court: Continuity and Change* (Cambridge Univ. Press, 2011). The American Society of International Law awarded a Certificate of Merit for the latter book "for high technical craftsmanship and utility to practising lawyers and scholars." He is a member of the American Law Institute (ALI) and is working on the ALI project to draft the Restatement (Fourth) of US Foreign Relations Law.

Ms Ninon Mathieu (December 2015)

Ninon Mathieu is a PhD student from Paris. Whilst studying her Masters at Panthéon-Assas University, Ninon developed an interest in Common Law systems, particularly in comparison with Civil Law systems operating in Europe, including France. To complete her thesis in the area of habeas corpus, it is necessary to travel throughout her three year journey to her PhD. Australia was top of the list. During her time here, Ninon has been mentored by Laureate Professor Emeritus, Cheryl Saunders, observed Court hearings, and met personally with the Hon Justice Bell QC of the Supreme Court and former Justice of the High Court of Australia, the Hon Kenneth Hayne AC. In the future, Ninon will also travel to the United States as part of her studies. When asked about the best part of her experience, Ninon stated, without a doubt, having the opportunity to spend time getting to know members of CCCS and the legal fraternity, and learning as much as she can from their wealth of experience.

CCCS PhD Graduates

Elizabeth Southwood, whose PhD thesis, supervised by Professor Adrienne Stone and Professor Cheryl Saunders AO, was passed in April. Elizabeth examined the separation of judicial power under the Australian Constitution. She graduated as a Doctor of Philosophy on 31 July 2015.

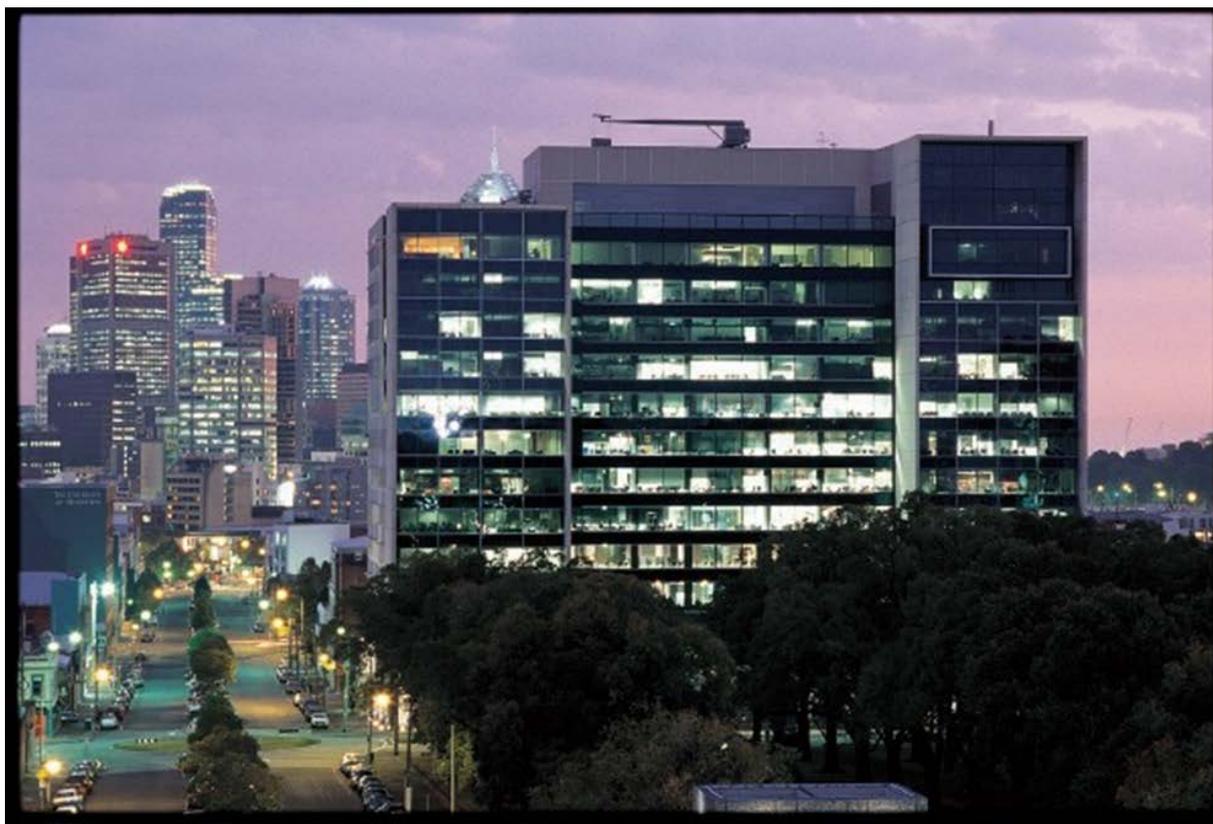
CCCS Graduate Research Students

Student	Supervisor(s)
Elizabeth Southwood	Professor Adrienne Stone
Dylan Lino	Professor Adrienne Stone
Anne Carter	Professor Adrienne Stone
John Simpkins	Professor Adrienne Stone & Professor Cheryl Saunders AO
Anna Dziedzic	Professor Adrienne Stone Professor Cheryl Saunders AO
Arturo Villagran	Professor Cheryl Saunders AO Professor Jürgen Kurtz
Tsegaye Ararssa	Professor Cheryl Saunders AO & Professor Michael Crommelin AO
Brian Opeskin	Professor Cheryl Saunders AO
Osayd Awawda	Professor Cheryl Saunders AO Professor Simon Evans
Troy Keily	Professor Cheryl Saunders AO Professor Richard Garnett
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

Student	Supervisor(s)
George Kailis	Professor Michael Crommelin AO & Associate Professor Kirsty Gover
Alice Ashbolt	Professor Michael Crommelin AO
Taychalem Moges	Professor Beth Gaze
Apsari Dewi	Professor Jeremy Gans
Daniel Hochstrasser	Professor Jeremy Gans
Andrew Newman	Associate Professor Joo-Cheong Tham
Monique Cormier	Associate Professor Alison Duxbury
Sasha Radin	Associate Professor Alison Duxbury
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

CCCS Research Assistants

Sophia Charles
Andrew Currie
Anna Dziejczak (PhD student)
Teresa Gray
Alexandra Harrison-Ichlov
Kalia Laycock-Walsh
Alex Lee
Nathan Ma
Minh-Quan Nguyen
Anna Saunders
Kathryn Wright



Events

CCCS Seminar Series

CREEL/ CCCS Seminar: After the Scottish Referendum: The “Enduring Settlement” and its Implications for the Energy Industries

Speaker: Professor Terence Daintith

Tuesday 17 March 2015

Despite the rejection of independence, the Scottish referendum has led to proposals for substantial enlargement of the powers devolved to the Scottish government, including control of onshore oil and gas. This paper looked at the implications and possible further development of the devolution proposals, in the context of the unstable political situation that is expected to follow from the 2015 UK General Election.



Terence Daintith is a Professorial Fellow at the Institute of Advanced Legal Studies, University of London, where he was Director from 1988 to 1995. Before that he taught at the Universities of California (Berkeley), Edinburgh and Dundee, and was a research professor at the European University Institute in Florence, Italy. His main research interests are in the fields of oil and gas law, regulation, and constitutional law. He is co-editor of Daintith, Willoughby and Hill’s multi-volume *United Kingdom Oil and Gas Law*, the basic reference in the field, and was founding editor of the *Journal of Energy and Natural Resources Law*. From 1994 until 2002 he was Dean of the University of London’s School of Advanced Study, grouping its research institutes in the humanities and social sciences, and he now teaches oil and gas law at the University of Western Australia, and energy law and regulation at Melbourne.



ALC/CCCS Seminar: Constitutional Transition from Military Rule in Burma/Myanmar: Beyond a Narrative of Linear Progress

Speaker: Andrew McLeod

Friday 13 March 2015

The prospect of Myanmar’s emergence from military rule has intrigued constitutional scholars by its apparent improbability. After two decades of near-complete isolation, a council of generals led the adoption of a new constitution in 2008; ceded power to a quasi-civilian regime in 2011; permitted the establishment of a constitutional reform process in 2013 with the stated aim of supporting stronger multi-party democracy and greater local autonomy; and in October 2014 confirmed multi-party elections for the end of 2015. The pace of these reforms, and the absence to date of concrete outcomes, has prompted suggestions that the transition is a sham and that the trajectory of change has reversed. Skeptics also note that these constitutional developments are taking place against the backdrop of a frustrated peace process that seeks to resolve decades-long armed conflicts between the military and ethnic groups.

This paper suggests a fresh reading of Myanmar’s transition from military rule, offering tentative lessons for theorists of constitutional transitions. The linear approach to analysing such transitions, marking progress in terms of the military’s gradual withdrawal from political positions leading to genuine acceptance of full civilian control, is insufficient to assess Myanmar’s ongoing constitutional reform process. I argue that understanding the transition underway in Myanmar requires looking further back in the country’s constitutional history to reveal a more complex set of legal and political factors. The case of Myanmar is better explained in terms of a long planned and carefully executed constitutional and political transformation, where events are often orchestrated by the same actors who ruled before the transition and where seemingly spontaneous outbursts of protest are rooted in decades-old conflicts. I argue that a closer, contextualised reading of constitutional dynamics in Myanmar offers useful insight for studies of constitutional transitions, highlighting reference points, actors and dynamics worthy of closer attention when making sense of transitions involving the military.



Andrew McLeod is a research fellow in law at the University of Oxford and directs the Oxford-Burma Law Programme. For the past two years, he has led law and higher-education projects in Myanmar and served as an adviser on the constitutional reform process. He provides analysis on South-east Asia as region head for the global strategic consultancy firm Oxford Analytica. His commentary regularly features across the BBC, Reuters and Agence France-Presse. Andrew was previously a lecturer in constitutional law at the University of Sydney and special adviser to the H C Coombs Policy Forum, within the Crawford School of Public Policy at the Australian National University. He served as associate to the chief justice of Australia and worked as a senior analyst and speechwriter within the Australian Department of the Prime Minister and Cabinet. He holds degrees in law and chemistry from the University of Oxford and the University of Sydney.



CCCS Seminar: Defending Constitutionalism Through Public Interest Litigation in Bangladesh: A Sceptical View

Speaker: Associate Professor Ridwanul Hoque
 Tuesday 10 March 2015
 Room 608, Level 6, Melbourne Law School

The paper sought to critically assess the potency of the strategy of ‘public interest litigation’ (PIL) in defending constitutionalism in Bangladesh. The PIL-jurisprudence of the Indian Supreme Court, entrenched since the early 1980s, is rightly considered the most outstanding contribution of that institution to constitutional and adjudicative theories. The Indian-style PIL travelled to Bangladesh during the late 1990s. From the functionality point of view, the PIL-tool can be used to protect constitutional rights of various deprived segments of society, or to realise the wider principles of constitutionalism such as public participation, judicial independence, free election, and so on. This paper limited its focus on the instrumentality of PIL in the protection of constitutionalism in Bangladesh. While Dr Hoque tended not to belong to the camp of critics of PILs moving away from its original ideal of protecting the rights of the desperately poor and socially disadvantaged sections of the public, he argued that PIL-strategy has delivered much less than it initially promised for constitutionalism. One potential reason is the increasing misuse of PILs purportedly involving issues of constitutionalism. The analyses were based on some select decisions of the Supreme Court of Bangladesh pertaining to judicial review of structural issues.

Dr Ridwanul Hoque is Associate Professor of Law at the University of Dhaka, and 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 (SOAS) 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 was a Fulbright Visiting Scholar at Cornell Law School (October 2013 to June 2014) and was a Visiting Scholar at the CCCS, Melbourne Law School, in 2013 (March - June). Dr Hoque has published in British, American, Singaporean, Indian, Pakistani and Bangladeshi law journals. He is the author of a book titled *Judicial Activism in Bangladesh: A Golden Mean Approach* (2011).



APCML/CCCS Seminar: The Rise of the Orwellian State? Australia's Approach to Surveillance and Counter-terrorism

Wednesday 29 April 2015

Speakers: Brett Walker SC, Senator Scott Ludlam, Professor Ben Saul and Dr Patrick Emerton

Chair: Professor Adrienne Stone

Significant reforms to Australia's national security laws are on foot. Legislation was passed last year to expand ASIO powers in relation to computer networks, to increase penalties for revealing details of secret intelligence operations, and to restrict the travel of persons perceived as threats to Australia's security. Debates are ongoing as to the compulsory retention of metadata by telcos. Are these measures necessary to keep Australians safe or are we on our way to an Orwellian dystopia?

The Centre for Comparative Constitutional Studies and the Asia Pacific Centre for Military Law hosted a panel discussion on the wide ranging changes that have been implemented as well as those that are still being contemplated.

The panel consisted of four leading experts on security issues and counter-terrorism laws:

- Brett Walker SC: barrister; former Independent National Security Legislation Monitor;
- Senator Scott Ludlam: Senator for Western Australia; Australian Greens' spokesperson on Broadband, Communications and the Digital Economy, and on Defence;
- Professor Ben Saul: Professor of International Law at Sydney Law School; barrister; and
- Dr Patrick Emerton: Senior Lecturer at the Faculty of Law, Monash University.



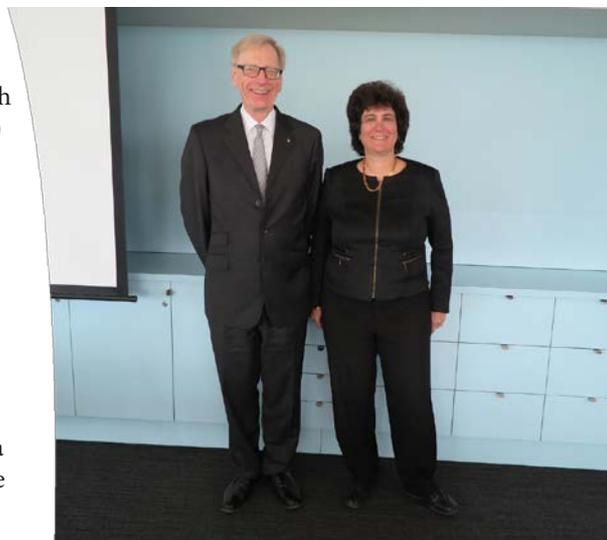
CCCS Seminar: A Comparative Conversation on Constitutions: Implications and the Recognition of 'Unwritten Rights' in Australia and Israel

Friday 7 August 2015

Speakers: the Hon. Justice Daphne Barak-Erez (Justice, Supreme Court of Israel) and the Hon. Kenneth Hayne AC QC (former Justice High Court of Australia)

Commentator: Professor Adrienne Stone, Director, Centre for Comparative Constitutional Studies.

This seminar explored the recognition of unwritten doctrines of constitutional law in Australia and Israel, with a particular emphasis on constitutional rights. The speakers - Justice Daphne Barak-Erez and Justice Kenneth Hayne - each explained and analysed the approaches of the courts on which they have served as a Justice. Professor Adrienne Stone offered a comparative commentary.



CCCS/IILAH Seminar: American Law Institute Restatement of the Law Fourth, the Foreign Relations Law of the United States

Tuesday 13 August 2015

Paul B Stephan (John C Jeffries, Jr, Distinguished Professor of Law - University of Virginia School of Law)

This Restatement updates the influential 25-year-old Restatement Third of The Foreign Relations Law of the United States. It is a very large project involving eight reporters, including two coordinating reporters. Initial topics for consideration include jurisdiction, the domestic effect of treaties, and sovereign immunity.

Professor Stephan is one of the coordinating reporters for this project.

Paul B Stephan is John C Jeffries, Jr, Distinguished Professor of Law in the University of Virginia School of Law. He is an expert on international business, international dispute resolution and comparative law, with an emphasis on Soviet and post-Soviet legal systems. In addition to writing prolifically in these fields, Stephan has advised governments and international organisations, taken part in cases in the Supreme Court of the United States, the federal courts, and various foreign judicial and arbitral proceedings, and lectured to professionals and scholarly groups around the world on issues raised by the globalization of the world economy.



During 2006-2007, he served as counsellor on international law in the U.S. Department of State. He is one of the coordinating reporters for the American Law Institute's Restatement (Fourth) of the Foreign Relations Law of the United States. He is visiting the Melbourne Law School this week to teach Energy Resources in Emerging Markets in the Melbourne Law Masters program.

CCCS Seminar: Constitutional Statutes

Tuesday 25 August 2015

Speakers: Adam Perry (Queen Mary University of London) Farrah Ahmed (Melbourne Law School)
Chair: Professor Adrienne Stone (Melbourne Law School)

The British constitution includes many statutes, such as the Bill of Rights 1689 and the Scotland Act 1998. Since 2002, British courts have treated constitutional statutes differently than ordinary statutes. In this article we address three questions: (1) How have courts treated constitutional statutes differently than ordinary statutes? (2) What is a constitutional statute? (3) Why, if at all, should constitutional statutes be treated differently than ordinary statutes? We explain that courts have made it harder for ordinary statutes to repeal constitutional statutes by implication, and easier for constitutional statutes to repeal ordinary statutes by implication. We suggest that a constitutional statute is a statute which concerns state institutions, which depends on few other governmental norms, and on which many other governmental norms depend. Drawing on our definition, we show the extent to which the special treatment of constitutional statutes is justified, and we explain when one constitutional statute should be held to repeal another constitutional statute by implication.

CCCS Seminar: Eastminster – Sir Ivor Jennings, the Westminster Model and State Building in Asia

Tuesday 20 October 2015

Speaker: Dr Harshan Kumarasingham (University of London)

This talk examined the concept of Eastminster in the eventful context of Asian decolonisation and the need for rapid constitutional settlement. Eastminsters emerged when the Asian States from British control in varying degrees took key substantial elements from the British Westminster system. Since the Westminster system is based on convention and ambiguity and not rigid rules and clarity it could be adopted and manipulated to produce diverse results and reactions that would shape these countries forever. These states therefore became Eastminsters.



Dr Kumarasingham is a Senior Research Fellow at the Institute of Commonwealth Studies, University of London and Lecturer in Comparative politics at Ludwig Maximilians University, Munich.



CCCS 2015 Constitutional Law Conference

Thursday & Friday, 23 - 24 July 2015



PROGRAM

THURSDAY 23 JULY 2015

4pm	Registration
4.30-6pm	Session One Public Event A Conversation with the Hon. Justice Hayne AC Speaker The Hon. Justice Kenneth Hayne AC Moderator Professor Carolyn Evans (Dean & Harrison Moore Professor, Melbourne Law School)
6.15-7.15pm	Book Launch James Stellios, <i>Zines' The High Court and the Constitution</i> (6 th edition 2015) Launch by The Hon. Justice John Griffiths (Federal Court of Australia)
7.15 for 7.30pm	Conference Opening Dinner <i>UHQW, Level 10, Melbourne Law School</i>

FRIDAY 24 JULY 2015

8.30am	Registration and Coffee
9-10.30am	Session Two Constitutional Dimensions of Statutory Interpretation Welcome Professor Adrienne Stone (Melbourne Law School) Speakers <ul style="list-style-type: none"> • Professor Cheryl Saunders AO (Melbourne Law School) • Professor Jeremy Gans (Melbourne Law School) • The Hon. Justice John Basten (Court of Appeal, Supreme Court of New South Wales)
10.30am	Morning Tea

11am-12.30pm	Session Three Spending and Contracting: Executive Power after <i>Williams</i> Speakers <ul style="list-style-type: none"> • Professor Michael Crommelin AO (Melbourne Law School) • Professor Simon Evans (Melbourne Law School) • Mr David Heaton (Oxford Law)
12.30pm	Lunch
2-3.30pm	Session Four Constitutional Law in Comparative Perspective: Proportionality in Constitutional Law Speakers <ul style="list-style-type: none"> • Professor Rosalind Dixon (UNSW Law School) • Associate Professor Benjamin Berger (Osgoode Hall Law School) • The Hon. Justice Nye Perram (Federal Court of Australia)
3.30pm	Afternoon Tea
4-5.30pm	Session Five The Contribution of the Hon. Justice Hayne AC to Australian Public Law Introductory Remarks The Hon. Justice Geoffrey Nettle (High Court of Australia) Speakers <ul style="list-style-type: none"> • Dr Stephen Donaghue QC (Owen Dixon Chambers West) • Frances Gordon (Owen Dixon Chambers West) • Kristen Walker SC (Owen Dixon Chambers West)



CCCS Symposium: Public Law in Three Nations

9-10 December 2015

'Public Law in Three Nations' (the TriNations Symposium) is convened every two to three years by the law schools of three leading universities in the southern hemisphere: The University of Auckland, the University of Melbourne and the University of the Witwatersrand (situated in Johannesburg). Participation is restricted to the academic staff of these three institutions, and no conference fee is charged.

The first, highly successful TriNations Symposium took place at the Tamaki Yacht Club in Auckland in July 2010. The second equally successful forum was hosted by the Wits School of Law in June 2013, adjacent to the Kruger National Park. The third TriNations Symposium was held at the Melbourne Law School, hosted by CCCS in December 2015.

The Symposium was in two parts. The first day was devoted to the theme "Separation of Powers in Three Nations". The second day was open to papers on any topic in Public Law broadly conceived including, constitutional structure and design; constitutional rights, judicial method in public law (including administrative law review); conceptions of justice in public law (including transitional and restorative justice) and the intersection of public law with international and private law.

The Symposium gave participants the opportunity to discuss concerns of each of the three nations represented and facilitated engagement with the papers presented during the symposium.



Symposia/Round Table

Judges and the Academy Seminar: Disagreement About Values: Courts, Legislatures and the Reform of Tort Law (Invitation Only)

Co-hosted by the Centre for Comparative Constitutional Studies

Speakers: Professor Peter Cane and The Hon. Margaret Beazley AO

Friday 27 February 2015

Brown Bag Seminar with Special Visitor: Lady Hale

Tuesday 8 September 2015

Brenda Hale, Baroness Hale of Richmond, DBE, QC, PC, FBA (Hon) is the current Deputy President of the Supreme Court of the United Kingdom.

During her visit to Melbourne Law School, Lady Hale was kind enough to take some time to speak at a CCCS Brown Bag lunch, attended by many CCCS academics and research assistants. She discussed common law fundamental rights jurisprudence in recent UK Supreme Court cases.



Workshop: Philosophical Foundations of Indigenous Law

9 December 2015

Dr Claire Charters (University of Auckland Law School)

Dr Kirsty Gover (Melbourne Law School)

Dr Nicole Roughan (National University of Singapore Faculty of Law)

The paper presented at this workshop came about from a new project to be conducted by Dr Claire Charters (Auckland), Dr Kirsty Gover (MLS) and Dr Nicole Roughan (NUS). The field of indigenous law is well populated by scholarship on positive law and on political theory, but legal theorists have been very tentative in their interventions. The 'scoping article' presented at this workshop outlined the contours and content of the field as it stands, highlighted core methodological strands, and identified promising avenues for further research on the 'Philosophical Foundations of Indigenous Law'. The event was extremely well attended by members of the Melbourne Law School and visiting academics from South Africa and 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. The workshop is organised by Dr Lulu Weis and is supported by CCCS.

Guests presenters for 2015 included:

27 March 2015

Dr Hedi Viterbo (SOAS), 'Child-Adult Separation: Links, Analogies, and Continuities'. Commentator: Dr Coel Kirkby (Melbourne)

** Workshop co-sponsored by the Institute for International Law and the Humanities*

24 April 2015

Mr Josh Paine (Melbourne - PhD Candidate), 'Interpretive Communities in International Law: Understanding Legal Meaning, Regimes and Interpretive Power'

Commentator: Associate Professor Jürgen Kurtz (Melbourne)

8 May 2015

Professor Tony Coady (Melbourne - Philosophy), 'Terrorism: the Hunt for its Distinctive Significance' Commentator: Dr Anna Hood (Melbourne)

22 May 2015

Dr Patrick Emerton (Monash), 'Legislation as Stipulation' Commentator: TBA

5 June 2015

Professor Liam Murphy (NYU), 'Private Law and Social Illusion: The Shackles of Everyday Libertarianism' Commentator: Professor Matthew Harding (Melbourne)

** Workshop co-sponsored by the Obligations Group*

Thursday 23 July 2015

Special Event: Workshop on Constitutional Theory, co-hosted by the Centre for Comparative Constitutional Studies and the Australian Society of Legal Philosophy.

7 August 2015

Prof Fleur Johns (UNSW), 'The Temporal Rivalries of Human Rights'. Commentator: Ms Cait Storr (Melbourne).

14 August 2015

Prof Alon Harel (Hebrew University Jerusalem), 'Against Hierarchy: The Case for Discordant Parity between Constitutional and International Law'. Commentator: Dr Scott Stephenson (Melbourne).

28 August 2015

Dr Daniel Halliday (Melbourne), 'Freedom of Bequest and the Nature of Private Property'. Commentator: Mr Michael Crawford (Melbourne).

4 September 2015

Dr Rose Parfitt (Melbourne), 'Thinking through the Arco dei Fileni: Fascist Sovereignty Yesterday and Tomorrow'. Commentator: Dr John Morss (Deakin).

9 October 2015

Dr Robert Simpson (Monash), 'Defining "Speech": the subtractive approach v. the additive approach'. Commentator: Prof Adrienne Stone (Melbourne).

30 October 2015

Dr Coel Kirkby (Melbourne), 'Why Doesn't Legal Positivism Have a History?' Commentator: A/Prof Shaun McVeigh (Melbourne).

Funded Research Grants

Australian Research Council (ARC)

Discovery Projects in 2015

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.

Farrah Ahmed, **Carolyn Evans**, Helen Rhoades and Ghena Krayem (Sydney) (2015-2017)

'How can the Australian Family Law System Respond to Islamic Dispute Resolution Processes so as to Best Support Muslim Women?'

Funding: \$329,900

The University of Melbourne

Melbourne Interdisciplinary Seed Funding from 2015

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) from 2014

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.'

Melbourne School of Government Incubator Grant

Joo-Cheong Tham, Zim Nwokora and Nicholas Reece (Social and Political Sciences) (2014-2015)

The Problems of Campaign Finance Regulation

Funding: \$24,774

Dyason Fellowship

Michelle Foster (2014-2015)

Statelessness in International Refugee Law

Funding: \$5,000

Melbourne Law School-Asia Research Collaboration

Pip Nicholson, Tim Lindsey and Anup Surendranath (National Law University, Delhi) (2015)

Comparing death penalty law and practice: India

Funding: \$9,995

Melbourne Law School-National University of Singapore Law Research Partnership

Kirsty Gover and Dr Nicole Roughan (NUS) (2015-2016)

Philosophical Foundations of Indigenous Law: Scoping Workshop

Funding: \$19,511

Melbourne Law School-Oxford Research Partnership

Michelle Foster and Cathryn Costello (Oxford) (2015-2016) *The New Dynamics of*

International Refugee Law

Funding: \$17,442 and £9,995

New South Wales Electoral Commission and Victorian Electoral Commission

Electoral Regulation Research Network

Joo-Cheong Tham (2015-2018)

Funding: \$150,000

Melbourne Law School Major Collaborative Research Fund

CCCS, Asian Law Centre & the Asia Pacific

Centre for Military Law (2016 -2017)

Constitution Making in the Asia Pacific

Funding: \$50,000

This project aims to understand the relationship between constitution making and the construction of constitutionalism.

Melbourne-Oxford Research Partnership

Dr Farrah Ahmed, Dr Adam Perry (Oxford) and Professor Richard Albert (Boston College) (2015 - 17)

Constitutional Boundaries

Funding: \$17,500

Publications

Book Chapters

Dziedzic, Anna and **Cheryl Saunders**, 'Constitution –making in Myanmar: Insights from World Experience' in M. Crouch and Tim Lindsey (eds), *Law, Society and Transition in Myanmar*, (Hart Publishing, 2014) 159.

Saunders, Cheryl, 'The Interdependence of Federalism and Democracy in Australia' in Francesco Palermo and Elisabeth Alber (eds), *Federalism as Decision-Making* (Brill, Martinus Nijhoff, 2015) 20.

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Edited Books

Davis, Dennis, Alan Richter, and **Cheryl Saunders**, *An Enquiry into the Existence of Global Values Through the Lens of Comparative Constitutional Law*, (Hart Publishing, 2015).

Murray, Christina (editor) and **Coel Kirkby** (co-editor), *International Encyclopaedia of Laws, Constitutional Law: South Africa* (Kluwer, 2014).

Journal Articles Refereed

Clark, Martin and Mark McMillan, 'Making Sense of Indigeneity, Aboriginality and Identity: Race as a Constitutional Conundrum since 1983' (2015) 24 *Griffith Law Review* 106.

Clark, Martin, 'Experiences of Coming to Law: An Interview with Bob Brown on the Tasmanian Wilderness Society as Client in the Tasmanian Dam Case' 24 *Griffith Law Review* 58.

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Young, Margaret, 'Trade Measures to Address Environmental Concerns in Faraway Places: Jurisdictional Issues' (2014) 23 *Review of European, Comparative and International Environmental Law* 302.

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Carter, Anne, '*McCloy v New South Wales*: Political donations, political communication and the place of proportionality analysis' (2015) 26 *Public Law Review* 245.

Dziedzic, Anna, '*The New Commonwealth Model of Constitutionalism: Theory and Practice* by Stephen Gardbaum' (review) (2015) 26 *Public Law Review* 61.

Partlett, William, 'Courts and Constitution-Making' (2015) 50 *Wake Forest Law Review* 921.

Partlett, William, 'Restoration Constitution-Making' (2015) 9 *Vienna Journal of International Constitutional Law* 514.

Rundle, Kristen, 'Legal Subjects and Juridical Persons: Developing Public Legal Theory through Fuller and Arendt,' (2014) 43(3) *Netherlands Journal of Legal Philosophy* 212.

Rundle, Kristen, 'Reply' (to four commentaries on 'Legal Subjects and Juridical Persons: Developing Public Legal Theory through Fuller and Arendt'), (2014) 43(3) *Netherlands Journal of Legal Philosophy* 288.

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Stone, Adrienne, 'Judicial Power – Past Present and Future: A Comment on Professor Finnis' on *Policy Exchange: Judicial Power Project* (10 Nov 2015) <<http://judicialpowerproject.org.uk/judicial-power-past-present-and-future-a-comment-on-professor-finnis/>>.

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 QC

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.

Justice Mark Moshinsky

UPDATE ON APPOINTMENT TO FEDERAL COURT 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.

Justice Stephen McLeish

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 QC

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

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