



Centre for
Comparative
Constitutional
Studies



THE UNIVERSITY OF

MELBOURNE

Centre for Comparative Constitutional Studies

Annual Report 2006

Melbourne Law School
The University of Melbourne

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DIRECTOR'S REPORT 2006

2006 was another extremely busy and successful year for the CCCS. The following is a short summary of the highlights, described more fully in the rest of the report.

Research and Knowledge Transfer

Many Centre members were heavily engaged in the implementation of the Victorian Charter of Human Rights, presenting lectures, conducting training sessions and advising government. Centre members also continued their work on other key topics in Australian and comparative public law. **Carolyn Evans** wrote and lectured internationally about freedom of religion. I published an analysis of the political theories underlying the protection of property rights under the Australian constitution. **Pip Nicholson** wrote about developments in the institutions of the modern Vietnamese state. **Glenn Patmore** wrote about constitutional change, particularly republican change, in Australia and Canada. Founding Director **Cheryl Saunders** returned to Melbourne in late 2006 after visits to Université Pantheon Assas Paris II, France and University of Copenhagen and after spending the 2005-2006 academic year as Arthur Goodhart Visiting Professor of Legal Science, University of Cambridge. She lectured extensively on constitutional change, federalism and comparative constitutional law, among other topics. She has also been involved in assisting the Iraqi constitution-making process. **Joo-Cheong Tham's** research focused on two key issues in contemporary Australian constitutionalism: ensuring that the response to terrorism accords with constitutional values and evaluating the funding of Australian political parties against democratic principles. **Kristen Walker** was active as counsel in three major constitutional cases, the acting judges case (*Forge*) and the terrorism control orders case (*Thomas*) in the High Court, and the *Catch the Fire Ministries* case in the Victorian Court of Appeal. She also wrote a major work on same-sex marriage in Australia which is due for publication in 2007. **John Waugh's** work in state constitutional law and history, particularly Victorian constitutional law and history, continues. Cheryl Saunders, **Megan Donaldson** and I collaborated with colleagues from the Centre for Employment and Labour Relations Law to produce a major commentary on the Work Choices decision, published in early 2007 by Thomsons.

Parliaments and the Protection of Human Rights

A major research focus of some Centre members continued to be the ARC funded project on Australian Parliaments and Human Rights (the Chief Investigators from 2005 were Dr Carolyn Evans and me). This project investigated all the existing parliamentary and pre-parliamentary mechanisms for ensuring that proposed legislation is compliant with rights. In most jurisdictions these mechanisms include a parliamentary scrutiny committee with primary responsibility for checking legislation against (often vague) rights criteria. The project combines a review of the parliamentary records of selected Australian parliaments with interviews of key parliamentary stakeholders. It aims to identify the capacity and effectiveness of Australian parliaments and, through a comparative study, to compare their performance with world's best practice.

As part of the project, the Centre hosted a major international conference in July 2006. More than 200 people attended the conference and the Miegunyah Lecture presented by Miegunyah Distinguished Visitor Professor David Feldman (University of Cambridge, and former legal adviser to the UK Parliament's Joint Committee on Human Rights).

Research funding

Carolyn Evans and **Beth Gaze** were successful in obtaining funding from the ARC for a three year project (2007-2009) on religious freedom and non-discrimination. Joo Cheong Tham received a Melbourne Early Career Researcher Grant Scheme award for work on Parliamentary Protection of Human Rights in an Age of Counter-Terrorism. **Michelle Foster** received a Collaborative Research grant for work on a collaborative analysis of qualification for refugee status with Professor James Hathaway, University of Michigan Law School.

Teaching

The CCCS does not have direct responsibility for teaching in the Faculty's teaching programmes but its members are deeply involved in designing and delivering courses in public law subjects in the LLB, LLM and JD as well as in supervising research higher degrees.

In 2006, I was awarded a Universitas 21 Teaching Fellowship to study best practice in public law teaching in Canada and the Asian region and began the project with a visit to four law schools in Canada. The trip has both consolidated the CCCS' strong relationships with leading Canadian law schools and confirmed that our public law teaching is at least as good as teaching in leading Canadian law schools.

Looking forward

There was much else besides in 2006 – including the many visitors, seminars, research publications and more, listed below.

2007 will be just as busy and challenging for the CCCS's public lawyers, as the Victorian Charter of Human Rights comes into force, issues of federal reform return to the political agenda and the threat of terrorism produces responses that raise questions about fundamental constitutional values.

It has been, and remains, a privilege to be Director of a Centre whose members are engaged in all these issues, through outstanding basic research, influential public engagement and world-class teaching.

Simon Evans
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 Director of the Centre is Dr Simon Evans 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

Dr Simon Evans **Director CCCS**

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.

Professor Cheryl Saunders AO **Founding Director CCCS**

Cheryl Saunders is the Founding Director of the Centre for Comparative Constitutional Studies. She has held a personal chair in the Faculty since 1989 and is a Fellow of the Academy of the Social Sciences in Australia. During 2006 she was the Arthur Goodhart Visiting Professor of Legal Science at the University of Cambridge and a visiting professor at the University of Copenhagen, where she taught comparative constitutional law.

Other positions presently held by Cheryl Saunders include President of the International Association of Constitutional Law and of the International Association of Centres for Federal Studies. She is an editor of the *Public Law Review*, the symposium editor of *I.CON*, a member of the editorial boards of a range of Australian and international journals, including *Publius* and a member of the *Conseil Scientifique, Traité International de Droit Constitutionnel*. She is an Honorary Professor at the University of Capetown and an external examiner for the University of Hong Kong. She has been enseignante invitée at Université Paris II, Panthéon-Assas for the past 8 years.

Cheryl Saunders has specialist interests in constitutional law and comparative constitutional law, including federalism and intergovernmental relations and constitutional design and change. 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.

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 and Iraq.

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 an honorary doctorate from the University of Cordoba, Argentina in 2005.

Associate Professor Kristen Walker
Deputy-Director CCCS

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 graduate program, 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.

Dr Carolyn Evans
Deputy-Director CCCS

Carolyn Evans teaches and researches in the areas of constitutional law, human rights and religious freedom. Carolyn graduated with degrees in Arts and Law (with honours) from the University of Melbourne in 1993 and then completed her Articles with Blake Dawson Waldron. In 1995 she won a Rhodes Scholarship which allowed her to study at Oxford University where she completed her doctorate and was appointed to a Stipendiary Lectureship for two years. She returned to Melbourne University in 2000.

Carolyn is the author of *Religious Freedom under the European Court of Human Rights* (OUP 2001) and co-editor of *Religion and International Law* (1999, Kluwer) and *Mixed Blessings: Laws, Religions and Women's Rights in the Asia-Pacific Region* (2006 Martinus Nijhoff). 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 and Australia. From 2007-2009 she will undertake a joint ARC Discovery Project with Beth Gaze on the topic of religious freedom and non-discrimination.

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 Simon Evans. In 2006, in addition to co-convening a major conference on Parliaments and Human Rights, Simon and Carolyn published articles on this topic in leading international and domestic journals.

Katy Le Roy
Assistant Director CCCS

Katy Le Roy is the Assistant Director of the CCCS, and has been closely associated with the Centre since 1996. Katy completed her undergraduate degrees in Law and Arts at the University of Melbourne, before completing Articles of Clerkship and practicing as a solicitor with Holding Redlich. She is a Barrister and Solicitor of the Supreme Court of Victoria and has also worked in Germany in finance law, and as a Research Fellow in the Law School. In 2006, she co-edited with Cheryl Saunders a volume in the Global Dialogue series on *Legislative, Executive and Judicial Governance in Federal Countries*.

Together with Cheryl Saunders, Katy is co-editor of *The Rule of Law*, published in 2003 by the Federation Press. Katy teaches Fundamentals of the Common Law in the Graduate Program at the Melbourne Law School, and is also a PhD Candidate at the Centre. She is doing her doctoral research on constitution making in the Asia Pacific, looking specifically at constitution making processes in Fiji and the Solomon Islands, and democratic participation in constitution making. Her main academic interests are constitution making, comparative federalism, constitution theory and political theory.

Ms Emma Brimfield
Administrator

Emma Brimfield joined the Centre in late 2005. She had worked for several years within the Higher Education sector, undertaking event management and web/graphic design duties for the University of Melbourne's Alumni Relations Program as well as for a private Higher Education provider. Emma holds a Bachelor of Commerce degree from the University of Tasmania with majors in Market Strategies and Business Economics.

In addition to her duties with CCCS, Emma was also the administrator for the Institute of International Law and the Humanities.

Centre Members

Dr Michelle Foster

Dr Michelle Foster is a Senior Lecturer and Director of the International Refugee Law Research Programme in the Institute for International Law and the Humanities at the University of 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 LL.M. and S.J.D. degrees from the University of Michigan Law School, where she was a Michigan Grotius Fellow. In 2006, Michelle began a formal collaboration between Melbourne Law School and the University of Michigan's Program in Refugee and Asylum Law on a major project in international refugee law. Michelle has published a number of articles on international refugee law and her book, *International Refugee Law and Socio-Economic Rights: Refuge from Deprivation*, is being published in July 2007 by Cambridge University Press.

Associate Professor Beth Gaze

Beth Gaze has a BSc from the University of Melbourne, an LLB (Hons) from Monash University and an LLM from the University of California, Berkley. Her interests are in anti-discrimination and equality law, feminist legal thought, and administrative law including tribunals. Her 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. She commenced two new funded research projects in 2006, one involving a study of the experience of appellants in the Australian Social Security Appeals Tribunal, the other, with Associate Professor Carolyn Evans, a study of the conflict between the principles of freedom of religion and non-discrimination.

She is 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.

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

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).

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 Pip Nicholson **Senior Lecturer**

Dr Pip Nicholson has been associated with the Faculty since 1998. She is a member of the Faculty's Asian Law Centre as well as associated with the Centre for Comparative Constitutional Studies. A graduate in Law and Arts from the University of Melbourne with a Masters in Public Policy from the Australian National University, Pip teaches on the

Vietnamese legal system in both the undergraduate and graduate programs of the Melbourne Law School and teaches on Vietnamese law to a consortium of American law-schools. Pip also teaches Comparative Law, Law and Economic Reform in Asia, Fundamentals of the Common Law and Principles of Public Law (formerly History and Philosophy of Law). 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 recent round of reforms to the Vietnamese court system and labour law reform in Vietnam. Current projects include a study of Vietnamese attitudes to dispute resolution and an analysis of comparative law theory's applicability to empirical legal studies in Asia generally and Vietnam in particular. Pip has worked as a consultant to the Faculty's International Programs, assisting to develop and run programs for overseas visiting groups. She currently consults on changes in transitional legal systems.

Mr Glenn Patmore
Senior Lecturer

Glenn has an LLB (Hons) and a BA from Monash University, and an LLM from Queens University, Canada. His principal fields of interest are democratic theory and practice, constitutional law, human rights law and the republican debate.

Glenn has published in a range of Australian and international journals.

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

Dr Joo-Cheong Tham
Senior Lecturer

Joo-Cheong has an LLB (Hons) and an LLM from the University of Melbourne. Joo-Cheong joined the Melbourne Law School as a Lecturer in 2005. Prior to his appointment, he taught at the law schools of Victoria University and La Trobe University.

His principal fields of interest are labour law, anti-terrorism laws and political finance law. His writings in all three areas have been published in newspapers and international and Australian academic journals. He has also given evidence to parliamentary inquiries into terrorism laws and political finance law. His terrorism law research is presently devoted to an Australian Research Council-funded project on the financing of terrorism. Together with Dr Sally Young, he has published a report on Australian political finance for the Democratic Audit of Australia. He has also recently completed his doctoral thesis which examines the legal precariousness of casual employment.

Joo-Cheong is also a member of the Faculty's Centre for Employment & Labour Relations Law.

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.

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
- Stephen McLeish
- Professor Brian Opeskin
- Jason Pizer
- Pamela Tate SC, Solicitor-General for
Victoria
- Justice Richard Tracey, Federal Court
of Australia

Visitors to the Centre

During 2006, the Centre hosted 10 Australian and International scholars in short and long research visits. Here we list all visitors and provide reports by some of the longer term visitors:

- Christine Bateup, 23 August – 25 September 2006, 10 October – 14 November 2006
- Dr Gregory Carne, University of Tasmania, 2 January – 10 February 2006
- Professor David Feldman, University of Cambridge and Distinguished Miegunyah Visiting Fellow, 20 July – 28 August 2006
- Professor Grant Huscroft, University of Western Ontario, 6 August – 9 August 2006
- Amos Jones, Harvard Law School, 1 September 2006 – 31 May 2007
- Professor Geoffrey Lindell, 12 September – 15 September 2006
- Dan Meagher, Deakin University, 17 July – 31 December 2006
- Charles Parkinson, 23 January 2006 – 1 May 2007
- Dr Gregory Taylor, Monash University, 1 January – 30 June 2006
- Rayner Thwaites, University of Toronto, 23 January – 1 September 2006

– Christine Bateup

I spent my time as a Visitor of the CCCS undertaking further research for my doctoral dissertation and working on a draft of the final section of the dissertation. My dissertation, which I am writing as three discrete articles, focuses on theories of constitutional dialogue and the extent to which dialogue takes place as an observable phenomenon under various national bills of rights. The third and final article I worked on during my time in Melbourne more specifically examines how dialogue can be expected to operate in Australia under a federal bill of rights, in light of Australia's existing political and institutional dynamics.

The leading models for an Australian bill of rights are the weak-form bills of rights that have been adopted in countries such as Canada, the United Kingdom and New Zealand. One of the primary reasons these models are favoured is because of the way they distribute decision-making power between judges and legislators, which is thought to create the conditions for interactive dialogue between the judiciary and the political branches of government. Drawing on positive political theory regarding the strategic nature of judicial decision-making, I argue, however, that dialogue should be reconceived as a *general* feature of the strategic relationship between the judiciary and other actors. Dialogue is thus generated by the general system of constraints under which judges operate, which in turn depends on the broader institutional and political dynamics of constitutional systems. As a result, dialogue is not a form of interaction that is merely *created* by the adoption of weak-form bills of rights mechanisms. Those mechanisms can, however, influence how dialogue evolves due to the fact that they alter the institutional context in which judges operate.

Reframing the concept of dialogue in this way necessitates a rather different form of analysis to determine the likely dialogic effect of the different weak-form bills of rights models if adopted in Australia. In particular, it first requires us to examine how pre-existing institutional and political dynamics in Australia contribute to dialogue about issues of fundamental importance to Australian society, before turning to consider how the adoption of different weak-form mechanisms might affect these dynamics under a bill of rights. In my article, I suggest that the pre-existing constraints in judicial action in Australia are quite significant, which has resulted in the generation of forms of dialogue in which it is difficult for judges to speak with a strong voice in many controversial cases. In light of this, I argue that a federal bill of rights under which judges have the power to strike down legislation, combined with a legislative override, will have greatest potential to achieve a vibrant and satisfying dialogue about rights in Australia.

– Professor David Feldman

During my time in Melbourne I achieved my personal objectives for my visit: learning about Victoria's human-rights legislation and that of the ACT; updating my understanding of areas of Commonwealth constitutional law; and contributing to some extent to the work of the Faculty of Law at the University of Melbourne. It was fortuitous that we arrived in Melbourne just as the Parliament of Victoria was passing the Charter of Human Rights and Responsibilities Act 2006. This coincidence of timing stimulated interest in my presence in Melbourne on the part of a number of people and groups, and led to unexpected invitations to give lectures and seminars and to meet people in many different settings. The remainder of this report outlines my activities (a) within the Faculty of Law at the University of Melbourne, (b) at Trinity College, (c) in relation to other universities, (d) in the legal and governmental communities of Melbourne and Victoria, and (e) in the wider legal and governmental communities.

My formal role included the following activities:

Miegunyah Lecture: The Roles of Parliaments in Protecting Human Rights, 20 July 2006. This lecture also served as the springboard for a highly successful international conference, organised by Dr Simon Evans and Dr Carolyn Evans and the Centre for Comparative Constitutional Studies, on the protection of human rights through parliamentary processes, in which I participated on 21 and 22 July 2006.

Seminar for postgraduate research students on conducting research in human rights law, 31 July 2006. Staff seminar on the drafting of constitutions to build or re-build nations after periods of conflict and the tension between different objectives (short-term and long-term), with a focus on South Africa, Iraq and Bosnia and Herzegovina, 8 August 2006.

A lecture on the roles of international and national agencies in rebuilding nations following conflict, with a focus on the work of the Constitutional Court of Bosnia and Herzegovina and the Office of the High Representative for Bosnia and Herzegovina, drawing on my experience as a judge of the Constitutional Court of Bosnia and Herzegovina since 2002, 16 August 2006.

Activities in relation to the legal and governmental communities of Victoria:

I met the Solicitor-General for Victoria, Pamela Tate SC, on 14 August 2006 to discuss the effects and implementation of the Charter of Human Rights and Responsibilities Act 2006 and the best approach to offences of religious hatred, in the light of the UK's experiences and case-law of the European Court of Human Rights.

I addressed the inaugural conference of the Supreme Court of Victoria on "Implementing a human rights charter: what are the implications for the judicial role?" at the Mansion Hotel, Werribee Park on 11 August 2006.

I gave a talk to public servants (mainly lawyers) at the Victorian Department of the Premier and Cabinet on the implications of the Charter of Human Rights and Responsibilities Act 2006, on 15 August 2006.

I met the Chief Parliamentary Counsel for Victoria, Mr Eamonn Moran SC, on 29 August 2006 to discuss the process for pre-vetting legislation for compatibility with human rights, and the relationship between Parliamentary Counsel, departmental advisers and ministers, and Parliament in the UK and Victoria.

I gave a talk to public servants at the Victorian Department of Justice on the preparations in the public service for implementing the UK's Human Rights Act 1998, the impact of that Act in the UK, the reasons for its politically controversial character, and the extent to which the lessons could be applied in Victoria, on 29 August 2006.

Activities in relation to the legal and governmental communities more widely:

I spoke about the impact of terrorism on the Constitution at the annual conference of the New South Wales Supreme Court, responding to a paper by the Hon. Michael McHugh, on 20 August 2006.

I met the Attorney-General for New South Wales, Bob Debus MP, with representatives of churches and others, to offer ideas about the implementation of a Human Rights Act on the basis of the UK's experience.

I gave a lecture at the Federal Court of Australia, co-hosted by the Federal Court and the Faculty of Law in the University of Melbourne, on constitutional reform in the UK (particularly judicial appointments systems), on 28 August 2006.

In the course of these activities, I had time to develop my ideas on a number of areas of comparative public law and human-rights law. I expect my experience over the last six weeks to be reflected in future writing and publications.

– Dan Meagher

In the second semester of 2006 it was my good fortune to be a visiting scholar at the Centre for Comparative Constitutional Studies (CCCS) at the University of Melbourne. My time was devoted primarily to furthering my current research interest in the often fraught and

complex intersection between free speech and hate speech. In particular, I was working on a long article that examined the efficacy (or otherwise) of Australian criminal racial vilification laws.

The world-class research facilities and academic staff at the CCCS (and the Faculty more generally) made my research not only trouble-free but most enjoyable. I started each day with a stiff coffee in the city and gathered my thoughts whilst enjoying the walk to the Law Faculty. My library carrel had a magnificent view of the Melbourne sky-line and this always seemed to get me in the right frame of mind to read and write.

I was also pleased to deliver a seminar – “The Failure of Criminal Racial Vilification Laws in Australia” - on my research progress. It provided an invaluable opportunity to make and test my arguments before a knowledgeable and (I hope) interested group of students, scholars and practitioners.

As a consequence of my time and research at the CCCS I have since had published articles in the *Public Law Review* and *Criminal Law Journal* and am currently in the process of seeking the publication of another piece on statutory bills of rights.

Research Assistants for 2006

This is a partial list of the research assistants who worked with Centre members on research projects during 2006.

- Megan Donaldson
- Anna Hood
- Chris Thomas
- Jess Moir
- Bronwyn Reddan
- Tim Rogan

EVENTS

International Conference

International Conference on Legislatures and the Protection of Human Rights 20 – 22 July 2006

This major international conference was designed to encourage exploration of the role and effectiveness of legislatures in protecting human rights. Until recently academic and public attention had focussed mainly on the contribution of courts to the protection of human rights through the enforcement of bills of rights.

This conference built on the growing awareness of the significant role of legislatures in protecting human rights. In particular, it investigated how effective legislative scrutiny mechanisms have been in practice. Papers presented at the conference discussed:

- the impact of Bills of Rights on parliamentary procedures
- the contribution of legislative actors and processes (for example: the executive, political parties, parliamentary committees, debate in the chamber) to effective scrutiny of legislation
- the conditions in which effective legislative scrutiny can take place
- pre-legislative mechanisms, including rights- or Charter-compatibility statements and human rights impact statements
- developing a human rights culture in the public service
- the role of outside influences on effective legislative scrutiny

Featured speakers included:

- Professor David Feldman (University of Cambridge, and former legal adviser to the UK Parliament’s Joint Committee on Human Rights)
- Professor Janet Hiebert (Queen’s University, Kingston Ontario)
- Professor George Williams (Director, Gilbert+Tobin Centre of Public Law, UNSW)
- Hafid Abbas (Director General of Human Rights Protection, Department of Justice and Human Rights, Indonesia)
- Professor Jeremy Gunn (Director, Program on Freedom of Religion and Belief, American Civil Liberties Union, Washington DC and Senior Fellow, Emory University, Georgia)
- Professor Paul Rishworth (Faculty of Law, University of Auckland)
- Professor David Kinley (Faculty of Law, University of Sydney)

Most of the papers presented at the Conference are available from the Centre’s website.

Public Lectures

Regulating Religious Vilification

Dermot Feenan, University of Ulster, Northern Ireland

18 May 2006

Dermot Feenan, a Visiting Fellow at Melbourne Law School during May 2006, spoke about Victoria's Racial and Religious Tolerance Act 2001 in the context of the post September 11 trend to introduce religious vilification legislation. These laws pose a range of issues regarding religious sensitivity and freedom of expression. Is such legislation effective? Does legislation requiring religious tolerance lead to intolerance of other beliefs or undermine multiculturalism? Does human rights analysis assist in resolving some of these issues? His presentation addressed these questions with reference to some such laws worldwide, but with particular reference to the legislation in Victorian and recent religious hatred legislation in the United Kingdom.

2006 Miegunyah Public Lecture

The Roles of Parliaments in Protecting Human Rights: a View from the UK

Professor David Feldman, University of Cambridge

20 July 2006

Professor Feldman, Miegunyah Distinguished Visiting Fellow for 2006, discussed the relationship between human rights and politics, and how parliaments can include human rights in their deliberative processes and how human rights can become a constructive element in political discourse. In his lecture, Professor Feldman argued that human rights are part of the standards of public decency and private freedom to which any worthwhile democracy aspires. By making human rights standards an integral part of political discussion, we improve the quality of that discussion, safeguard the values which make society work and foster proper accountability and transparency in public decision-making.

In order to do this effectively, politicians and others must consider the part played by human rights obligations in defining the place of the state in the world; the roles of parliaments and governments in respect of human rights obligations within the state; and the nature of our conception of human rights.

Seminars and Roundtables

Equality and the Shape of Constitutions: Perspectives on Legislative Rights from Canada and the US

Professor Benjamin Berger, University of Victoria, Canada

May 29 2006

Professor Benjamin Berger discussed the drive towards "popular constitutionalism" and legislative rights, and the way in which the constitutional protection of equality is imagined.

Professor Berger is currently an Associate Professor at the Faculty of Law, University of Victoria. Prior to joining the Faculty, he served as a law clerk to Chief Justice Beverly McLachlin in 2002-2003 and was a Fulbright Scholar at Yale University in 2003-2004. His research addresses questions related to constitutional and criminal law and theory, the law of evidence, law and culture, and law and religion.

A Sceptical Canadian Perspective on Charters of Rights
Professor Grant Huscroft, University of Western Ontario
8 August 2006

Grant Huscroft, an expert on the Canadian Charter of Rights and Freedoms and the New Zealand Bill of Rights Act, discussed the implications of Victoria's Charter of Human Rights and Responsibilities with reference to the New Zealand, UK and Canadian experience. Professor Huscroft observed that the promise to preserve parliamentary sovereignty in one form or another was essential to the passage of bills of rights in countries like Canada, New Zealand, the UK, and in states like Victoria. The legislature was said to retain the last word; it can overrule the courts or the bill of rights itself. That, at any rate, was the sales job. Once in force, however, ostensibly weak bills of rights like the NZ Bill of Rights became strong, and strong bills of rights like the Canadian Charter became stronger. Professor Huscroft argued that the Victorian Charter is likely to develop in similar fashion and have a greater impact than expected.

Constitutions and Nation-(re)building
Professor David Feldman, University of Cambridge and Miegunyah Distinguished Visiting Fellow
16 August 2006

Professor David Feldman examined the relationship between national aspirations and values, international pressure and comparative constitutional influences in the drafting of new constitutions, and their implications for the legitimacy and effectiveness of those constitutions. He also drew out the differences between drafting a constitution with long-term goals and one with only short-term goals. He focused on the 1995 Constitution of Bosnia and Herzegovina, but also took sidelong glances at South Africa's 1993 and 1996 Constitutions as well as Iraq's new Constitution.

Anti-Terrorism and Migration Detention in Canada: The Supreme Court Charter of Rights Challenge
Mr Rayner Thwaites, University of Toronto
22 August 2006

Mr Rayner Thwaites spoke about three significant cases heard at the Supreme Court of Canada concerning the deportation, and possible indefinite detention, of non-citizens. The cases were a constitutional challenge to the "security certificate" regime under which the relevant Canadian Ministers can issue a certificate stating that the named non-citizen is "inadmissible" on the grounds of national security, violating human or international rights or of serious or organised criminality. Noting the parallels between the pending Canadian cases and other recent decisions bearing on the indefinite detention of non-citizens, including the

High Court's decision in *Al Kateb*, Mr Thwaites noted that one obvious difference was the argument in the Canadian cases that focused on the human rights protected by the Canadian Charter of Rights and Freedoms. Mr Thwaites analysed the various human rights arguments presented by the parties in the litigation and explored their significance for detainees in Canada and the impact of their absence in Australia.

Mr Thwaites is a doctoral candidate and Connaught scholar at the University of Toronto. He is writing on the indefinite detention of non-citizens. He has lectured in Australian constitutional law at the University of Melbourne, served as an Associate to Justice Merkel of the Federal Court of Australia and practiced with the Public Interest Law Clearing House (Vic) and Mallesons Stephen Jaques.

The Failure of Criminal Racial Vilification Laws in Australia
Mr Dan Meagher, Deakin University
30 August 2006

This seminar focussed on the efficacy of the two main legislative models in Australia which make racial vilification a crime. He considered whether the laws are compatible with the protection and promotion of freedom of speech; whether they sit comfortably within the existing criminal law frameworks; and whether the text of the offences are sufficiently clear and precise. Mr Meagher argued that the current models are fundamentally flawed and ought to be repealed and replaced with a particular kind of penalty enhancement statute.

Dan Meagher is a senior lecturer at Deakin University. He teaches constitutional and criminal law and his research interests include constitutional law, criminal law, legal philosophy and human rights law.

Can Constitutional Courts Solve Serious Social Problems? Segregation, Abortion and Access to Housing
Roundtable Discussion
Professor Geoffrey Lindell, Professorial Fellow, Melbourne Law School
12 September 2006

This roundtable explored whether Constitutional Courts can and should try to solve serious and long-standing social, political and economic problems. It also addressed the limits on the reach of judicial power. Three case studies were analysed:

- Segregation in the United States – the success and legacy of *Brown v Board of Education* (1954)
- Abortion in the United States – how necessary was the decision in *Roe v Wade* and was the price paid for the recognition of the right to an abortion too great in terms of judicial methodology?
- Access to housing in South Africa – the judicial enforcement of social and economic rights as an experiment and the value of adopting an administrative law model of judicial

review as illustrated by the Government of the Republic of South Africa v Grootboom (2001)

The Coalition Invasion of Iraq: The Recognition and Enforcement of International Law and the Courts of the UK and Ireland- Significance for Australia

Professor Geoffrey Lindell, Professorial Fellow, Melbourne Law School

14 September 2006

This seminar, presented by CCCS and the Asia Pacific Centre for Military Law, explored the relationship between domestic and international law which was raised by recent cases decided by British and Irish courts and involved the Coalition invasion of Iraq in 2003. The cases concerned attempted to test the legality of that invasion and also the court – martial of an RAF Medical Officer for refusing to serve in Iraq because of the allegedly unlawful nature of the same invasion. The seminar also dealt with associated issues regarding the availability of judicial review in relation to the exercise of the prerogative powers over foreign affairs and defence and also the scope of those powers.

Education, the Australian Constitution and the Commonwealth – He Who Pays the Piper, Calls the Tune

Professor Geoffrey Lindell, Professorial Fellow, Melbourne Law School

14 September 2006

When the Commonwealth was established, education was a State responsibility and consequently government expenditure and other involvement in education was smaller than it is today. No reference was made to education in the Australian Constitution until the successful amendment in 1946 enabling the Commonwealth to provide “benefits to students” (Constitution section 51 (xxiiiA)). This seminar explored the constitutional basis for the dramatic growth in Commonwealth responsibility for the control and provision of education under that power and other powers, most notably the power to grant financial assistance to the States under Constitution section 96 and the corporations powers under Constitution section 51 (xx).

Transnationalism and Common Law Constitutionalism

Professor Vicki Jackson, Georgetown University Centre of Law, Washington DC

8 November 2006

Professor Jackson’s presentation focused on the implications of domestic constitutions, which operate within an increasingly transnational legal environment. Should transnational legal sources (international and/or foreign) be considered in constitutional adjudication? If so, how, when, and for what purposes? These questions are bound up with broader debates over appropriate methods of constitutional interpretation, debates that are quite vigorous in the United States. Professor Jackson argued that common law constitutionalism is the legitimate interpretive approach within which these questions can be appropriately resolved.

Hong Kong's Political Autonomy and its Continuing Struggle with Universal Suffrage

Mr Phil C. W. Chan, Visiting Fellow, Asia-Pacific College of Diplomacy, ANU

28 November 2006

In this seminar Phil Chan assessed the political autonomy or otherwise of Hong Kong and its continuing struggle for universal suffrage. He examined the question of whether Hong Kong is entitled to the right of self-determination in and under international law and, if so, what that right entails and whether and how it has been violated or implemented. He also discussed whether and how the ultimate aim of universal suffrage in Hong Kong continues to be diluted. Finally, Mr Chan examined the constitutional implications of the Standing Committee of the National People's Congress' power and use of interpretation of a law that is meant to be the ultimate law of Hong Kong.

The High Court's Work Choices Decision: Analysis and Implications for Employment Law and Constitutional Law

Justin Bourke (Barrister), Rosemary Owens (Associate of the Centre for Employment and Labour Relations) and Professor Cheryl Saunders AO (Founding Director of the Centre for Comparative Constitutional Studies)

5 December 2006

On 14 November, the High Court handed down its much-anticipated decision on the constitutional validity of the Federal Government's *Workplace Relations Amendment (Work Choices) Act 2005* (Cth) (Work Choices). Dismissing the challenges brought by the State Governments and trade union organisations, the High Court upheld the reliance by the Commonwealth on the corporation's power to regulate relations between corporations and their employees. This seminar was jointly sponsored by the Centre for Comparative Constitutional Studies and the Centre for Employment and Labour Relations Law. Justin Bourke, one of the six counsel that acted for the Commonwealth in the Work Choices constitutional challenge, summarised and analysed the plaintiffs' challenges to the legislation and the High Court's judgment. Rosemary Owens and Professor Cheryl Saunders, explored the implications, both immediate and longer-term of the decision for federalism and for industrial relations in Australia.

Visiting Positions held by Centre Members

Cheryl Saunders

- November 2006: Enseignante invitée, Université Pantheon Assas Paris II, France
- September/October 2006: Visiting Professor, University of Copenhagen
- To October 2006: Arthur Goodhart Visiting Professor of Legal Science, University of Cambridge
- August 2006: Visiting Professor, Summer University, Fribourg, Switzerland

Selected Presentations at International Conferences by Centre Members

Carolyn Evans

- 'Comparing the approach of the Vatican and the United Nations on the Protection of Religious Freedom', Building Bridges Seminar, Georgetown University, Washington DC, April 2006
- 'The 25th Anniversary of the Declaration on Religious Freedom – Future Directions', Conference on The 1981 U.N. Declaration on Religious Tolerance and Non-Discrimination: Implementing Its Principles After Twenty-five Years, Law and Religion Program, Brigham Young University, October 2006

Simon Evans

- 'The Australian Senate: State's House, Parties' House?', 2006 Conference of the International Association of Centres for Federal Studies, University of Tubingen, Germany, 29 June-1 July 2006
- 'Assessing the Deliberative Capacity of Legislatures: A Case Study of Victorian Religious Vilification Laws', Faculty of Law, Victoria University, Victoria BC, Canada, 24 October 2006; presented at Faculty of Law, McGill University, Montreal, Canada, 19 October 2006

Beth Gaze

- "Equality and Difference: Women, Men and Motherhood" at *Revisiting Equality* organised by the International Sociological Association, Research Committee on Sociology of Law, Gender and Law Committee, Onati, Spain, 10-12 July 2006

Pip Nicholson

- 'Economic rights and land in the Socialist Republic of Vietnam: Rhetoric or Reality?', the Legitimacy and Western and Non-Western Views of Human Rights Barnes Symposium, University of South Carolina, 3-4 February 2006
- 'Teaching Development in Asia: Law and Economic Reform in Asia' Law, Development and Transition: New Questions and Directions', University of Washington and University of Illinois School of Law and Umea University Sweden, Seattle, March 2006

Cheryl Saunders

- 'Democracy, Transparency and the apparent demise of the European Constitution', Cambridge Centre for Legal Studies, 25 January 2006
- 'Federal state and federal society in Australia', Centre for Federal Studies, Canterbury, Kent, 2 February
- 'Anatomy of the Australian Constitution', Centre for Public Law, University of Cambridge, 7 February

- 'The Executive in a Written Constitution', Institute of Advanced Legal Studies, London, 20 March 2006
- 'Administrative Review in Australia', address to the United Kingdom Section of the International Association of Constitutional Law on Reforming and reorganising tribunals, 22 March 2006
- 'Public Participation in Constitutional Change', The Department of Constitutional Affairs, 19 April 2006
- 'Use and Misuse of Comparative Constitutional Law', Centre for Public Law, University of Cambridge 3 May 2006
- 'The United Kingdom as a Federal Political System', Faculty of Law, University of Swansea and the Wales Public Law and Human Rights Association, Cardiff, 4 May 2006
- 'Comparative Constitutional Law in the Courts: Is there a Problem?', University College, London, 11 May 2006
- 'The Use and Abuse of Comparative Constitutional Law', Hebrew University, Israel, 21 June 2006
- 'The Referendum as an Instrument of Constitutional Change', Ramat Gan College, Israel, 22 June 2006
- 'Rights protection in common law countries', Colloquium on Comparative Protection of Human Rights, CEFRES, Prague
- 'Separation of Powers and the Judicial Branch', Administrative Law Bar Association Summer Conference, Cambridge, 30 July 2006
- 'Comparative Constitutional Law in the Courts', University of Copenhagen, 6 October 2006
- 'The Chicken, the Egg and the European Constitutional Order', Conference on Law and European Integration: Towards a Common European Legal Thinking, Copenhagen, 27 October 2006

Michelle Foster

- 'Conceptual Challenges in Refugee Claims Based on Economic Deprivation: Confronting the Distinction between Economic Migrants and Political Refugees', 10th Biennial International Association for the Study of Forced Migration Conference, Toronto, 21st June 2006
- 'Protection Elsewhere: The Right to Require Refugees to Seek Protection in another State', 4th Colloquium on Challenges in International Refugee Law, Ann Arbor, Michigan, 10th-12th November 2006

Selected Presentations at National Conferences by Centre Members

Carolyn Evans

- 'Religious Vilification Laws in Liberal Democracies', Castan Centre for Human Rights, Annual Conference, Melbourne, December 2006
- 'From the Global to the Local and Back Again – Women's Rights and Religious Freedom', Conference on Globalisation, Law and Justice, UWA, Perth, November 2006
- 'Key Legal Changes in the Victorian Charter', Roundtable on the Charter, Human Rights Forum, Melbourne 18 August 2006 (Carolyn Evans was also a convenor of this conference)
- 'Will the Victorian Charter Make a Difference?', Human Rights Forum, University of Melbourne, 5 September 2006
- 'Human Rights Acts and Administrative Law', Australian Institute of Administrative Law, Annual Conference, Queensland, June 2006
- 'Parliaments and the protection of human rights – new empirical work', Legislatures and Human Rights conference, Melbourne, July 2006
- 'Religious Freedom and Equality', Religion, Law and Social Change conference, Canberra, May 2006

Simon Evans

- 'Australian Parliaments and the Protection of Human Rights', Senate Occasional Lecture, Australian Parliament, 17 November 2006
- 'Legislatures and the Protection of Human Rights -- Parliamentary Deliberation about Religious Hatred Legislation: Report on a Work in Progress', Workshop on Free Speech, Hate Speech and Human Rights in Australia, ANU, 8-9 September 2006
- 'Comparing the Victorian Charter of Rights and Responsibilities and the ACT Human Rights Act', ACT Human Rights Act Project Conference, ANU, 20 June 2006
- 'The Victorian Charter of Rights and Responsibilities: Implications for the Victorian Public Service', Clayton Utz Solicitors, Melbourne, 13 June 2006
- 'Appointing Australian Judges: A New Model', Judicial Conference of Australia Colloquium, Hyatt Hotel, Canberra, 7-9 October 2006, joint presentation with Professor John Williams (Adelaide)
- 'Legal Redress under the Victorian Charter of Rights And Responsibilities', Staff Seminar, Faculty of Law, University of Melbourne, 2 October 2006, presentation of a paper written with Carolyn Evans

Beth Gaze

- 'The Impact of WorkChoices on Women', Centre for International and Public Law and Australian Labour Law Association Fringe Event to High Court hearings in the WorkChoices case: Australian National University, Canberra, 10 May 2006

Katy Le Roy

- 'The Solomon Islands Constitution-making Process', Asia Pacific Week, ANU January/February 2006.
- 'The Making of the 1997 Fijian Constitution', Inaugural Conference of the Australian Association for the Advancement of Pacific Studies, The Pacific in Australia, Brisbane 24-27 January 2006.

Joo Cheong Tham

- 'Deconstructing the logic of responding to one threat with another: The perils of countering terrorism by eroding human rights', Human Rights 2006: The Year in Review Conference, Melbourne, Castan Centre of Human Rights, 1 December 2006, joint presentation with Dianne Otto,
- 'Towards an Understanding of Standard Employment Relationships under Australian Labour Law', Australian Labour Law Association 3rd Biennial National Conference, Stamford Plaza, Brisbane, 22-3 September 2006
- 'The impact of counter-terrorism laws on academic freedom', University Regulations & Governance Forum, Rendezvous Hotel, Melbourne, 21 September 2006, invited paper
- 'Dangers of a Charter of Rights in an Age of Counter-Terrorism', Castan Centre for Human Rights Workshop, 'A Bill of Rights in an Age of Fear', Monash University Law Chambers, Melbourne, 25 August 2006, joint presentation with K.D. Ewing.
- 'From the Rule of Law to Pre-emption: An Overview of Australia's Anti-terrorism laws', 'Liberty v Security: A Necessary Trade Off?' Monash University and Victoria Police Conference, Monash University, 19 April 2006

Michelle Foster

- 'Religious Persecution and Australian Refugee law', Law, Religion and Social Change, Law Program, Research School of Social Sciences, The Australian National University, Canberra, 25-27 May 2006

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

- Whiting, A., and **Evans, C.**, (eds) *Mixed Blessings: Laws, Religions and Women's Rights in the Asia-Pacific Region*, Martinus Nijhoff, Leiden, 2006, xvi, 1-288
- Abbott, F. M., Breining, C., Cottier, T., (eds), **Foster, M.**, Fischer, T., (associate editors), *International Trade and Human Rights: Foundations and Conceptual Issues*, Volume 5, World Trade Forum, University of Michigan Press, 2006
- **Le Roy, K.**, and **Saunders, C.**, (eds) *Legislative, Executive and Judicial Governance in Federal Countries*, McGill-Queen's University Press, 2006
- Pernice, I., Kokott, J., and **Saunders, C.**, (eds) *The Future of the European Judicial System*, Nomos Verlag, 2006
- Young, S. and **Tham, J.**, *Political Finance in Australia: A Skewed and Secret System* (Audit Report No 7), Democratic Audit of Australia: Australian National University, 154 pp (2006)

Book Chapters

- Evans, C., and Whiting, A., 'Situating the Analysis, Framing the Issues', in *Mixed Blessings: Laws, Religions and Women's Rights in the Asia-Pacific Region*, Martinus Nijhoff, Leiden, 2006, 1-23
- Evans, S., 'Constitutional Property Rights in Australia: Reconciling Individual Rights and the Common Good' in Tom Campbell, Jeffrey Goldsworthy and Adrienne Stone (eds), *Protecting Rights Without a Bill of Rights: Institutional Performance and Reform in Australia*, Ashgate, 2006, 197-222
- Breining, C and Foster, M., 'Introduction', in Frederick M. Abbott, Christine Breining, Thomas Cottier (eds), Michelle Foster, Thomas Fischer (associate editors), *International Trade and Human Rights: Foundations and Conceptual Issues*, Volume 5, World Trade Forum, University of Michigan Press, 2006
- Gaze, B. "WorkChoices or No choices: the impact of the new industrial relations laws on work and family", in Julian Teicher, Rob Lambert, and Anne O'Rourke (eds),

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

- WorkChoices: The New Industrial Relations Agenda*, Pearson Education Australia, 2006, 106-122
- Saunders, C., 'Australia' in Le Roy, K., and Saunders, C., *Legislative, Executive and Judicial Governance in Federal Countries* (McGill-Queen's University Press, 2006)
 - Saunders, C., 'A Synthesis' in Le Roy, K., and Saunders, C., *Legislative, Executive and Judicial Governance in Federal Countries* (McGill-Queen's University Press, 2006)
 - Saunders, C., 'Budgetary Federalism: Balance of Interests and Contradictions' in *International Academy of Comparative Law, Convergence of Legal Systems in the 21st Century*, Bruylant, Bruxelles, 2006, 1473-1501, ISBN 2-8027-2207-7
 - Tham, J., 'Job Security Laws: Constituting 'Standard' and 'Non-Standard' Employment' in Christopher Arup et al (eds), *Labour Law and Labour Market Regulation: Essays on the Construction and Regulation of Labour Markets and Work Relationships*, 2006, Federation Press, 657-676
 - Waugh, J, 'Haines, O'Shanassy, Nicholson and Heales: The Old Guard, 1855-1863' in Strangio, P, Costar, B (eds), *The Victorian Premiers 1856-2006* (2006) 12-29
 - Waugh, J, 'The Inevitable McCulloch and His Rivals, 1863-1877' in Strangio, P, Costar, B (eds), *The Victorian Premiers 1856-2006* (2006) 30-50
 - Waugh, J, 'Deadlocks in State Parliaments' in Winterton, G (ed), *State Constitutional Landmarks* (2006) 185-210

Journal Articles

- Evans, C., and Evans, S., 'Evaluating The Human Rights Performance Of Legislatures' (2006) 6(3) *Human Rights Law Review* 545-569
- Evans, C., and Evans, S., 'Legal Redress under the Victorian Charter of Rights And Responsibilities' (2006) 17 *Public Law Review* 264-281
- Evans, C., and Thomas, C., 'Church-State Relations and the European Court of Human Rights, Brigham Young University Law Review' (2006) 3: 699-726
- Evans, S., 'The Meaning of Constitutional Terms: Essential Features, Family Resemblance and Theory-Based Approaches' (2006) 29:3 *University of NSW Law Journal* 207-237
- Evans, C., and Evans, S., 'Scrutiny Committees and Parliamentary Conceptions of Human Rights' [2006] *Public Law* 785-806
- Evans, S., 'Australia: Mandatory administrative detention' (2006) 4 *International Journal of Constitutional Law* 517-532
- Evans, S., 'Improving Human Rights Analysis In The Legislative And Policy Processes' (2005) [2006] 29 *Melbourne University Law Review* 665-703

- Evans, S., 'Should Australian Bills of Rights Protect Property Rights?' (2006) 31 *Alternative Law Journal* 19-24
- Foster, M., "Membership in the Australian Community: *Singh v The Commonwealth* and its Consequences for Australian Citizenship Law" (2006) 34(1) *Federal Law Review* 161
- Foster, M., Review Essay "Internally Displaced Persons: Conceptual and Practical Challenges" (2006) 17 *Public Law Review* 63.
- Patmore, G., 'Choosing the Republic: The Legal and Constitutional Steps in Australia and Canada' (2006) 31 *Queen's Law Journal* 270–295
- Gollan, P., and Patmore, G., 'Transporting the European Social Partnership Model to Australia' (2006) 48 *The Journal of Industrial Relations* 217–256
- Saunders, C., 'The Use and misuse of comparative constitutional law' (2006) 13 *Indiana Journal of Global Legal Studies* 37-76
- Saunders, C., 'Democracy, Transparency, and the Apparent Demise of the Treaty Establishing a Constitution for Europe' (2006) 8 *Cambridge Yearbook of European Legal Studies*, 9-36
- Saunders, C., 'Apples, Oranges, and Comparative Administrative Law', 2006 *Acta Juridica*, 423-449
- Stone, A., and Evans, S., 'Developments – Australia – Freedom of Speech and Insult in the High Court of Australia: *Coleman v. Power*' (2006) 4 *I.CON (International Journal of Constitutional Law)* 677-688
- Waugh, J, 'Appointing the Governor-General: The Case of William McKell' (2006) 17 *Public Law Review*, 49-59
- Waugh, J, 'Government Control of Royal Assent in Victoria' (2006) 8 *Constitutional Law and Policy Review*, 69-74
- Waugh, J, 'The Brummagem Coup: The Start of Self-Government in Victoria' (2006) 77 *Victorian Historical Journal*, 143-161

Selected Media Commentary / Opinion Pieces

- Evans, S., 'Federation in Tatters', *Sydney Morning Herald*, 18 November 2006
- Evans, S., and Williams, J., 'Politics can contaminate the judicial selection process', *The Australian*, 27 October 2006
- Evans, C., and Evans, S., 'Charter a step forward in protecting human rights', *The Age*, 22 December 2005 (republished at *Australian Policy Online*, 10 January 2006, <http://www.apo.org.au>)
- Gaze, B. 'Work changes that will hurt women', *The Age*, 12 June 2006, 13

- Tham, J., 'Giving rights away, but to what end?', *The Age*, 14 November 2006, 17
- Tham, J., 'Goodbye to a decent life', *The Age*, 6 June 2006, 11.
- Tham, J., 'Party funds threaten democracy', *The Age*, 26 May 2006, 15
- Tham, J., 'Why the Kurdistan Workers Party should not be banned', posted on Australian Policy Online (www.apo.org.au) on 1 May 2006, 2 pp
- Tham, J., 'Paying a price for patronage', *The Age*, 3 February 2006, 13

Other Publications

- Evans, C., and Rogan, T., 'Australia, Encyclopaedia of World Constitutions', Gerhard Robbers (ed), Facts on File, 2006
- Evans, C., 'Religion in the World' (review essay), *Journal of Law and Religion* XXI 169-172, 2005-6
- Evans, C., and Evans, S., 'Charter a step forward in protecting human rights', *The Age*, 22 December 2005 (republished at Australian Policy Online, 10 January 2006, <http://www.apo.org.au>)

Grants

- Simon Evans, Carolyn Evans and Kristen Walker were awarded a 3 year Australian Research Council Discovery Project grant for the project 'Australian Parliaments and the Protection of Human Rights'. This grant commenced in 2004.
- Carolyn Evans and Beth Gaze were awarded a three year Australian Research Council Discovery Project grant, for the project 'Non-Discrimination Laws and Religious Freedom: Current Conflicts and Future Directions'. This grant will commence in 2007.
- Beth Gaze and Belinda Fehlberg have taken over as Chief Investigators on a 3 year Australian Research Council Discovery Project grant for the project 'Coherent, independent and user-friendly? Participant perceptions of social security administrative review processes in Australia and Britain.' Work on the project commenced during 2006.
- Joo-Cheong Tham was awarded a Melbourne Early Career Researcher grant for the project 'Parliamentary Protection of Human Rights in an Age of Counter-Terrorism'. This grant commences in 2007.
- Joo-Cheong Tham was awarded the Rydon Fellowship in Australian Politics and Political History for a study visit at the Menzies Centre for Australian Studies in 2008.
- Michelle Foster was awarded a Collaborative Research grant for the project 'Guidelines on International Refugee Law: A Collaborative Analysis of Qualification for Refugee

Status'. This grant commences in 2007. The collaborating partner for the project is James Hathaway, University of Michigan Law School.

Consultancies

Centre members provide advice on public law questions on a private consultancy basis for a wide range of national and international bodies. In 2006, Simon Evans collaborated with Professor John Williams on a CCCS consultancy for the Judicial Conference of Australia, preparing a position paper on new models for the appointment of judges to Australian courts.

Research Supervision – Research Higher Degree Students

Carolyn Evans

- John Date (Masters): 'Implications of Canon Law for Church Organisations Operating in Australia'
- Kasia Lach (PhD): 'Sovereignty and Eastern Europe'
- James Irving (Masters): 'Free speech and anti-terrorism laws'
- Khaled M Abou-Elyous (PhD): 'The UN Security Council's Role After the Cold War and its Impact on the Palestinian-Israeli Conflict'
- Gideon Boas (PhD): 'Trying Former Heads of States and Senior Officials for War Crimes: Lessons in Complex Litigation from the Milosevic Trial'
- Clancy Kelly (PhD): 'How International Law Gives Effect to the Right to Essential Medicines'
- Peter Little (PhD): 'Universal Jurisdiction for Multinational Corporations'
- Penny Martin (Masters): 'The Impact of Human Rights in Scotland: Five Years After Devolution'

Simon Evans

- Emily Hammond (PhD): 'Judicial Review and Courts created by Parliament'
- Wayne Jovic (PhD): 'Liberty and Responsibility in the Gleeson Court'
- Matthew Storey (PhD): 'Statutory Property in Australia'

Beth Gaze

- Dominique Allen (PhD): 'Improving the Effectiveness of Australia's Anti-Discrimination Laws'
- Tony Mihalopoulos (PhD): 'The Granting of recognition space to indigenous and ethno-cultural groups in Australia'
- Lee Adams (SJD): 'Mediating Work and Family Responsibilities: A Comparative Study of Legislative Strategies in Three Common Law Countries'

Cheryl Saunders

- Fiona Hanlon (PhD): 'Role of the Attorney-General'
- Katy Le Roy (PhD): 'Constitution-making in the Asia-Pacific Region'
- Emily Hammond (PhD): 'Judicial Review and Courts created by Parliament'

Research Supervision – Advanced Legal Research & Legal Internship Projects (LLB)

Simon Evans

- Joseph Ip: ‘The Public Use/Public Purpose Requirement in Compulsory Acquisition Law’ (Advanced Legal Research)
- Jess Gurevich, “Civil Liberty vs National Security: Exercising Executive Power in the ‘War on Terror’” (Legal Internship)
- Andrew Brookes, “Judicial Independence and the Supreme Court Appointment Process” (Legal Internship)

Beth Gaze

- Kate Brennan: ‘Substantive Legitimate Expectation in Australian and British Administrative Law: The Significance of Increasingly Divergent Visions of the Rule of Law’

PUBLIC POLICY AND LAW REFORM

Internship

In the summer of 2005-6, the Centre hosted the third Law Reform and Public Policy Intern, Daniel McCluskey. Tragically, Dan died, young and suddenly, during his time with us. Dan made an enormous contribution to the Centre and its public policy work. He worked on several submissions, on human rights, citizenship and other topics. He also began work on updating the Annotated Constitution, published by the Centre and the Constitution Centenary Foundation. Dan's talent, energy and rich humanity are sorely missed.

Evelyn Tadros was the CCCS's fourth intern (summer 2006-7) and contributed significantly to the improvement of the CCCS's communications, website and educational materials.

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 2006. Many of the submissions had a significant impact on these processes, as well as contributing to Centre members' own research.

- Evans, C., and Evans, S., Comments on the New Matilda Bill of Rights, submission to the Human Rights Act Campaign, 17 February 2006
- Evans, S., and McCluskey, D., Submission to the Senate. Legal and Constitutional Legislation Committee Inquiry into the Provisions of the Australian Citizenship Bill 2005 and the Australian Citizenship (Transitional and Consequential) Bill 2005 (submission dated 16 January 2006) and oral evidence given by Evans, S., to the Committee on 30 January 2006
- Evans, S., Submission to the House of Representatives Standing Committee on Legal and Constitutional Affairs Inquiry into Harmonisation of Legal Systems, 17 March 2006
- McCluskey, D., Evans, C., and Evans, S., Submission to the Victorian Department of Justice Charter of Rights Implementation Process, 25 January 2006

TEACHING PROGRAMS

Centre members have teaching responsibilities in the Faculty's wide range of public law subjects across all Faculty programs. In 2006 these included:

Bachelor of Laws

Constitutional Law
Administrative Law
Advanced Constitutional Law

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

Universitas 21 Teaching Fellowship

Simon Evans was awarded a fellowship to visit universities in Canada, Singapore, China and Hong Kong to investigate **Global perspectives on teaching and learning in public law**. The project has three strands: identifying international best practice, understanding our students and investigating opportunities for cooperative teaching. A summary of the project results will appear in the 2007 Annual Report.

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 AACL.

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.

LAWASIA, The Law Association for Asia and the Pacific International Association of Constitutional Law

LAWASIA is a professional association of representatives of bar councils, law associations, individual lawyers, law firms and corporations principally from the Asia Pacific region. LAWASIA's main objective is to foster professional and business relations between lawyers, businesses and government representatives in the Asia Pacific region and also to promote the rule of law in a diverse range of political, cultural, social and economic contexts throughout the region.

Institute of Federalism, Fribourg Switzerland

The Institute of Federalism of the University of Fribourg is an international centre engaged in research, teaching, consulting and documentation. The Institute's activities focus on the understanding of various and diverse issues of federalism, decentralization, human rights, minority protection and good governance. Through its activities, the Institute aims at

contributing to the development of multicultural communities within federal/decentralized States, under the rule of law and committed to domestic and international peace.

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

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

Stephen McLeish is a Victorian barrister practising mainly in the areas of commercial law and equity, constitutional law and administrative law. He studied law at the University of Melbourne and was awarded the Supreme Court Prize in 1986. He completed a Master of Laws degree at Harvard in 1991 concentrating on constitutional law. Before going to the Bar he also practised in commercial law with Arthur Robinson & Hedderwicks. Between 1988 and 1990 he was Associate to Sir Anthony Mason.

Brian Opekin

Brian Opekin 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 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.

Pamela Tate SC, Solicitor-General for Victoria

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.

Justice Richard R S Tracey

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

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