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**Director’s Report**

Over 2011, the CCCS was been characteristically busy and engaging on a range of fronts. For the first half of 2011 Laureate Professor Cheryl Saunders returned to the Directorship of CCCS while I was a Visiting Professor at the Georgetown University Law Centre. I am very grateful to Professor Cheryl Saunders for her leadership of CCCS during this period.

**New Colleagues**

First and importantly the Centre welcomed several new colleagues: Paula O’Brien, whose research interests lie in administrative law generally and public health and public interest law in particular; Elizabeth Southwood who is undertaking a PhD on rights determination as an indicator of judicial power, under the supervision of Adrienne Stone and Cheryl Saunders; Tom Bland, a second year JD student who assists with the AACL and CCCS newsletters and acts as a research assistant to several CCCS members; Dr Irene Spigno joined us as a Post-Doctoral Fellow supported by an Endeavour Award. Dr Spigno holds a PhD in Comparative Public Law. Her project is entitled, ‘Freedom of Speech, Hate Speech and the Influence of Foreign Law: The Australian experience’.

The Centre was also delighted to welcome Michael Crommelin back from the deanship as an active CCCS member, while reluctantly surrendering Carolyn Evans, who became Dean on 1 February.

**Visitors**

In addition to colleagues on staff, a range of visitors passed through the CCCS in a variety of capacities, each of whom contributed greatly to our intellectual life. These included: Professor Miyoko Tusjimura-Yokoyama, of Tohoku University, Japan; Professor Maeve McDonagh, from University College, Cork; Dr Gavin Anderson, University of Glasgow, Scotland; Professor Brian Opeskin, Macquarie University; Professor Jiunn-rong Yeh from National Taiwan University; and Dr Lorenzo Zucca from King’s College, London.

**Awards and Appointments**

In June 2011, the Victorian Government announced the appointment of Stephen McLeish SC as the new Solicitor-General for Victoria. Stephen McLeish is a member of the Advisory Board of the Centre.

In July, two CCCS members (myself and Pip Nicholson who is also a Deputy Director of the Asian Law Centre) were elected as associate members of the AIDC-IACL (Académie internationale de droit comparé - International Academy of Comparative Law) along with our colleague Associate Professor Sarah Biddulph of the Asian Law Centre.

**Publications**

The publications by CCCS members over 2011 are detailed further in this report but especially notable were two important books. Dr Kirsty Gover published *Tribal Constitutionalism: States, Tribes and the Governance of Membership* (OUP, 2011) and Dr Alison Duxbury, published *The Participation of States in International Organisations: The Role of Human Rights and Democracy* (CUP 2011).

**Seminars**

As usual, the CCCS was been host to a variety of seminars and other discussion forums in the first part of the year. The Legal Theory Workshop, founded and convened by CCCS member, Dr Lu Weis, brought a number of public law scholars to the CCCS including Professors Peter Cane (ANU) and Corey Bretschneider (Brown) to the CCCS and the planning of a vibrant series of workshops for the second part of 2011 is well underway.
Teaching

2011 was the fourth year of the Law School's transition to a fully graduate law school. CCCS members have been instrumental in developing and teaching a new, challenging and integrated series of public law subjects for the JD. These build from a foundation subject on the principles of domestic and international public law through constitutional law to administrative law and criminal law. JD students with particular interest in public law are welcome to participate in CCCS activities and many of them do so. The CCCS also worked in close collaboration with the public and international law specialization in the Melbourne Law Masters. Four subjects have been held already this year: Evolving Constitutionalism in Asia (Yeh); Australian Charters of Rights (Evans and Pound); International Migration Law (Opeskin); Law of Royal Commissions and Public Inquiries (Charles); and Law of Democracy (Issacharoff). A complete list of subjects still to come in the government law specialisation of the Melbourne Law Masters is provided on page 11.

Conferences

Three significant conferences were held at CCCS over 2011. During the University's break between semesters the CCCS organized two important conferences. 'Law and Religion: Legal Regulation of Religious Groups, Organisations and Communities' was convened by Professor Carolyn Evans who, in an almost super-human effort, managed to combine leading this important international conference with her responsibilities as Dean. The conference brought extremely eminent nationally renowned scholars to Melbourne for a fascinating two day discussion. The conference was immediately preceded by a workshop for post-graduate students and was launched with a provocative public lecture on the relationship between religion and human rights by Professor John Witte Jr the Jonas Robitscher Professor of Law, Alonzo L. McDonald Distinguished Professor and director of the Center for the Study of Law and Religion at Emory Law School.

Almost simultaneously, the CCCS hosted a workshop (supported by the New South Wales Electoral Commission and Victorian Electoral Commission) on the theme 'Challenges for Electoral Democracy', the second in a series convened by Associate Professor Joo-Cheong Tham. The workshop brought together politicians, electoral commissioners and legal and political scholars, and focused on two broad topics: electoral systems and political funding.

Together with much of the nation, CCCS members were transfixed by public events with strong public law underpinnings: the High Court's decisions in *M70 v Commonwealth* (the Malaysian Solution Case), the decision of the Federal Court in *Eatock v Bolt* and the questions raised by the Expert Panel on Constitutional Recognition of Indigenous People. We've also been following the High Court's decision in *Momcilovic v the Queen* and the report of SARC on the Victorian Charter of Rights and Responsibilities.

These events were the focus of two major and very well attended public seminars. On 22 September, the CCCS jointly with the Law School's Institute for International Law and the Humanities held a public seminar 'Beyond the Malaysian Solution? Refugee Responsibility Sharing in the Asia-Pacific Region' at which Richard Towle, United Nations; Associate Professor Michelle Foster, Melbourne Law School; and Professor James C. Hathaway, Michigan Law School spoke. On 12 October, the CCCS held (as part of the Law School's Courting Controversy Series) a public seminar featuring Malcolm Fraser AC CH; Dr Mark McMillan and myself on the Constitutional Recognition of Indigenous People.

In addition, Simon Evans made a submission, with Jason Bosland, to the Senate Legal and Constitutional Affairs Committee enquiry into the Trade Marks Amendment (Tobacco Plain Packaging) Bill 2011 and gave oral evidence to the Committee; and was cited in the report. The CCCS also provided substantial assistance to the Expert Panel on the Constitutional Recognition of Local Government in the form of a commissioned research report. Joo-Cheong Tham gave evidence to Commonwealth Joint Standing Committee on Electoral Matters' inquiry into the 2010 federal election and gave a lecture, 'Money in Australian Politics: Is there a Case for Change?' at the Commonwealth Parliament on 25 August.

Media Engagement

The prominence of public law issues in the news saw many CCCS members in the national media: Simon Evans along with Melbourne Law School colleague Jeremy Gans gave interviews to Radio National's Law Report on the future of the Victorian Charter of Rights and Freedoms; and a fortnight later I gave an interview also to the Law Report and to the ABC Television's on *Bolt v Eatock* and an interview to Radio National's Life Matters. Michelle Foster was
interviewed on the Law Report on the High Court’s decision in *M70* and also gave interviews to ABC Local Radio and was featured on ABC Television’s *The Drum*.

While some CCCS members were engaged with national affairs, the Centre did not lose focus on international events. Michelle Foster ran an ARC funded workshop from 21st-24th September on International Refugee law which attracted leading international and refugee law scholars from around the world; Cheryl Saunders participated in South-South Dialogue on Constitution Building Processes in Cairo, 10-12 October, under the auspices of International Institute for Democracy.

All these activities occurred along side our regular seminar program, which featured Professor Brian Opeskin (Macquarie); Professor Andrew Harding (Victoria University, Canada); Associate Professor James Stellios (ANU) and Robert Li (Peking University) and a joint event with the Accountability Roundtable, a public lecture by the Hon. Fred Chaney, 'Integrity in Parliament - Where does duty lie?'

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
Professor Adrienne Stone

Director, CCCS

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

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

Professor Cheryl Saunders AO

Laureate Professor

Personal Chair in Law

Foundation Director of CCCS

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

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

Other positions presently held by Cheryl Saunders include President of the International Association of Centres for Federal Studies, member of the advisory board of International IDEA and member of the Program Committee of the Forum of Federations. She is an editor of the Public Law Review, a member of the advisory board of ICON 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.
Carolyn Evans is Deputy Director of the Centre for Comparative Constitutional Studies. Her teaching and research are in the areas of constitutional law, human rights and religious freedom. Carolyn has degrees in Arts and Law from Melbourne University and a doctorate from Oxford University where she studied as a Rhodes Scholar and where she held a stipendiary lectureship for two years before returning to Melbourne in 2000. She also qualified to practice law and is a barrister and solicitor of the Supreme Court of Victoria. In 2010, Carolyn was awarded a Fulbright Senior Scholarship to allow her to travel as a Visiting Fellow at American and Emory Universities to examine questions of comparative religious freedom. Carolyn is the author of *Religious Freedom under the European Court of Human Rights* (OUP 2001) and co-author of *Australian Bills of Rights: The Law of the Victorian Charter and the ACT Human Rights Act* (LexisNexis 2008). She is co-editor of *Religion and International Law* (1999, Kluwer); *Mixed Blessings: Laws, Religions and Women’s Rights in the Asia-Pacific Region* (2006 Martinus Nijhoff) and *Law and Religion in Historical and Theoretical Perspective* (CUP 2008). She is an internationally recognised expert on religious freedom and the relationship between law and religion and has spoken on these topics in the United States, United Kingdom, Russia, China, Greece, Vietnam, India, Hong Kong, Switzerland, Malaysia, Nepal and Australia.

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

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.

Pip Nicholson joined the Asian Law Centre in 1997 and was a Senior Fellow of the Faculty from 1998. She joined the Faculty permanently as a lecturer in 2002, becoming a senior lecturer in 2004 and Director of Teaching in 2006-2007. A graduate in Law and Arts from the University of Melbourne with a Masters in Public Policy from the Australian National University and doctorate form the Law School University of Melbourne, Pip teaches on the Vietnamese legal system in both the LLB and Law Masters of the Melbourne Law School and teaches on Vietnamese law to a consortium of American law-schools.
Pip's doctoral research focused on the Vietnamese court system between 1945 and 1976, in the course of an analysis of the extent to which the Vietnamese legal system mirrored or diverged from its Soviet parent.

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

**Professor Michael Crommelin AO**

Zelman Cowen Professor of Law

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

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

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

**Associate Professor Kristen Walker**

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

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

**Associate Professor Michelle Foster**

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

Michelle graduated with a BComm (Hons) and LLB from the University of New South Wales in 1996 and then worked as Research Director for the Hon AM Gleeson AC (then Chief Justice of NSW) in 1997. From 1997-2000 Michelle was the Legal Research Officer for the Solicitor-General and Crown Advocate of NSW, and also tutored part-time in Industrial Law at the University of New South Wales. From 2000-2004 Michelle completed an LLM and SJD at the University of Michigan, where she was a Michigan Grotius Fellow and won a number of awards including the William W. Bishop Jr. Award for study in international law, a Certificate of Merit for first place in Comparative Human Rights law, and a Community of Scholars Graduate Student Fellowship. Michelle was awarded the SJD degree in 2004.
for her thesis entitled *Refuge From Deprivation: Forced Migration and Economic and Social Rights in International Law*. While at Michigan she co-authored a number of papers with James C. Hathaway on various aspects of the 1951 Refugee Convention, and participated in the 2001 and 2004 Michigan Colloquiums on Challenges in International Refugee Law as student and rapporteur respectively. She also worked as an intern at the Advice for Individual Rights in Europe (AIRE) Centre in London and conducted seminars in Dubrovnik, Croatia on cultural relativity and international law for the University of Zagreb.

**Associate Professor Beth Gaze**

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

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

**Associate Professor Joo-Cheong Tham**

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

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

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

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

Associate Professor Jeremy Gans

Jeremy Gans is an Associate Professor in Melbourne Law School, where he researches and teaches across all aspects of the criminal justice system. He holds higher degrees in both law and criminology. In 2007, he was appointed as the Human Rights Adviser to the Victorian Parliament's Scrutiny of Acts and Regulations Committee. His early research focused on fact-finding in sexual assault trials, the subject of his doctoral thesis and a number of published articles, and criminal investigation, especially the technique of DNA identification. He is the co-author of an evidence law text and a forthcoming human rights text, and is currently working on a criminal law treatise. He has contributed to public debate on criminal justice in a number of forums. He publishes a running commentary on Victoria's Charter of Human Rights and Responsibilities at charterblog.wordpress.com.

Associate Professor Margaret Young

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

Dr 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 (IIIJ). She received her doctorate from NYU Law School, where she was a Graduate Institute Scholar of the IIIJ, and a New Zealand Top Achiever Doctoral Fellow. Dr Gover was a Senior Advisor and then consultant to the New Zealand government on international and domestic policy on indigenous peoples, and taught in this field at the Canterbury Law School. She represented the New Zealand government at intergovernmental drafting sessions of the U.N. Declaration on the Rights of Indigenous Peoples.
She is currently working on a book project, based on her thesis, entitled Constitutionalizing Tribalism: States, Tribes and Membership Governance in Australia, Canada, New Zealand and the United States. Other work addresses the friction between tribal and settler state laws on the status of adopted children, and the participation of indigenous communities in international trade and investment dispute resolution fora. Her article ‘Genealogy as Continuity: Explaining the Growing Tribal Preference for Descent Rules’ (American Indian Law Review, 33-1, 2009) looks at changes in the way United States tribes have determined membership since the 1930s, with an emphasis on the increased tribal use of blood quantum rules.

Dr Lael Weis
McKenzie Post-Doctoral Fellow

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

Mr Glenn Patmore

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

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

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

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

Ms Paula O’Brien

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

After graduating with her LLB, Paula completed her articles and worked as a lawyer at Minter Ellison Melbourne until 2003. Her practice was principally in the area of administrative law. She advised public sector agencies on the regulation of health professionals. From 2003 – 2007, Paula was the Executive Director of the Public Interest Law Clearing House (PILCH) in Victoria, a community legal centre which engages in case work, advocacy and education to advance the public interest, in particular the position of marginalised and disadvantaged members of the community. For her work at PILCH, she was awarded the Women Lawyers ‘Rising Star’ Award in 2007.

Paula’s current research is in the area of public health law. Her doctoral thesis is on the domestic and international legal regulation of the global alcohol industry. Her other area of health law expertise relates to health workers and she had researched and published on questions related to the global shortage of health workers. She has looked closely at the international regulatory environment in which the shortages occur. Paula is also involved in an inter-disciplinary project on social justice and temporary migrant work, where the major case study is the Victorian nursing sector. This is, in part, an empirical project involving interviews with experts in the Victorian nursing industry, as well as nurses on 457 visas: see http://www.socialjustice.unimelb.edu.au/Research/migrantwork3.html. Paula’s part in the project relates to the law regulating the international recruitment and registration of health workers.
Mr Ben Saunders
Research Fellow

Ben Saunders is a Research Fellow at the Melbourne Law School, examining executive power in Australia and a lawyer, practising in corporate, financial services and water law. Ben is undertaking a PhD at the TC Beirne School of Law, University of Queensland, researching representation and responsible government under the Australian Constitution. Ben Saunders is a Research Fellow at the Melbourne Law School, and is investigating the definition and regulation of Executive Power in Australia, under an ARC Discovery Project. He is also a PhD candidate at the University of Queensland, researching representative and responsible government under the Australian Constitution. Prior to starting at the Law School in 2010 Ben was an Associate at M+K Lawyers, practising in corporate, financial services and water law.

Claire Hausler
Centre Administrator

Claire Hausler joined the Centre in July 2010. She previously worked for the McGill University Faculty of Law BCL/LLB Admissions Office in Montreal, Canada. Claire holds a BCom (Hons) from the University of Melbourne.

Advisory Board

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

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

Mr Li Zhiqiang
PhD Candidate
Peking University, China
1 October 2010 to 30 September 2011

Mr Zhiqiang’s research interests lie in comparative constitutional law, equal protection and anti-discrimination, and power separation. A PhD candidate from Peking University, is working with scholars from the Centre of Comparative Constitutional Studies (CCCS) to gain insight into how equal protections works in Australia.

Professor Miyoko Tusimura-Yokoyama
Tohoku University, Japan

Associate Professor Maeve McDonagh
University College, Cork
19 January to 20 April 2011

Associate Professor Maeve McDonagh’s areas of specialisation include in freedom of information law (FOI) and policy and data protection laws. During her time at Melbourne Law School she will spend time researching the application of FOI law in the electronic age, including newer FOI legislation that is being introduced in Australia. She will seek to evaluate, from a comparative perspective, the extent to which FOI laws meet the challenges associated with developments in technology and the way information is stored. Associate Professor McDonagh will also be researching a third edition of her book, Freedom of Information Law (Thomson Round Hall) and writing an article on developments in Australian FOI law. Associate Professor McDonagh will work with Faculty from the Centre for Comparative Constitutional Studies during her visit.

Dr Gavin Anderson
University of Glasgow, Scotland
January to April 2011

Dr Gavin Anderson is a Senior Lecturer at the University of Glasgow's School of Law. His research interests are in comparative constitutional law and theory, globalisation, and legal pluralism. During his time at Melbourne Law School, Dr Anderson will research his current project ‘Constitutionalism in Historical Context: Recovering Constitutionalism from Below’. His research will focus on the extent to which globalization from below recovers a broader understanding of constitutionalism as struggle. This study is located in the context of colonial constitutional history and analyses how the predominant Western conception of constitutionalism emerged through its engagement with non-Western and non-institutional forms of constitutionalism, while at the same time grounding the authority of the colonial state in the designation of such forms as non-constitutional. Dr Anderson will be working with Faculty affiliated with the Centre for Comparative Constitutional Studies during his visit.

Professor Brian Opeskin
Macquarie University, Australia

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 seditious laws.

**Professor Jiunn-rong Yeh**
National Taiwan University, Taiwan
February 2011

**Dr Lorenzo Zucca**
King’s College, London
March 2011

**Dr Claudia Geiringer**
University of Victoria, New Zealand
November to December 2011

**Justice Dennis Davis**
High Court of South Africa
November to December 2011

**Professor Dieter Grimm**
Yale Law School and Ins Wissenschaftskolleg zu Berlin (Institute for Advanced Study Berlin)
December 2011

Dieter Grimm is Professor of Law at Humboldt University of Berlin and a Permanent Fellow and former Director of the Wissenschaftskolleg zu Berlin Institute for Advanced Study.

Professor Grimm studied Jurisprudence and Political Science in Frankfurt, Freiburg, Berlin, Paris, and Harvard, and completed both juridical state examinations. He holds a Master of Laws from Harvard University, and earned his Dr. jur at Frankfurt University with a thesis on ‘Solidarity as a Legal Principle’. He earned his habilitation in Frankfurt in 1979 in German and Foreign Public Law, Modern Legal and Constitutional History, Legal Theory, and Political Science.

From 1967 to 1979, Professor Grimm was a Research Lecturer at the Max Planck Institute for European Legal History in Frankfurt and, from 1979 on, Professor for Public Law at Bielefeld University, where he was also Director of the Center for Interdisciplinary Research for some of this time.

From 1987 to 1999, Dieter Grimm was a Justice in the Federal Constitutional Court in the First Senate, where he was responsible for the fields of freedom of opinion, the press, and broadcasting; freedom of assembly; and freedom of association, personal rights, data protection and commercial law. In 1996, he was appointed Distinguished Member of the Global Law Faculty at New York University Law School and, in 1999, was awarded the Major Federal Service Cross with Sash and Star.

In January 2000 he was appointed Professor of Public Law at the Humboldt University of Berlin and a Permanent Fellow of the Wissenschaftskolleg zu Berlin. From October 2001 until March 2007 he was also the Rector of the Wissenschaftskolleg. He was Visiting Professor of Law and Oscar M. Ruebhausen Distinguished Senior Fellow at Yale Law School in spring 2011.

Professor Grimm is co-editor of several law reviews including The International Journal of Constitutional Law and has published extensively in both German and in English.
## CCCS Graduate Research Students

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<tr>
<th>Student</th>
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<tr>
<td>Dylan Lino</td>
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**Events**

**CCCS Seminar Series**

**The Emergence of East Asian Constitutionalism**

*Tuesday 15 February 2011, 1-2pm*

Vibrant constitutional democracies have taken hold in East Asia. Scant attention, however, has been placed upon ways that constitutionalism has emerged and developed into distinctive forms in East Asia. In this seminar, Professor Yeh will analysed and generalised constitutional developments in Japan, South Korea and Taiwan after World War II. By reading the three cases together, he identified a number of common features shared by the three constitutional environments. These included an instrumental approach to constitutional state building, textual and institutional continuity, a reactive and cautious style of judicial review, and adoption of a wide range of rights in line with social and political progresses. He argued further that these features developed in East Asian constitutionalism do not merely mirror standard (western) constitutionalism, nor do they fit nearly under the so-called Asian values discourse. They are not merely indicative of a global transitional constitutionalism. The emergence of an East Asian style of constitutionalism has shed a new light on contemporary constitutionalism and deserves a central place in comparative constitutional studies.

**Jiunn-rong Yeh** is Professor of Law and Director of Public Law Research Center at the College of Law, National Taiwan University, Taiwan, where he teaches constitutional law, administrative law and environmental law. He has been involved in many constitutional, legislative and regulatory issues in Taiwan, including drafting of several major legislative bills, such as the Freedom of Information Act, the Administrative Procedural Act, the Superfund Law and the Greenhouse Gases Control Act.

**Tolerance or Toleration? How to Deal with Religious Conflicts in Europe**

*Wednesday 23 March 2011, 1-2pm*

In this paper Dr Zucca distinguished between tolerance and toleration as competing attitudes towards religious diversity. He stipulated a definition of tolerance as a non-moralizing attitude, which should be kept apart from moralizing toleration (involving a great deal of moral judgement) and should be understood as the human disposition to put up with diversity. Tolerance thus defined is the basis for an alternative approach to cope with religious conflicts. Such an approach is less dependent on normative assumptions and more responsive to empirical data, including psychological insights as to the human ability to deal with difference.

**Dr Lorenzo Zucca**’s interests lie in jurisprudence, constitutional theory, EU constitutional law and human rights. He is the author of Constitutional Dilemmas - Conflicts of Fundamental Legal Rights in Europe and the USA (OUP, 2007) and articles on European human rights law and theory. He is currently working on the place of religion in the European public sphere. Dr Zucca also publishes in the fields of legal theory and is particularly interested in theories of human rights. He is also working on a research project on the methodology of comparative constitutional law. Dr Zucca joined King’s College in 2007 as a Lecturer in law. He holds the degrees of Maitrise (Paris 2 Assas), DEA (Paris 1 Sorbonne), MJur (Oxford) and PhD (EUI, Florence). Previously, he was a full time law lecturer at the University of Aberdeen from 2005 to 2007.
The Right to Information in International Human Rights Law  
Thursday 14 April 2011, 1-2pm

This paper explored the conceptual basis for the right to information. This examination took place in the context of recent developments in the recognition of a right to information in international human rights law. The instrumental approach to the recognition of the right to information is considered in terms of its potential, as well as its limitations, in founding a general right of access to information. The paper also considered the case for arguing for the existence of a fundamental right to information independent of other rights.

Maeve McDonagh is an Associate Professor of Law at University College Cork. Her areas of specialisation include in freedom of information law and policy and data protection laws. Associate Professor McDonagh is a graduate of the National University of Ireland Galway (B.A., LL.B., Dip. Sys. An.) and of Monash University, Australia (L.L.M) and was awarded the LLD degree on published work by the National University of Ireland in 2003. She is a qualified solicitor who has worked both in private practice and as a local government lawyer. She has taught law at National University of Ireland Galway (1982 – 1985), La Trobe University, Melbourne, Australia (1986 – 1991) and University College Cork (1991 to date). She was Dean of the Faculty and Head of the Department of Law at University College Cork from 2002 to 2003. Associate Professor McDonagh is author of *Freedom of Information Law* (Thomson Round Hall, 2nd ed., 2006, 597p), *Cyber Law* (Irish Monograph) (International Encyclopaedia of Laws Series, Kluwer Law, 2006); and *Disability Discrimination Law in the United States, Australia, and Canada* (with G. Quinn and C. Kimber) (Oak Tree Press, 1993).

Constitutional Courts in Fragile Democracies  
Thursday 19 May 2011, 6-7pm

In this seminar, Professor Sam Issacharoff discussed the work in progress on Fragile Democracies.

Professor Samuel Issacharoff is the Reiss Professor of Constitutional Law at New York University Law School, New York. He is in Melbourne to teach Law of Democracy in the Melbourne Law Masters, from 11-17 May. In Fragile Democracies he explores how and why states in transition to democracy rely on constitutional constraints, enforced through judicial review, to reinforce legitimacy and assist to se-cure stability. His work draws on the experience of many states in the contemporary world that are currently undergoing some form of constitutional transition, many of which also have deeply divided societies in which constitutional constraints on majority action have particular application.

Wainohu v New South Wales  
Friday 26 August 2011, 1-2pm

Over the last two years we have seen a renewed interest by the French High Court in the Kable principles. In that period, the High Court has relied on the Kableline of authority to invalidate State provisions on four occasions: *International Finance Trust Co Ltd v NSW Crimes Commission*, *Kirk v Industrial Relations Commission (NSW)*, *South Australia v To-tani* and, most recently, *Wainohu v NSW*. In this seminar, Associate Professor James Stellios considered the most recent decision in Wainohu, and reflect on the trends that are developing in this Kable line of cases.

James Stellios is an Associate Professor at the ANU College of Law where he teaches public law. His primary research interest is constitutional law and, in particular, Chapter III of the Constitution. In 2010 he published The Federal Judicature: Chapter III of the Constitution. Prior to joining the ANU College of Law in July 2001, he spent a number of years in legal practice, including as Counsel Assisting the Solicitor-General of the Commonwealth. James is also a Consultant to Sparke Helmore.
From the Pursuit of Unity to Respect of Diversity: A Retrospect and Reflection of Chinese Ethnic Policy

Wednesday 31 August 2011, 1-2PM

China is a multinational country with 56 ethnic groups. However, its population structure is highly homogenous (the Han account for more than 90% of the whole population) and its living structure is ethnic-mixed. China has a long history of dealing with interethnic relation. Equally long is the tradition of theorizing about ethnic relations, based largely on the Confucian tradition in ancient times, supplemented with Marxism theory (including the Mao Zedong's theory) in the last 60 years. Robert Li’s seminar analysed these theories, their evolution and application in China.

Robert Li is a PhD candidate at Peking University, China. Since October 2010 he has been a visiting scholar in the Centre for Comparative Constitutional Studies at Melbourne Law School. Mr Li’s research interests lie in comparative constitutional law, equal protection and anti-discrimination, and power separation.

ALC/CCCS Occasional Seminar: The Social Contract and the Malaysian Constitution Revisited

Monday 12 September 2011, 6-7.30pm
Chair: Dr Amanda Whiting (Asian Law Centre)

Malaysia’s social contract was originally a deal between ethnically-based parties that formed the basis for Malaysia’s independence constitution in 1957. Following inter-ethnic violence in 1969, the social contract was reformulated and strengthened in several respects. This renewed social contract in turn formed the basis for Malaysia’s striking economic growth since the early 1970s, as well as the basis of its social and political stability.

In the 2000s, new questions have arisen about the nature and future of the social contract, as it appears to have outlived its utility. These questions place the nature of the Malaysian state, always a contested issue, once more in doubt. In this lecture Professor Harding examines the nature and origins of Malaysia’s developmental state in the light of questions over the social contract’s continued relevance.

Professor Andrew Harding is a leading scholar in comparative Asian legal studies who has specialised in law and society in Southeast Asia over three decades. He has been a frequent visitor to, and collaborator with, Melbourne Law School, and on his current visit is teaching Human Rights in Asia in the Melbourne Law Masters program.

The High Cost of Judges: Reconsidering Judicial Pensions and Retirement in an Ageing Population

Thursday 29 September 2011, 1-2pm

Most Australian judges are remunerated through a package of benefits that includes salary during their years of judicial service, a judicial pension paid during their years of retirement, and a spousal pension paid to a judge’s surviving spouse until the spouse’s death. These non-contributory pensions are calculated as a proportion of the current judicial salary and their cost is rising rapidly. The unfunded liability at 30 June 2008 amounted to $586 million for federal judges alone, an increase of 23 per cent on the liability just three years earlier. This paper argued that substantial increases in the life expectancy of Australians over the next 40-50 years will impose a very significant strain on the current system of judicial remuneration. This is because the judicial pension and the spousal pension will continue to rise substantially, while the period of judicial service remains constrained—at the lower end, by the need to acquire legal skills prior to judicial appointment; and at the upper end, by mandatory retirement of judges at 70 or 72 years. The paper developed two metrics for measuring how the cost of judges changes under different assumptions about their age of appointment and retirement, and under different conditions about life expectancy of judges and their spouses. The paper advocated three changes to the law that will
help to address the long term pressures of demographic change, namely, (a) increasing the maximum retirement age of judges; (b) increasing the minimum age at which judges qualify for the judicial pension; and (c) increasing the minimum years of service required to qualify for the judicial pension. Consistently with the core value of judicial independence, these changes should be put in place for new judicial appointees only.

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

Valerie Morse v The Police
Friday 11 November 2011, 1-2pm

Steven Price is a New Zealand barrister specialising in media law. He is also a lecturer in media law and privacy at Victoria University of Wellington. He is the author of Media Minefield, a book about media regulation in New Zealand, and writes a blog called Media Law Journal.

Last year, he acted for Valerie Morse in a successful Supreme Court appeal against her conviction for offensive behaviour for burning a New Zealand flag at an Anzac Day dawn ceremony. The case was the latest to grapple with the thorny questions about how Bill of Rights guarantees affect the interpretation and application of general statute law. Steven discussed the background to the case, its resolution and its place in the burgeoning international jurisprudence on protest speech.

Federalism and Climate Change in Canada, USA and Australia: Competitive Solutions to Collective Action?
Thursday 17 November 2011, 1-2pm

A key problem in dealing with policy to reduce greenhouse gas emissions is the "collective action" issue, how to achieve effective governance among so many independent actors. Federal theory and practice may contribute some insights to this problem. Climate change (greenhouse gas emissions) is an important case of environmental politics and federalism, with major implications for regional and national interests. Can or should subnational governments deliver on climate change policy where central governments are unwilling or unable? The presentation explored how specific institutions and norms in three federal systems – Canada, the USA and Australia – shape the pattern of cooperative versus competitive intergovernmental relations, with significant impacts on policy options.

Douglas M. Brown is Associate Professor of Political Science, St Francis Xavier University, Nova Scotia, Canada. He is a Fellow and former Executive Director of the Institute of Intergovernmental Relations at Queen’s University and has been engaged in the practice, research and teaching of federalism and intergovernmental relations for 30 years. He is the co-author, with Herman Bakvis and Gerry Baier, of Contested Federalism: Certainty and Ambiguity in the Canadian Federation published in February 2009 by Oxford University Press.
Declarations of Emergency and the Role of the Courts: The Nauru Experience  
**Wednesday 23 November 2011, 1-2pm**

**Richard Niall SC** is a Melbourne Barrister. His principal areas of practice are administrative law (both judicial and merits review), revenue law, discrimination, employment and industrial law and human rights law.

He has acted both for applicants and Government agencies (State and Federal) and has appeared in cases in the High Court, Federal Court and Supreme Court arising under a wide range of Acts, both Commonwealth and Victorian, including the *Migration Act*, *Customs Act*, *Fisheries Management Act*, *Environment Protection and Biodiversity Conservation Act* and the *Health Insurance Act*. In the Supreme Court of Victoria he has appeared in judicial review cases under the Flora and Fauna Guarantee Act, Police Regulation Act, Teaching Service Act, Education Training and Re-form Act and the Legal Aid Act.

In addition to judicial review, he regularly appears in merits review in the Commonwealth AAT and VCAT. He also regularly appeared in the Australian Industrial Relations Commission and Fair Work Australia.

Keeping things in proportion: Section 7(2) of the Victorian Charter - post Momcilovic and in Comparative Perspective  
**Wednesday 30 November 2011, 1-2pm**

In this seminar Claudia Geiringer reflected on the role of the Victorian Charter in the constraint of administrative action and, in particular, the role of proportionality under the Charter. She drew on comparative experience from New Zealand, as well as reflected on the likely impact of the recent decision of the *High Court in R v Momcilovic*.

**Claudia Geiringer** is Senior Lecturer in the School of Law, Victoria University of Wellington. She teaches and researches primarily in the areas of the New Zealand Bill of Rights Act, constitutional and administrative law, the domestic reception of international law and the laws of Parliament. She is a New Zealand contributor to the Oxford Reports on International Law in Domestic Courts and has been a Visiting Professor at the University of Iowa School of Law. Over her time at VUW, she has held a number of offices for the New Zealand Centre for Public Law, including Deputy Director and Acting Director.

Prior to commencing her academic career, Claudia was a Crown Counsel in the Bill of Rights team at the Crown Law Office from 1996 to 2001, where she practised primarily in the areas of Bill of Rights law, immigration law, electoral law and constitutional law. From October 2009 to March 2010, Claudia took six month's leave from the Faculty to fulfil a six month temporary appointment as Acting Special Counsel for Human Rights at the Victorian Government Solicitor’s Office in Melbourne.

**CCCS Book Launches**

**Kirsty Gover, Tribal Constitutionalism: States Tribes and the Governance of Membership**  
**Tuesday 5 April 2011, 6-8pm**

The Centre for Comparative Constitutional Studies (CCCS) and the Centre for Resources, Energy and Environmental Law (CREEL) co-hosted the launch of Kirsty Gover’s *Tribal Constitutionalism: States Tribes and the Governance of Membership* (OUP, 2010). The book launch was opened by Professor Carolyn Evans, Dean, Melbourne Law School, with an introduction by Professor Jeremy Webber, who holds the Canada Research Chair in Law and Society at the University of Victoria. Professor Webber joined the faculty at Victoria in August 2002, after more than four years as Dean of Law at the University of Sydney in Australia and eleven years on the Faculty of Law at McGill University. Professor Webber's current work is primarily in the fields of legal and political theory, constitutional law, and indigenous rights.
Tribal Constitutionalism

Recognised tribes are increasingly prominent players in settler state governance, but in the wide-ranging debates about tribal self-governance, little has been said about tribal self-constitution. Who are the members of tribes, and how are they chosen? Tribes in Canada, Australia, New Zealand and the United States are now obliged to adopt written constitutions as a condition of recognition, and to specify the criteria used to select members. Tribal Constitutionalism presents findings from a comparative study of nearly eight hundred current and historic tribal constitutions, many of which are not in the public domain.

Dr. Kirsty Gover, Senior Lecturer at Melbourne Law School, directs the Law School’s Comparative Tribal Constitutionalism Research Program at the CCCS. Her research and publications address the domestic and international law, policy and political theory of indigeneity and indigenous self-governance. Dr. Gover received her JSD from NYU Law School, where she was a global scholar at the Institute for International Law and Justice, her LLM from Columbia Law School and LLB from the University of Canterbury Law School in Christchurch.

Joo-Cheong Tham, Electoral Democracy: Australian Prospects
Friday 15 July 2011, 1.30-2.30pm

Melbourne Law School and Melbourne University Publishing hosted the launch of Electoral Democracy: Australian Prospects, edited by Joo-Cheong Tham, Brian Costar and Graeme Orr, with chapters by: Peter Brent, Megan Davis, Keith Ewing, Andrew Geddis, Lisa Hill, Rob Hoffman, Norm Kelly, Ron Levy, Peter Mares, Jeremy Moss, Jacob Rowbottom, Anne Twomey, Sally Young.

The book was launched by the New South Wales Electoral Commissioner, Mr Colin Barry.

A healthy democracy relies on a healthy electoral system. Are the ways we run elections and political parties adapting to contemporary challenges and learning from international experience? Drawing together leading political scientists and legal scholars, this collection examines pressing debates about the regulation of political finance, parties and representation in Australia. It does so by testing the system and reform proposals against three fundamental—and sometimes conflicting—values: political equality, liberty and integrity. This book will inform and provoke all who take part in and care about Australia’s electoral democracy.

CCCS Public Lectures

Beyond the Malaysian Solution? Refugee Responsibility Sharing in the Asia-Pacific Region
Thursday 22 September 2011, 6-7.30pm

In this public seminar the UNHCR’s Regional Representative in Canberra and leading academic commentators explored the international and domestic legal issues surrounding the ‘refugee swap’ Agreement between Australia and Malaysia signed in July 2011. The question whether ‘responsibility sharing’ or ‘burden sharing’ arrangements are permitted at international law will be debated, and the specific legal issues surrounding the current challenge to the Agreement in the High Court will also be examined and considered. The Panel Members were Richard Towle, James Hathaway and Michelle Foster, and chaired by Adrienne Stone (Director, CCCS).

Richard Towle is the United Nations High Commissioner for Refugees’ Regional Representative for Australia, New Zealand, Papua New Guinea and the South Pacific.

James C. Hathaway is the James E. and Sarah A. Degan Professor of Law and Director, Program in Refugee and Asylum Law, at the University of Michigan Law School and Professorial Fellow, University of Melbourne.

Michelle Foster is an Associate Professor and Director, Research Programme in International Refugee Law, IILAH, Melbourne Law School.
ART/CCCS Inaugural Lecture: Integrity in Parliament - Where Does Duty Lie?
**Tuesday 11 October 2011, 6-7.30pm**

The public rightly demands honesty and integrity in our parliamentary representatives. But how difficult is it in practice for a parliamentarian to maintain his or her integrity? Based on twenty years’ experience in the Federal Parliament, Fred Chaney provided an insight into the difficult choices facing parliamentarians.

Before entering the Senate in 1974, Mr Fred Chaney practiced law in Western Australia and Papua New Guinea. Since retiring from parliament in 1993 he has served as a Member and later Deputy President of the National Native Title Tribunal, Co-Chair of Reconciliation Australia Limited and Chancellor of Murdoch University. He is currently Chair of Desert Knowledge Australia.

The Accountability Roundtable is a non-partisan group of citizens with diverse backgrounds (academics, lawyers, politicians, journalists, authors) who are gravely concerned with the current erosion of honesty and integrity of our democratic parliamentary and governmental processes.

2011 Seabrook Chambers Public Lecture: The Criminalisation of Holocaust Denial and Freedom of Speech
**Wednesday 14 December 2011, 6.30-7.30pm**

In Germany Holocaust denial was criminalised in 1994. But even before this it was punishable under a more general provision of the Penal Code. The Constitutional Court upheld judgments that had applied these provisions and sentenced perpetrators. A number of other European states followed Germany. The European Union now wants to require all member states to punish Holocaust denial. This lecture discussed the question of whether punishment of Holocaust denial is compatible with freedom of speech. Does the answer depend on history and culture? In particular: Does it matter that Germany was responsible for the Holocaust whereas other countries did not participate in the persecution of Jews or did so only under German occupation? Is the United States’ or the German approach to this problem preferable?

**Dieter Grimm** is Professor of Law at Humboldt University of Berlin and a Permanent Fellow and former Director of the Wissenschaftskolleg zu Berlin Institute for Advanced Study.

Professor Grimm studied Jurisprudence and Political Science in Frankfurt, Freiburg, Berlin, Paris, and Harvard, and completed both juridical state examinations. He holds a Master of Laws from Harvard University, and earned his Dr. jur at Frankfurt University with a thesis on ‘Solidarity as a Legal Principle’. He earned his habilitation in Frankfurt in 1979 in German and Foreign Public Law, Modern Legal and Constitutional History, Legal Theory, and Political Science.

From 1967 to 1979, Professor Grimm was a Research Lecturer at the Max Planck Institute for European Legal History in Frankfurt and, from 1979 on, Professor for Public Law at Bielefeld University, where he was also Director of the Center for Interdisciplinary Research for some of this time.

From 1987 to 1999, Dieter Grimm was a Justice in the Federal Constitutional Court in the First Senate, where he was responsible for the fields of freedom of opinion, the press, and broadcasting; freedom of assembly; and freedom of association, personal rights, data protection and commercial law. In 1996, he was appointed Distinguished Member of the Global Law Faculty at New York University Law School and, in 1999, was awarded the Major Federal Service Cross with Sash and Star.

In January 2000 he was appointed Professor of Public Law at the Humboldt University of Berlin and a Permanent Fellow of the Wissenschaftskolleg zu Berlin. From October 2001 until March 2007 he was also the Rector of the Wissenschaftskolleg. He was Visiting Professor of Law and Oscar M. Ruebhausen Distinguished Senior Fellow at Yale Law School in spring 2011.

Professor Grimm is co-editor of several law reviews including The International Journal of Constitutional Law and has published extensively in both German and in English.
**CCCS Workshop, Conference and Round Table**

**Challenges of Electoral Democracy Workshop**

*Thursday to Friday 14-15 July 2011*

The program of the Workshop has been divided into ten panels throughout both days.

The topics include:

- The High Court in Rowe v Electoral Commissioner and its Implications
- Political Funding - Contested Regulatory Principles
- Is there a Case for Automatic Enrolment?
- Political Funding: How Effective are Spending Limits?
- Electronic campaigning and the challenge for regulation
- Pre-Selection and Primaries
- Political Funding: Regulating Third Parties
- Improving Voting Turnout by Under-Represented Groups
- Realising Electoral Democracy in Local Government
- Political Funding: Challenges of Enforcement and Compliance

Presenters include:

- Associate Professor Graeme Orr, University of Queensland
- Dr Zim Nwokora, Griffith University
- Paul Beeren, Director, Enrolment, New South Wales Electoral Commission
- Dr Peter Brent, Australian National University
- Senator Scott Ryan, Liberal Party of Australia
- Dr Malcolm Anderson and Associate Professor Joo-Cheong Tham, Melbourne University
- Dr Peter Chen, Sydney University
- Dr Narelle Miragliotta, Monash University
- Professor Marian Sawer, Australian National University
- Rob Hoffman, Swinburne University
- Dr Nick Economou, Monash University
- Associate Professor Joo-Cheong Tham, Melbourne University
- Brian DeCelis, Director, Funding and Disclosure, NSW Electoral Commission
- Brad Edgman, Director, Financial Compliance, Funding and Disclosure Unit, Australian Electoral Commission
- Sam Dasytari, Secretary, Australian Labor Party (NSW Branch)
- Richard Shields, Deputy Director, Liberal Party (NSW Branch)

On Friday, the Workshop also hosted a book launch. The NSW Electoral Commissioner, Mr Colin Barry launched Tham, Orr and Costar, *Electoral Democracy: Australian Prospects*, MUP, Australia 2011.

This Workshop was co-organised by Joo-Cheong Tham (Melbourne Law School), Graeme Orr (Queensland University Law School) and Brian Costar (Swinburne University, Institute for Social Research).

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**Law and Religion: Legal Regulation of Religious Groups, Organisations and Communities**

*Friday to Saturday 15-16 July 2011*

The Centre for Comparative Constitutional Studies at Melbourne Law School and the International Centre for Law and Religion Studies at Brigham Young Law School are pleased to invite you to an international conference on Law and Religion: Legal Regulation of Religious Groups, Organisations and Communities.

Religious freedom is usually set out in international treaties and domestic constitutions as an individual right. Yet it is widely acknowledged that it has significant collective dimensions. This international conference will explore the role of law in regulating religious communities and how the law should and does respond to conflicts between individual and group rights. It will cover both international and comparative domestic law and include experts in the field from across the world.
Speakers include:
Professor Carolyn Evans (Conference Convenor and Dean of the Melbourne Law School), Professor Cole Durham, Carlos Valderrama A., Ngaire Naffine, Professor Tim Lindsey, Ratna Osman, Pauline Ridge, Kim-Kwong Chan, Juan G Navarro Floria, Fr Frank Brennan SJ, Professor Adrienne Stone, Javier Martinez-Torron, Jeroen Temperman, Brett Scharffs, Tore Lindholm, Paul Babie, Benny Tai.

The conference gratefully acknowledges the support of Professor Tim Lindsey’s Federation Fellowship ‘Islam, Modernity: Syariah and Governance in Southeast

**Round Table: Freedom of Expression - Universal or Particular?**
*Friday to Staurday 15-16 December 2011*

The Centre for Comparative Constitutional Studies hosted a two-day Round Table at the Law School. The purpose of this Round Table was to provide a forum for the discussion of Freedom of Expression.

Paper topics include:
- Is Freedom of Expression a Universal Right?
- The Universal Components of Freedom of Speech
- Freedom of Expression: Legal Cultures, Legal Tradition and Community Convictions
- First Amendment Scepticism
- Freedom of Speech and Democracy: Rethinking the conflict between liberty and equality
- Freedom of Expression and Civility in the New Zealand Supreme Court
- Understanding universal and particular causes for the evolution of Freedom of Expression in India
- Freedom of Speech, Hurt Emotions and Judicial Review in Divided Societies
- Content Neutrality and Freedom of Expression

Speakers include:
Professor Adrienne Stone (Director of CCCS), Professor Larry Alexander, Associate Professor Katharine Gelber, Professor Dieter Grimm, Associate Professor Susan Brison, Assistant Professor Yasmin Dawood, Professor Andrew Geddis, Assistant Professor Arun Thiruvengadam and Professor Daphne Barak-Erez.

The program of day one of the Round Table concluded with a dinner that was held at the Enoteca Vino Bar, Il Tinello – Sun Room in Carlton North. After the final session on day two, a meeting of the Independent Media Inquiry was held and chaired by Ray Finkelstein QC. Tourist activities were also organised for the Round Table attendees with an informal dinner that followed.
Funded Research Grants

Commencing Australian Research Council (ARC) Discovery Projects in 2011

Carolyn Evans (2011-2013)
'Religious Autonomy and the Restriction of Rights or Freedoms by Religious Communities: Comparative and Theoretical Approaches'
Funding: $174,443
Religious communities must be autonomous in order to protect their unique identity and mission. Yet in exercising their autonomy they may interfere with the rights of freedoms of others. This project's sophisticated analysis of the tension between two sets of rights will offer a resolution that strengthens Australia's social fabric.

Beth Gaze and Anna Chapman (2011-2013)
'Reshaping Employment Discrimination Law: Towards Substantive Equality at Work?’
Funding: $217,000
The Australian employment discrimination law system comprises long standing anti-discrimination law and novel discrimination provisions from the Fair Work Act 2009. This project studies the operation and effectiveness of the reshaped system, to assess whether it is likely to be effective in supporting a more substantive version of equality at work.

Cheryl Saunders (2011-2013)
'Meeting the Challenges of Constitutional Comparison'
Funding: $235,000
This project offers a more genuinely global approach to comparative constitutional law. It will deepen understanding of the operation and underlying assumptions of systems of government in countries around the world, assisting Australia in its dealings with neighbours and strategic partners and in developing its own constitutional arrangements.

Maureen Tehan, Lee Godden, Margaret Young and Kirsty Gover (2011-2013)
'Climate Change Law and Mitigation: Forest Carbon Sequestration and Indigenous and Local Community Rights'
Funding: $305,000
The project examines the impact of climate change law and mitigation on Indigenous peoples and local forest communities in Australia, India and Malaysia. It examines the United Nations - Reducing Emissions from deforestation and Forest Degradation scheme which gives credit for carbon sequestration in forests thus providing financial incentives to avoid deforestation for communities in sensitive ecosystems.
Publications

Books Authored

The Participation of States in International Organisations: The Role of Human Rights and Democracy
Alison Duxbury
Publisher: Cambridge University Press
Year: 2011

Criminal Process and Human Rights
Jeremy Gans, Terese Henning, Jill Hunter and Kate Warner
Publisher: Federation Press
Year: 2011

Health Worker Shortages and Global Justice
Paula O’Brien and Lawrence Gostin
Publisher: Milbank Memorial Fund
Year: 2011

The Constitution of Australia: A Contextual Analysis
Cheryl Saunders
Publisher: Hart Publishing
ISBN: 978-1-84113-734-6
Year: 2011

Trading Fish, Saving Fish: The Interaction between Regimes in International Law
Margaret Young
Publisher: Cambridge University Press
Year: 2011
Books Edited

**Electoral Democracy: Australian Prospects**
Joo-Cheong Tham, Brian Costar and Graeme Orr
Publisher: Melbourne University Press
Year: 2011

Book Chapters

Crommelin, M and Hinchcliff, C, 'Global Legal Education and its Implications for Legal Information Management' in R Danner and J Winterton (eds), *The IALL International Handbook of Legal Information Management*, Ashgate, United Kingdom (2011), 65-75


Refereed Journal Articles


Gans, J, 'A Tale of Two High Court Forensic Cases' (2011) 33 *Sydney Law Review* 515-543


Gaze, B and Stevens, C, 'Running Risks of Gender Inequity: Knowledge Transfer Policy in Australian Higher Education' (2011) 1 *Journal of Education Policy*

30 University of Queensland Law Journal 79-97

Other Journal Contributions


Other Journal Contributions

Gover, K, Indigenous Rights and Governance in Canada, Australia and New Zealand, Oxford Bibliographies Online (2011) Oxford University Press, United Kingdom
APPENDIX

Advisory Board Profiles

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

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

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

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

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

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

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

Mark Moshinsky SC

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

Stephen McLeish SC

Stephen McLeish 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

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 practice including as Judge Advocate and Reviewing Judge Advocate (Defence Force Magistrate). Since 2007 he has been the Judge Advocate General of the Australian Defence Force. He is also President of the Defence Force Discipline Appeal Tribunal.

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