



## Centre for Comparative Constitutional Studies Newsletter

*Number 3 / June 2008*

Welcome to the third issue of the Centre for Comparative Constitutional Studies Newsletter, a guide to news and events at the centre and a spotlight on issues in constitutional law nationally and globally.

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### Centre Update

**Professor Cheryl Saunders, CCCS Director**, travelled to Buenos Aires, Argentina, in late March 2008 to participate in a Forum of Federations two day International Seminar: *Comparing High Courts in Federal Countries*. The Seminar was held at the Faculty of Law of the University of Buenos Aires and brought together Constitutional Law experts from around the world to debate compare the way constitutional courts work in federal systems on five different continents and to debate the merits of different approaches to interpretation. Further details can be found at: [http://www.forumfed.org/en/events/29\\_03\\_08.php](http://www.forumfed.org/en/events/29_03_08.php)

Cheryl also participated in the *Australia 2020* Summit convened by the Prime Minister of Australia, Kevin Rudd, at Parliament House on 19 and 20 April 2008 to help shape a long term strategy for the nation's future. She participated in *The Future of Australian Governance* stream which was concerned with democratic renewal, a more open government (including the role of the media), the structure of the Federation and the rights and responsibilities of citizens. For more information see: <http://www.australia2020.gov.au/index.cfm>

Cheryl subsequently provided insight on her experiences as a participant in the Summit at the ANZSOG and State Services Authority Seminar Series held on 9 May 2008 in Melbourne. She also contributed to an exploration of the issue of how Victorian public policy practitioners might learn from national and international approaches to citizen engagement to improve public policy outcomes as part of this forum.

Cheryl welcomed the appointment of Quentin Bryce as the next Governor-General of Australia in an article published in the *Herald Sun* newspaper entitled "Progressive Choice for Dated Office", 14 April 2008. She made the point that the appointment of such an Australian woman to the highest formal position in government within Australia will make the office more representative of Australia as a whole, despite the increasingly symbolic nature of the role. To

view the whole article click here: <http://www.news.com.au/heraldsun/story/0,21985,23534797-5000117,00.html>

On 11 June Cheryl moderated a session of the Alfred Deakin Lectures 2008 *New Models for the Nation of the Future* held at Federation Square, Melbourne. Participants in the panel included award-winning playwright & theatre director Wesley Enoch, ANU law graduate Tim Goodwin and University of Melbourne political science student Sana Nakata. Issues and models of governance for the future of Australia and the world were discussed as well as the particular issue of whether or not our institutions and legislation can keep pace with change.

In February, **Associate Professor Carolyn Evans, CCCS Deputy-Director**, travelled to India to present a paper entitled 'The Uneasy and Under-theorised Relationship between Non-discrimination Laws and Religious Schools' at an international conference on Law, Religion and the State: South Asia and Beyond held in New Delhi. The paper will be published in a book arising out of the conference to be published by Oxford University Press later this year.

**Professor Adrienne Stone** and **Professor Cheryl Saunders** travelled to Andorra to participate in a meeting of the International Association of Constitutional Law (IACL) held at the Constitutional Court of Andorra from 16-17 May 2008 to discuss the issue of *International Law and national constitutions in the jurisprudence of constitutional courts*. Cheryl Saunders made a presentation to the working session on Jurisprudence of the other national Courts.

Adrienne had an article published in the *Oxford Journal of Legal Studies* in February 2008 entitled 'Judicial Review Without Rights: Some Problems for the Democratic Legitimacy of Structural Judicial Review', in which she addressed an issue overlooked in most of the literature on judicial review: the legitimacy of judicial review of a constitution's federal and structural provisions.

**Associate Professor Simon Evans** visited the National University of Singapore and the University of Cambridge. He also attended a planning conference for the Centre for Transnational Legal Studies (CTLS). It is a joint venture of ten leading law schools, coordinated by Georgetown University's Law Centre. From September 2008 it will teach semester length programmes in transnational legal studies in London. The program will bring together faculty and students from several of the world's top law schools to study transnational legal issues in a multicultural and transnational setting. Outstanding Melbourne Law School LLB students in the fourth or fifth year of their degree and JD students in their second or third year may attend the Centre for an intensive semester focused on transnational, international, and comparative law. More information about this exciting new programme can be found at: <http://undergraduate.law.unimelb.edu.au/index.cfm?objectid=AB4054CC-B0D0-AB80-E29D5CAB01437FA8&view=Overview&sid=4168>

Simon also spoke at the *Human Rights Law & Policy 2008 Shaping the National Stage for a New Era of Rights* Conference held in Melbourne on 16-17 June. Simon's presentation was about reasonable limits on human rights and building a culture of human rights. More information can be found at: <http://www.thomson.com.au/resources/humanrights/>

**Associate Professor Beth Gaze** attended a Joint Annual Meeting of the Canadian Law and Society Association and the (US) Law and Society Association in Montréal, Canada, May 29-June 1. She presented at a Roundtable on *Transnational Feminisms*, speaking about equality issues relating to women's work in Australia, and in particular on whether reforms to WorkChoices can or are likely to reverse its detrimental impact on women, who are overrepresented among the casual and low paid workers whose conditions were worst affected. Beth is a member of the Advisory Committee of the Review of the Equal Opportunity Act (Vic) being conducted for the Department of Justice (appointed September 2007).

Beth also made several submissions as follows: Submission in response to the Equal Opportunity Review Issues Paper, January 2008; Submission to the Exceptions Review, April 2008; and Submission in response to the Equal Opportunity Review Options Paper, May 2008.

In April **Dr Michelle Foster** was invited to attend a workshop organised by the Minerva Centre for Human Rights at Tel Aviv University entitled 'Designing an Asylum System in Israel'. In recent years Israel has received increasing numbers of refugees arriving by land through the border with Egypt but has not established an adequate system of refugee status determination or refugee protection. Michelle was invited to present a paper on the 'Social and Economic Rights of Asylum Seekers and Refugees', which analysed Israel's international obligations towards refugees and discussed examples of international 'best practice' on which Israel may model a system of refugee protection. The workshop was attended by representatives of the Israeli government, academics and the non-governmental sector, as well as other invited international scholars.

In May Michelle was invited to present a paper in the opening plenary session at a conference entitled "Best Practices in Refugee Status Determination" organised by Monash University and the Université de Montréal, in Prato, Italy. Michelle presented a paper entitled "Protection Elsewhere: the Legal Implications of Requiring refugees to Seek protection in Another State".

In June Michelle participated in a number of events during Refugee Week (15<sup>th</sup>-22<sup>nd</sup> June). On 17<sup>th</sup> June Michelle spoke at a public forum entitled "Are We There Yet? Where we are up to in the struggle for refugee rights" at BMW Edge in Federation Square. Michelle, together with Julian Burnside and Paris Aristotle, assessed the new government's record to date in complying with Australia's international obligations in respect of refugees. On 18<sup>th</sup> June Michelle was interviewed on radio 3CR on Australia's record on refugee protection.

In May **Associate Professor Pip Nicholson** was invited, in her capacity as a Vietnamese court system expert, to Hanoi, Vietnam, on a research consultancy mission. Pip worked with the Supreme People's Court to establish a pioneering public searchable database of Vietnamese Court Judgements.

Pip also carried out research on her Australian Research Council Discovery Project 'Testing Court Reform Projects in Cambodia and Vietnam'. More information on this project can be found at:

<http://alc.law.unimelb.edu.au/go/research/grants/current-grants/index.cfm#courtreform>.

**Dr Joo-Cheong Tham** is currently a British Academy Visiting Fellow at King's College, University of London and is undertaking a comparative study of control orders in Australia and the United Kingdom in relation to the protection of human rights. He is also writing a book on Australian political finance law that will be published by UNSW Press in 2009.

## Forthcoming events

A schedule of forthcoming events at the Centre for Comparative Constitutional Studies in 2008. Updates will be issued as times and topics are confirmed for events later in the year. Please check the CCCS [website](#) for further details.



**'Giving Teeth to International Human Rights Treaties: Commissions, Courts and Corporations - A Practitioner's Perspective.'**

**Speaker: Professor Brian Burdekin**, Visiting Professor at the Raoul Wallenberg Institute, Sweden.

**Date:** Thursday 17 July, 2008

**Time:** 6.00 pm – 7.00 pm

**Venue:** Melbourne Law School

In the last two decades the international order has changed dramatically - and institutions designed to protect human rights have evolved. New institutions, in particular National Human Rights Commissions, have (with Australia's assistance) been created in over 50 countries, in part to address the significant inadequacies of judicial systems in redressing violations by the Executive or forces it controls. Governments have increasingly "privatised" or "out-sourced" many essential services - but, in breach of international law, have frequently failed to ensure the private sector is appropriately regulated.

In this seminar Professor Burdekin will consider recent international developments in protecting human rights with reference, in particular, to developments in Australia, Africa, Europe, China, India, Indonesia, Korea and other Asian countries where he has recently been advising Governments, Commissions and civil society.

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

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

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



**'Thinking about "constitutional dictatorship."'**

**Speaker: Professor Sanford Levinson**, Professor of Government, The University of Texas at Austin, USA.

**Date:** Monday, 4 August 2008

**Time:** Seminar 5.30 pm – 6.30 pm

**Venue:** Melbourne Law School

"Constitutional dictatorship" no doubt strikes most people as an oxymoron (at least if we are talking about liberal constitutions), inasmuch as the very definition

of constitutionalism for most analysts is the creation of institutions designed to protect against tyranny or even arbitrary government. Yet there is a tradition of political (and constitutional) theory going back at least to ancient Rome that addresses the potential desirability of dictatorship, especially in times of emergency, and attempts in effect to "constitutionalize" it by embedding it within a variety of procedural constraints, including, very importantly, a time limit.

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

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

**Professor Sanford Levinson**, who holds the W. St. John Garwood and W. St. John Garwood, Jr. Centennial Chair in Law, joined the University of Texas Law School in 1980. Previously a member of the Department of Politics at Princeton University, he is also a Professor in the Department of Government at the University of Texas. The author of over 250 articles and book reviews in professional and popular journals, Levinson is also the author of four books: *Constitutional Faith* (1988, winner of the Scribes Award); *Written in Stone: Public Monuments in Changing Societies* (1998); *Wrestling With Diversity* (2003); and, most recently, *Our Undemocratic Constitution: Where the Constitution Goes Wrong (and How We the People Can Correct It)* (2006).



'Topic: tba.'

**Speaker:** Professor Christina Murray, Head of Department, Public Law University of Cape Town, South Africa

**Date:** August TBC

**Time:** 1.00 pm – 2.00 pm

**Venue:** Melbourne Law School

**Professor Christina Murray** is Head of Department, Public Law and Director of the Law, Race & Gender Research Unit at the University of Cape Town. She graduated from Stellenbosch University and, after a period of prosecuting, completed her LLM at the University of Michigan where she concentrated on American constitutional law. She taught for six years at the University of the Witwatersrand before joining the Faculty at UCT. She is co-author of the latest edition of *Farlam and Hathaway on Contract*, but overall her research focuses on human rights issues. She is a founding editor of the *South African Journal on Human Rights* and her published work includes articles on international humanitarian law, refugee law, rape in marriage, and polygamy. Current research concerns gender issues and particularly the apparent conflict between equality claims and cultural practices. In 1994 she was appointed to a panel of seven experts to advise the South African Constitutional Assembly in drafting South Africa's new constitution.



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

**Speaker:** Professor Li-ann Thio,  
Faculty of Law, National University of Singapore  
**Date:** Wednesday 24 September 2008  
**Time:** 1.00 pm – 2.00 pm  
**Venue:** Melbourne Law School

Rarely is a revolution accomplished without the firing of a single shot. However, this is precisely what happened in Singapore, a former British colony. Subsequent changes to the Singapore Constitution after 1965 were a product of deliberate design, largely engineered by the first Prime Minister, Lee Kuan Yew. These were so tremendous as to amount to a revolution cumulatively, in contrast to Lord Diplock's observation that new constitutions based on the Westminster model were 'evolutionary not revolutionary' in nature (*Hinds v The Queen* [1977] AC 195 at 212).

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

This engagement in constitutional experimentation, in the name of 'indigenising' a legal transplant to fit the demands of communitarian politics and 'Asian values', was facilitated by a formally controlled but practically flexible Constitution. The continuing hegemonic rule of the PAP government has allowed it to treat the Constitution not as a fundamental, stable document but as a 'work in progress', in relation to innovative institution-building experiments, particularly the elected presidency.

The Government's overriding concern with ensuring stability, public order and a formal conception of the rule of law, and in developing an 'Asian democracy, manifested through efforts to re-make the Constitution, is not without its setbacks or critics. In Hebrew tradition, 40 years marks the passing of a generation. It also marks the attainment of maturity and coming of age. With respect to Singapore, the passage of her first 40 years marks an evolution from a self-professed 'third world' state to a 'first world nation'. This lecture evaluates salient developments in the making, re-making and interpretation of Singapore constitutional law and practice, to shed light on the evolution/revolution of the Constitution, in the continuing project of developing an autochthonous basic law.

**Professor Li-ann Thio** teaches and researches public international law, international human rights law, constitutional and administrative law at the Faculty of Law, National University of Singapore. She holds a BA (Hons) from the University of Oxford, a LL.M from Harvard Law School and a Ph.D. from the University of Cambridge. She is a barrister (Gray's Inn UK) and is

currently a Nominated Member of the Singapore Parliament (Eleventh Session). Formerly Chief Editor of the *Singapore Journal of International & Comparative Law*, she is currently General Editor, *Asian Yearbook of International Law*, Editor, *Journal of East Asia and International Law* and the *Australian Journal of Asian Law*, and sits on the Advisory Board of the *New Zealand Yearbook of International Law and International Human Rights and Legal Discourse*

Her publications include the leading casebook *Constitutional Law in Malaysia & Singapore* (Butterworths, 1997, with Kevin YL Tan and Managing Babel: *The International Legal Protection of Minorities in the Twentieth Century* (Brill, 2005). She has published numerous law review articles in her fields of research.



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

**Speaker:** Dr Petra Butler, Associate Director of the New Zealand Centre for Public Law at the Victoria University of Wellington, New Zealand.

**Date:** Tuesday 28 October 2008

**Time:** 1.00 pm – 2.00 pm

**Venue:** Melbourne Law School

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

Dr Petra Butler is the Associate Director of the New Zealand Centre for Public Law at the Victoria University of Wellington. Petra has been admitted as a barrister and solicitor of the High Court of New Zealand and has also practised law in Germany. Her academic areas of interest centre on human rights law, comparative law and conflict of laws. Petra has also contributed to books and published many articles on human rights and related issues in both English and German.

### 2008 Protecting Human Rights Conference: Friday 3 October 2008

The Centre for Comparative Constitutional Studies will be hosting a National Conference on Australian Bills of Rights on Friday 3 October 2008 at the Melbourne Law School, 8.30 am to 5.00 pm.

The conference is being organised in conjunction with the Gilbert+Tobin Centre of Public Law (UNSW) and the Australian National University.

This one day event will discuss developments in the protection of human rights by Australian charters and human rights acts. The conference provides an important opportunity to examine the Victorian Charter of Human Rights and Responsibilities and the Australian Capital Territory's Human Rights Act and other charters of rights. Leading Australian and international speakers will address the role of judges in assessing limitations on rights and the use of international and comparative law, the intersection of anti-discrimination laws with human rights legislation, the effect of human rights protection on the private sector and the relevance of human rights in criminal trials. The day is aimed at both a legal and non-legal audience.

Key confirmed speakers include:

- The Right Hon Chief Justice Dame Sian Elias, New Zealand
- Lord Justice Sir Stephen Sedley, Judge of the Court of Appeal of England and Wales (via dvd)
- Professor Johannes Chan SC, Dean of the Faculty of Law, University of Hong Kong
- The Hon Justice Marcia Neave, Court of Appeal, Victoria
- Debbie Mortimer SC, the Victorian Bar

- Sally Sheppard, Partner, Clayton Utz
- Joanna Davidson, Special Counsel Human Rights, Victorian Government Solicitor's Office
- Associate Professor Carolyn Evans, Deputy Director CCCS, Associate Dean (Research), the Melbourne Law School
- Associate Professor Jeremy Gans, the Melbourne Law School, Human Rights Adviser to the Victorian Parliament's Scrutiny of Acts and Regulations Committee
- Professor Hilary Charlesworth, RegNet and Director of the Centre for International Governance and Justice (CIGJ), ANU
- Edward Santow, Senior Lecturer, Faculty of Law and Project Director, Australian Human Rights Centre, Gilbert + Tobin Centre of Public Law, UNSW

A registration form and program is available on the CCCS website: <http://cccs.law.unimelb.edu.au>.

## Recent CCCS Events



Pictured: Professor Cheryl Saunders and Jonathon Redwood.

### **'The *Kable* Principle: After *Forge* and *Gypsy Jokers*.'** **Jonathon Redwood, Victorian Bar** 31 March 2008

In this seminar Jonathon Redwood examined the scope and limits of the High Court's decision in *Kable v DPP* (1996) 189 CLR 51 in light of two recent decisions of the High Court: *Forge v ASIC* (2006) 228 CLR 45 (the acting judges case) and *Gypsy Jokers Motorcycle Club Incorporated v The Commissioner of Police* [2008] HCA 4.

The former decision although not invalidating the legislation in that case, may be seen as breathing some life into a principle that had seemed somewhat of a "dead letter" and confined to extreme facts of the type in *Kable* itself. While in *Gypsy Jokers* the Court considered application of *Kable* to the difficult issue of the withholding of confidential and sensitive evidence from a party to a criminal proceeding.

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



### **'Between the Devil and the Deep Blue Sea? Administrative Law in an Age of Rights.'** **Dr Thomas Poole, London School of Economics, UK** 1 April 2008

Dr Poole examined the impact of the new jurisprudence of rights on administrative law. He argued that commentators tend to conceptualise this development in terms of *constitutionalisation* and *internationalisation*. He will examine the effects of this process in two jurisdictions – the UK and Australia – which present sharply opposed responses. Australian courts seem by and large to have rejected the international discourse of rights, retreating to the apparent safe haven of old-fashioned Dixonian legalism. Rules are preferred to principles, and strict textual exegesis

prized above context-sensitive adjudication. The situation in the UK presents a radically different picture: courts seemingly awash on a sea of principles, and pre-existing rules partially abandoned or downgraded. The courts have opened themselves up to the influence of international law and the decisions of foreign courts. All this has resulted in a complicated stew in which the new principles have not been given anything like coherent shape. In this seminar questions such as whether, absent the discovery of coherent limiting devices, the prospect of 'judicial lawlessness' can be avoided in the application of rights-based administrative law will be raised and discussed.

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

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



### Launch of a book by Carolyn Evans and Simon Evans

#### *Australian Bills of Rights*

By Justice Chris Maxwell, President, Victorian Court of Appeal

9 April 2008

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

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

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

Associate Professor Simon Evans BSc (Hons), LLB (Hons) (Sydney), PhD (Cambridge) is the Deputy Dean at the Melbourne Law School, University of Melbourne, a legal practitioner admitted in NSW, and a barrister and solicitor of the High Court of Australia.



Pictured left to right: Assoc Prof Carolyn Evans, Assoc Prof Simon Evans, Justice Maxwell, Professor James Hathaway.



**'Legitimate Expectations in Administrative Law.'**  
*Mr Richard Gordon QC, Barrister, United Kingdom*  
16 April 2008

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

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

Amongst his many cases in public law he successfully represented Mrs Coughlan in the landmark *decision in R v. N&E Devon Health Authority, ex p. Coughlan* which has been endorsed as the authoritative ruling on legitimate expectation in many common law jurisdictions (though not Australia).

He has recently successfully represented the British Medical Association in their judicial review over the Government's renegeing over pension awards for GPs, and has also just successfully represented Ian Norris CEO of Morgan Crucible before the House of Lords resisting extradition over allegations in respect of price fixing in the USA.

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

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

## Centre Visitors

### **Professor Aniceto Masferrer**

*Professor of Comparative Legal History, Law School, University of Valencia*  
15/07/2008 - 15/10/2008

Professor Masferrer will use his visit to focus on legal reform in the Anglo-American legal tradition, and particularly on the Codification movement in the Australian legal tradition. This subject constitutes part of a wider research project which led him to work at the Universities of Cambridge (2005) and Harvard (2006), where he dealt with the Codification issue in the United Kingdom and the United States.

### **Professor Christina Murray**

*Professor of Constitutional and Human Rights Law & Head of the Department of Public Law, University of Cape Town, South Africa*  
17/07/2008 – 15/08/2008

The focus of Professor Murray's current research is on fundamental constitutional change and the processes by which it is achieved, with particular emphasis on constitution-making in divided societies, or those that have recently undergone protracted conflict.

#### **Dr Harshan Kumarasingham**

*Research Fellow, School of Government, Victoria University of Wellington*

12/10/2008 - 9/11/2008

Dr Kumarasingham will examine how Westminster constitutional Conventions operate at executive level compared to South East Asian and New Zealand.

#### **Professor Peter Leyland**

*Professor of Public Law, London Metropolitan University, U.K.*

15/11/2008 – 3/12/2008

Professor Leyland will be conducting research for a number of comparative constitutional law projects including a book entitled 'Thailand's Constitutions: A Contextual Analysis.' and another book on the 'Great Reform Act of 1832.'

#### **Professor Janet Hiebert**

*Department of Political Studies, Queen's University, Canada*

15/12/2008 – 16/2/2009

Professor Hiebert will be conducting research on Bills of Rights and developments in Australia.

### **Selected Recent Publications**

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

#### **Australian Bills of Rights**

*Australian Bills of Rights: the Law of the Victorian Charter and ACT Human Rights Act (Lexis Nexis 2008)*

This new authoritative work by CCCS Deputy Director **Carolyn Evans** and CCCS Member **Simon Evans**, guides the reader through the complex statutory provisions in the Australian human rights Acts, and provides detailed analysis of the key issues. Since Victoria and the ACT have become the first two Australian jurisdictions to introduce human rights Acts, this text is invaluable in helping lawyers, government agencies and all those whose rights are protected to rethink the role of human rights in law and government action.

- Australian Human Rights Acts: Application and Scope
- Obligations on the Legislature, the Executive and Public Authorities
- Interpretation of legislation consistently with human rights
- Human Rights Acts in courts and tribunals
- Justified limitations on human rights
- International Law and Comparative Law

The book can be ordered on line from:

[http://www.lexisnexis.com.au/aus/products/catalog/search/search\\_catalogue.asp?jurisdiction=0&medium=0&author=&overview=&title=&category=7](http://www.lexisnexis.com.au/aus/products/catalog/search/search_catalogue.asp?jurisdiction=0&medium=0&author=&overview=&title=&category=7)

## Project Updates

### Carolyn Evans and Beth Gaze: 2007 - 2009 ARC Discovery Project

**Project Title:** Non-Discrimination Laws and Religious Freedom: Current Conflicts and Future Directions

**Chief Investigators:** Carolyn Evans and Beth Gaze

Carolyn is a recognised expert on religious freedom. She will take primary responsibility for the research into the issues for religious freedom raised by the research. She will also have primary responsibility for the work on the international law on both religious freedom and discrimination, as she has both teaching and research experience in international law.

Beth is a highly experienced discrimination lawyer and academic. She will take charge of the research associated with domestic discrimination provisions in the comparator countries. This will include research into the interpretation and application of these laws by the relevant courts, tribunals and officials.

**Project Summary:** Achieving the right balance between adequately protecting religious freedom while staying true to principles of non-discrimination is far from easy. This project will advance understanding and analysis of religious freedom and equal treatment in Australia, in principle, in law and empirically. In the context of community tensions along ethno-religious lines, it will benefit Australia to have the issues at stake described and clarified. The project will identify the relevant interests at stake and develop policy recommendations for their protection. The aim is to contribute to inter-religious (and inter-cultural) harmony, as an element of safeguarding Australia.

Click [here](#) for a link to the project's webpage.

### Adrienne Stone: 2008 - ARC Discovery Project

**Project Title:** Freedom of Expression in Democratic States: A New Theoretical Direction

**Chief Investigator:** Professor Adrienne Stone

Adrienne 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.

**Project Summary:** Dominant theories of freedom of expression are strongly influenced by the practices of the United States Supreme Court. To date we do not have a strong theoretical foundation for the practices of courts in most other democratic countries. This project aims to develop a better foundation for an alternative to the dominant American conception of freedom of expression by:

- Expanding comparative study of principles of freedom of expression to three key jurisdictions so far neglected by constitutional comparativists (India, Israel and South Africa); and
- Developing theories of freedom of expression that can explain the predominant practices of courts in democratic countries and guide the future development of freedom of expression principles.

In doing so, this proposal aims to make a groundbreaking, internationally significant contribution to the constitutional law and theory of freedom of expression.

A link to the project's webpage will be available in November 2008.

## Centre People

CCCS members are active researchers and teachers across a broad range of public law issues. Many are available to give presentations or to consult on public law projects, particularly contributing a comparative perspective to domestic issues. They are also interested in discussing potential projects with prospective research students.

### Director

Professor Cheryl Saunders AO

### Deputy Director

Associate Professor Carolyn Evans

### Administrator

Dr Madeline Grey

### Centre Members

Professor Adrienne Stone

Associate Professor Simon Evans

Associate Professor Beth Gaze

Associate Professor Kristen Walker

Associate Professor Jeremy Gans

Dr Joo-Cheong Tham

Dr Michelle Foster

Dr Pip Nicholson

Dr Fiona Hanlon

Mr Glenn Patmore

Ms Katy Le Roy

Mr John Waugh

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