

Legislatures and the Protection of Human Rights

Abstracts and Biographical Notes

20 July 2006

6:00pm – 7:15pm
Miegunyah Public Lecture

Title: The Roles of Parliaments in Protecting Human Rights: A View From the UK

Author: Professor David Feldman, University of Cambridge

Abstract: Professor Feldman's lecture will address the role of parliaments in the protection and implementation of human rights. He will discuss the capacity of parliamentary processes to make rights part of their deliberative processes, the relationship between human rights and politics more generally, and the necessary and sufficient conditions for making human rights a constructive element in political discourse. His lecture will be grounded in the experience in the United Kingdom but will draw from that experience lessons for other jurisdictions, including Australia, that seek to enhance the capacity of Parliaments to implement and protect human rights.

Biographical Note: Professor David Feldman BCL, MA (Oxon), FRSA, is the Rouse Ball Professor of Law and Chairman of the Faculty Board of Law, University of Cambridge, United Kingdom. He is one of the United Kingdom's pre-eminent human rights scholars. He was the first legal adviser to the UK Parliament's Joint Committee on Human Rights (2000-04) and remained a specialist adviser to that Committee until 2005. He is also an International Judge and Vice-President of the Constitutional Court of Bosnia and Herzegovina.

21 July 2006

9:15am – 10:30am
Panel: Who Best Protects Rights: Legislatures or the Courts? Implications for the Bill of Rights Debate

Paper Title: The Case for a Role for the Judiciary

Author: George Williams, Gilbert + Tobin Centre of Public Law, UNSW

Abstract: This paper will explain why the judiciary must play a role in the protection of human rights. Parliament alone is not sufficient. An effective system must involve both the legislature and the courts. Hence, as to who best protects rights, legislatures or the courts, the answer is: neither without interaction with the other. A role for the judiciary is necessary both to ensure that human rights are adequately protected and to inform legislative processes and decision-making. A democratic constitutional system is deficient without the judiciary accorded some such role as part of a human rights act or charter of rights.

Biographical Note: George Williams is the Anthony Mason Professor and Director of the Gilbert + Tobin Centre of Public Law at the Faculty of Law, UNSW. He has worked at the Australian National University, Blake Dawson Waldron and as Associate to Justice McHugh of the High Court, and has held visiting positions as the Laskin Professor of Public Law at Osgoode Hall Law School, Toronto, at the Human Rights Institute, Columbia University Law School, New York and at University College London. He is an author of books including *No Country is an Island: Australia and International Law* (2006), *Treaty* (2005), *The Case for an Australian Bill of Rights: Freedom in the War on Terror* (2004), *Human Rights Under the Australian Constitution* (1999) and *Australian Constitutional Law and Theory: Commentary and Materials* (4th ed 2006), and is an editor of *The Oxford Companion to the High Court of Australia* (2001).

George also practises as a barrister in courts such as the High Court of Australia and the Supreme Court of Fiji and is a media commentator on legal issues. He was Chair of the Victorian Human Rights Consultation Committee that recommended in late 2005 that Victoria enact a Charter of Human Rights and Responsibilities.

Title: The case for parliamentary control

Author: James Allan, University of Queensland

Abstract: No abstract available.

Biographical Note: James Allan is a native born Canadian who has practised law at a large firm in Toronto and at the bar in London. He has taught in Hong Kong, Sydney and, for the past decade, in Dunedin, New Zealand at the University of Otago. He has had sabbaticals at Cornell Law School and at Dalhousie Law School, the latter as the Bertha Wilson Visiting Professor in Human Rights. His primary areas of research interest are legal philosophy, constitutional law and bills of rights scepticism. He has written two monographs, *Sympathy and Antipathy: Essays Legal and Philosophical* (Ashgate, 2002) and *A Sceptical Theory of Morality and Law* (Peter Lang, 1998). He has had published over 60 articles and book chapters. He is now a Professor at the University of Queensland.

11.00am-12.30pm:

Panel - Legislatures and the Protection of Rights: Comparative Perspectives

Title: The New Zealand Parliament and the Protection of Rights: praxis and pitfalls

Author: Paul Rishworth, The University of Auckland, New Zealand

Abstract: There is no abstract available at this time.

Biographical Note: Paul Rishworth is the Dean of the Faculty of Law at The University of Auckland, New Zealand. Professor Rishworth holds an LLB (Honours) and Master of Jurisprudence (Distinction) from The University of Auckland and is a Barrister of the High Court of New Zealand. He joined the University in 1987 following ten years in private legal practice. He teaches Public Law and elective

papers in Rights and Freedoms, Equality and Anti-Discrimination Law, Education Law, and South Pacific Legal Studies. He is a joint author of The New Zealand Bill of Rights (2003) and has published widely on human rights in New Zealand. He is contributor to the New Zealand Law Review on Human Rights.

Title: Achieving by Enacting: Locating Parliament in the Human Rights Discourse

Author: Satya Prateek, The National University of Juridical Sciences, India

Abstract: The post emergency human rights landscape in India has been dominated by monopolistic references to the Indian Supreme Court as the ultimate protector of rights under the Constitution. This paper, “Achieving by Enacting” argues that the monopoly of the Supreme Court is a myth: it disregards the significant contributions of the Indian Parliament in actualizing the normative declarations of human rights. The Parliament is a vital organ in the chain that connects the Constitution with the celebratory declarations on human rights by the Supreme Court. The paper highlights some of the parliamentary contributions, which though distinct, remain overlooked or underplayed in constitutional law scholarship.

The paper elaborates these parliamentary “achievements” by proposing a theoretical framework that distinguishes human rights discourse as a discourse of creative consciousness and a discourse of transformative action. The former emphasizes on the aspirational content of human rights law that has as its objective, the creation of a cultural consciousness about human rights as an integral aspect of constitutional governance. In contrast, human rights as a discourse of transformative action emphasizes on the institutional arrangements necessary to actualize the consciousness thus created. The paper argues that monopoly of the Supreme Court, if it exists, exists only as a discourse of cultural consciousness which, though important, is at a certain level limited to rhetoric. Human rights as a discourse of transformative action rests with the Parliament: without its contributions the consciousness produced by the rhetoric cannot be realised. The Parliament’s role in the realisation process is, however, often invisible and never celebrated due to an internalization of an exclusive relationship between courts and human rights. In this sense, human rights discourse has come to be understood as a discourse of creative consciousness only and it is important to move beyond claims of courts as the be all and end all of human rights dialogue.

Biographical Note: Satya Prateek is a student at The National University of Juridical Sciences, India. He is currently studying towards his B. A. LL. B (Hons.). He has worked on issues involving Indian Judiciary and justiciability of the rights read-in by the judiciary in its ‘activist’ regime with a view to seek a better understanding of human rights discourse in India.

Title: The United States Congress and the Protection of Rights

Author: John Dinan, Wake Forest University (USA)

Abstract: Ideally, an inquiry into the capacity of legislatures to protect rights would be comprehensive in considering the full range of ways that legislative behavior

affects rights, whether in the sense of enacting statutes that secure rights, enacting statutes that threaten rights, or failing to enact statutes necessary to secure rights; such an inquiry would also be comparative, by contrasting the record of legislatures with other institutions, including but not limited to the judiciary; and it would be evaluative, in that it would assess legislative performance by reference to some standard of judgment. This inquiry into the record of the U. S. Congress in protecting rights is, by these standards, rather modest in its aims, in that it is concerned in this paper with compiling and analyzing each of the instances from 1789-2004 when Congress enacted statutes securing protection for individual rights. Although less than comprehensive and with no intent (at least for present purposes) of being fully comparative or evaluative, this analysis contributes to our understanding of the behavior of one country's national legislature in regard to the frequency of rights-protecting statutes, the kinds of rights that have received protection, and the conditions under which these statutes have been enacted. Moreover, this analysis offers a corrective to traditional court-centered accounts of the advance of individual rights in the U. S. , by focusing on the role played by legislatures in securing rights throughout American history.

Biographical Note: John Dinan is Zachary Smith Associate Professor of Political Science at Wake Forest University (USA). He is the author of *'Keeping the People's Liberties: Legislators, Citizens, and Judges as Guardians of Rights'* (1998) and *'The American State Constitutional Tradition'* (2006), as well as articles on U. S. constitutional development, federalism, and the protection of rights.

1. 30pm-3.00 pm

Panel – Cultures of Rights in the Legislature

Paper Title: Parliamentary Committees and the Protection of Rights: a partial evaluation

Author: Andrew Murray, Scrutiny of Bills Committee, Australian Senate

Abstract: There is no abstract available at this time.

Biographical Note: Senator Andrew Murray was born in England, raised in Zimbabwe, and has been a resident of Western Australia since 1989. Andrew is a Rhodes Scholar. Andrew's business career has included that of an executive in large corporations and owning and managing his own business. He has been involved in manufacturing, wholesaling, retailing and service industries and has experience as a consultant, lecturer and industry journalist. He is also a published author and writer.

He has wide experience of interacting and negotiating with government and other participants in the political arena. He is best known in politics for his work on economic business and tax issues, on trade practices and corporations law, accountability, social justice issues and industrial relations. Andrew is the Australian Democrats spokesperson for Accountability, Electoral Matters & Public Administration, Taxation, Finance & Corporate Affairs and Workplace Relations.

Title: The Role of the Legislative Review Committee

Author: Allan Shearan, Legislation Review Committee, NSW Parliament

Abstract: On 15 August 2003, the Legislation Review Committee commenced its function of reviewing and reporting on all bills introduced into the Parliament. The Committee was established and given this bill scrutiny function in response to a recommendation made by the Legislative Council Standing Committee on Law and Justice in its inquiry into a NSW Bill of Rights (Report 17, October 2001). That Committee recommended that it was not in the public interest for NSW to enact a statutory Bill of Rights but that a scrutiny of legislation committee ought to be established.

In his paper, the Chairman will outline the work of the Committee over the past 2 years. In particular, he will discuss:

- those individual rights on which NSW legislation most commonly impacts and on which the Committee routinely comments in its *Digest*;
- the manner in which the Committee decides whether an adverse impact on an individual right is an “undue trespass” on that right;
- the sources to which the Committee has regard in deciding if legislation impacts on a recognised individual right or liberty; and
- the role of the Committee in bringing these and related matters to the attention of NSW legislators.

Biographical Note: Mr Shearan has been the Member for Londonderry in the NSW Parliament since May 2003. He is a member of the ALP and has sat on a number of parliamentary committees including the Legislation Review Committee. Since October 2005 he has been the chair of that committee.

Paper Title: Human Rights and the Victorian Parliament

Author: Victor Perton

Abstract: No abstract is available at this time.

Biographical Note: Victor Perton was the Inaugural Chairman of the Scrutiny of Acts and Regulations Committee from 1992 to 1996. Victor is well regarded for his commitment in civil rights matters including Transparency and the citizen's right to government information. He was a Member of the Australian Government's Delegation to the Second United Nations Conference on Human Rights in 1993.

From May of 1996 until 1999, Victor was the Chairman of the Victorian Law Reform Committee. This committee was a world leader in Law Reform and legal research via the internet. From November 1999 until February 2005 Victor was a Shadow Minister in the Liberal Opposition in the Victorian Parliament. He was also the Chairman of the Victorian Government's Multimedia Committee. Victor is committed to the use of new technologies to empower people in education, health and the law. He was the Chairman of the Data Protection Advisory Committee and the Electronic Business Framework Group.

Victor has served as the Shadow Minister for Conservation & Environment, Shadow Minister for Technology & Innovation, Shadow Attorney General, Shadow Minister for Aboriginal Affairs and Shadow Minister for Consumer Affairs and the Shadow Minister for Education. His academic qualifications include degrees in law and economics and admission to the Victorian Bar as a barrister at law (trial attorney).

3:30pm – 5:30pm

Panel – Rights and the Executive

Paper title: The Role of the Ombudsman in Ensuring Executive Compliance with Rights

Author: John McMillan, Commonwealth Ombudsman

Abstract: Human rights discussion typically focuses on the adverse impact that government action can have on the enjoyment of human rights. The major mechanism in Australia for dealing with complaints against government is the Ombudsman. Indeed, Australia has one of the most extensive and dynamic Ombudsman systems internationally for dealing with complaints against government (and industry).

Many of the complaints to the Ombudsman have a human rights dimension – for example, the detention of people under immigration legislation; the police role in executing counter terrorism powers; the imposition of penalties and confiscation of private assets by taxation and welfare authorities; the treatment of military recruits aged under 18; and the public enjoyment of freedom of information rights. Many complaints to the Ombudsman concern government executive action (frequently under non-statutory schemes) that fall typically below the radar of human rights mechanisms such as charters of rights.

Ombudsman offices interact frequently with the parliamentary process in dealing with complaints against government. The close connection between the Ombudsman and Parliament is captured in many countries (and some Australian States) by the designation of the Ombudsman as an officer of the Parliament.

Two case studies illustrate the contribution that the Ombudsman can make to upholding human rights through the parliamentary system. The first is in relation to immigration detention, where the Ombudsman has been designated as the Immigration Ombudsman with a special role of preparing reports that are tabled in the Parliament on the circumstances of those who have been held in immigration detention for more than two years. The second is in relation to counter-terrorism legislation, which designates a special monitoring role for the Ombudsman that involves periodic reports being provided to the Parliament.

Biographical Note: John McMillan was appointed Commonwealth Ombudsman in 2003 for a five year term. He is on leave from the Australian National University, where he was a Professor of Law, holding the Alumni Chair in Administrative Law.

John has practiced as a public lawyer for thirty years, in a variety of occupations – as Associate to a High Court Justice; a solicitor in private practice; a Principal Investigation Officer with the Commonwealth Ombudsman; in public interest advocacy; and as Consultant to the Government Services Group of national law firm, Clayton Utz. He has been a consultant to many parliamentary and governmental inquiries on aspects of administrative and constitutional law. He was a founding member and later President of the Australian Institute of Administrative Law. He is a member of the Administrative Review Council, which advises the Government on administrative law reform.

John is a co-author (with Professor Creyke) of '*Control of Government Action: Text, Cases & Commentary*' (2005, LexisNexis).

Paper Title: Post-legislative Scrutiny in the Immigration Portfolio

Author: Mr Angus Francis

Abstract: No abstract is available at this time.

Biographical Note: Angus Francis is responsible for teaching Immigration and Refugee Law in the Griffith Law School. Since 1990, Angus has represented asylum seekers on behalf of the Refugee Council of Australia, Western Australia Legal Aid, the Refugee Advice and Casework Service (Sydney) and the South Brisbane Immigration and Community Legal Service (now Refugee and Immigration Legal Service (RAILS)). Angus is a registered migration agent and an active member of the RAILS' Refugee Family Reunion Project.

Angus is actively involved in law reform work in the immigration and refugee law area and has been cited in a number of inquiries undertaken into Australia's immigration laws. In 2003 and 1996-7 Angus was a visiting fellow at the Refugee Studies Centre, Oxford University. Between 1997 and 2000 Angus was a solicitor in a national law firm before joining the University of Canberra.

Paper Title: Giving Meaning to a Culture of Human Rights

Author: Gabrielle McKinnon, Australian National University

Abstract: Proponents of bills of rights often assume that one of the benefits of such charters is the development of a 'culture of human rights', particularly within the executive government, which is given responsibility for shaping laws to be human rights compliant and for decision making within a human rights framework.

The paper will critically examine the concept of a human rights culture, and will survey the evidence of such a culture developing in the Australian Capital Territory government, since the introduction of the ACT *Human Rights Act* in July 2004. It will seek to compare these findings with research in other jurisdictions, and will consider how government culture might impact upon the development and scrutiny of law and policy from a human rights perspective.

Biographical Note: Gabrielle McKinnon is the director of the ACT Human Rights Research Project, a four year joint project between the ANU and the Department of Justice and Community Safety which is supported by the Australian Research Council.

Prior to this project Gabrielle practiced as a children's solicitor at Marrickville Legal Centre in NSW, and was accredited as a specialist practitioner in the field of children's law. Gabrielle has been a member of the Juvenile Justice Advisory Council of NSW and the steering committee for the Non Government report to the UN on the Convention on the Rights of the Child. She has convened the National Youth Advocates Network and the Youth Justice Coalition of NSW.

Paper Title: Developing a Human Rights Culture in the Public Service: You Can Lead an Agency to Water But You Cannot Make it Drink?

Author: Mr Stuart Beresford, New Zealand Ministry of Justice

Abstract: This paper will discuss the section 7 process and examine ways to improve the scrutiny of legislation for consistency with Bill of Rights Act (BORA). The paper will look at the requirements of the Attorney-General under BORA and summarise the various section 7 reports that have been tabled in the House. The paper will set out the criticisms of the section 7 process, and then detail the measures that have been instigated by the Attorney-General in response to these criticisms. When doing so, the paper will compare the process with that adopted by the United Kingdom and the Australian Capital Territory, concluding that the section 7 process is sufficiently robust and transparent to ensure that the quality of the legislative process.

Biographical Note: Stuart Beresford is a principal advisor in the Bill of Rights Team of the New Zealand Ministry of Justice. He has degrees in Law and Science from the University of Otago. Has worked as an adviser in the Registry of the International Criminal Tribunal for Yugoslavia and at the European Court of Human Rights.

22 July

9:00am – 10:30am

Panel: Human Rights and Legislatures in a Globalising World

Paper Title: Does the Globalizing Economy Help or Hinder Human Rights Compliance?

Author: Professor David Kinley, University of Sydney

Abstract: This paper takes a step back from the pre-legislative scrutiny debate and looks first, at what prompts states (especially developing states) to declare their adherence to international human rights standards in the first place, and second, – if and when – states then follow this up with mechanisms and practices at home to honour that commitment. In particular, the paper looks at the roles played by various institutions (bi-lateral aid agencies, World Bank, WTO, TNCs) and activities (trade agreements, foreign direct investment, good governance and rule of law programs) of

the global economy in these circumstances, and assesses the extent to which they instigate, sustain, and/or hamper human rights compliance in these states.

Biographical Note: David Kinley holds the inaugural Chair in Human Rights Law at Sydney University. Formerly, he was Professor and founding Director of the Castan Centre for Human Rights Law at Monash University in Melbourne, from 2000 to 2005.

He is author/editor of five books on human rights, international, European, British and Australian law - including *'The European Convention on Human Rights: Compliance without Incorporation'* (1993), a seminal text in the field of pre-legislative scrutiny for human rights compliance - as well as more than 60 articles, book chapters, reports and papers.

He began his academic career as a tutor at Cambridge University in the 1980s before moving to Australia where he has held positions at the Australian National University; University of New South Wales, and Monash University. He has been a Visiting Fellow/Professor at the Universities of Edinburgh and Hong Kong, and Washington College of Law, American University. He was the Australian representative on the European Union Visitor's Program in 1996, and a Senior Fulbright Scholar in 2004. Between 1995 and 1999 he was a legal specialist with the Australian Law Reform Commission and a consultant with the Australian Human Rights and Equal Opportunity Commission.

He has worked for many years as a consultant and adviser in human rights law on projects in Vietnam, Indonesia, Bangladesh, Thailand, China, Laos and Myanmar/Burma under the auspices of the various bodies including the UN Office of the High Commissioner for Human Rights, the World Bank, the Ford Foundation, AusAID, and Asia Pacific Forum of National Human Rights Institutions, as well as a number of national and international NGOs and corporations. He is a member of the Human Rights Council of Australia and the Australian Lawyers for Human Rights.

He is currently working on a number of interrelated projects comprising principally, a study of the interrelations between the trade, the WTO and human rights under an ARC grant 2005-7; research flowing from another ARC project on corporations and human rights (2002-4), and a study of the human rights law dimensions of the World Bank and the IMF conducted under the auspices of the Senior Fulbright scholarship 2004.

Paper Title: Decentralization and Local Elites' Role in Promotion of Human Rights

Author: Mr Hafid Abbas, Ministry of Law and Human Rights, Indonesia

Abstract: The Indonesian government has been implementing a plan for increasing compliance with human rights in Indonesia – a plan that the author has been deeply involved with. This paper gives an overview of some of the key strategies employed to create a culture of human rights in Indonesia.

Biographical Note: Hafid Abbas is currently the Director General of Human Rights Protection, Ministry of Law and Human Rights, the Republic of Indonesia. During the last ten years, he has been appointed to various roles including Deputy Minister of State Ministry of Human Rights Affairs (December 1999-March 2001), Adviser to President on Education and Human Resource Development, Deputy Rector for Academic Affairs, Jakarta State University, (July 1997-December 1999), and Head of Research Center, Jakarta State University (1992-1997).

In addition, at international level, he has been involved at various different capacities such as Team Leader of the task force for Community-Based Education Development in Indonesia, International Consultant of Educational Policy, Planning and Management for Basic Education Project and International Consultant for Literacy Project in Asia and the Pacific Region.

Hafid Abbas graduated with his Doctor on Education from IKIP Jakarta (State University of Jakarta) in 1990.

Paper Title: Legislatures and the Exportation of Rights: The Case of the US Congress and Religious Freedom

Author: Professor Jeremy Gunn, Program on Freedom of Religion and Belief, American Civil Liberties Union and Senior Fellow, Emory University, Georgia

Abstract: No abstract yet available.

Biographical Note: Jeremy Gunn is the Director of the ACLU's Program on Freedom of Religion and Belief and the Senior Fellow for Religion and Human Rights at the Center for the Study of Law and Religion at Emory University School of Law. He is a member of the Advisory Council on Freedom of Religion and Belief of the Office of Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (based in Warsaw, Poland), and is the member of several advisory boards for organizations involved in freedom of religion and belief.

He received his Ph. D. in the Study of Religion from Harvard University, a J. D. , *magna cum laude*, from Boston University, and an A. M. in Humanities from the University of Chicago. After completing law school he served as a law clerk for the Honorable Douglas P. Woodlock in the Federal District Court of Massachusetts, before moving to Washington, D. C. , where he was an attorney at the law firm Covington & Burling. He has held several positions in the U. S. government, including at the U. S. Department of State and as the Executive Director and General Counsel of a federal agency of the U. S. government that declassified records related to the assassination of President John F. Kennedy. He was a Senior Fellow at the U. S. Institute of Peace in 1998-99. In 2004, he was a Visiting Professor at the law faculty of the Université d'Aix-Marseille III in France and he also taught courses during that year at the Universität Trier in Germany and at the Université de Tunis in Tunisia. In 2005, he was a Visiting Professor in the Political Science faculty at the Université Laval in Québec, Canada.

Gunn's Harvard doctoral dissertation was revised and published as '*A Standard for Repair: The Establishment Clause, Equality, and Natural Rights*' (1992). In addition to publishing dozens of articles on religion, politics, and law, he recently published in France '*Dieu en France et aux Etats-Unis: Quand les mythes font les lois*' (trans. '*God in France and the United States: When Myths Become Law*') (2005) with Professor Blandine Chélini-Pont. The Office of the U. N. High Commissioner for Refugees commissioned him to prepare a report on '*The Complexity of Religion in Determining Refugee Status*' (2002), which is available at www.unhcr.ch and was subsequently revised and published as '*The Complexity of Religion and the Definition of 'Religion' in International Law*,' Harvard Human Rights Journal (2003). He currently is writing and editing several works on comparative law and is under contract with Praeger to publish a book on religion and American foreign policy.

11:00am – 1:00pm

Panel: Legislative Scrutiny in Comparative Perspective

Paper Title: The Commonwealth Model and Bills of Rights: Comparing Legislative Activism in Canada and New Zealand

Author: James Kelly, Concordia University, Montreal, Canada

Abstract: This paper challenges the judicial-centered model that has dominated the analysis of Bills and Rights by discussing the Commonwealth Model as a legitimate and perhaps more effective approach to the protection of rights in government action. Specifically, it discusses the importance of non-judicial review in the legislative process and the ability of legislative activism and not judicial activism to be the most significant variable ensuring that legislation conforms to constitutional guarantees. By focusing on what Tushnet describes as 'non-judicial review' this paper focuses on two Westminster parliamentary democracies, Canada and New Zealand, and their distinct attempts to protect rights within the paradigm of parliamentary democracy.

Biographical Note: James B. Kelly is Associate Professor of Political Science at Concordia University in Montreal, Canada. During 2006-2007 he will be the Seagram Chair in Canadian Studies at the McGill Institute for the Study of Canada at McGill University in Montreal, Canada. His research considers the introduction of bills of rights in advancement Westminster democracies and the implications for parliamentary democracy in Canada, Australia, New Zealand and Britain. Dr. Kelly is the author of '*Governing with the Charter: Judicial and Legislative Activism and Framers' Intent*,' which was one of five short listed works for the annual Donner Prize, presented for the best book in Canadian public policy during 2005.

Paper Title: The Role and Impact of Government Lawyer in Pre-legislative Scrutiny

Author: Ms Joanna Davidson

Abstract: This paper discusses the role of Crown Law in terms of vetting Justice legislation for consistency with the New Zealand Bill of Rights Act (BORA). Issues to be covered include:

- What is/should be the role of the government lawyer scrutinising legislation for consistency with the Bill of Rights? Sometimes Bills do not breach BORA, but may breach other international obligations or may appear simply to be bad policy.
- How do we deal with decisions by government to place a limit on a right?
- What difficulties are faced by lawyers scrutinising legislation? These include short timeframes; lack of familiarity with the subject matter and complexities of the policy aspects of the legislation.
- Pros and cons of publication of legal advice (in NZ, advice to the AG is published on the website): lawyers are not used to their advice being released publicly - does it change the nature, content, and/or style of the advice?

Biographical Note: Joanna Davidson is Crown Counsel in the Human Rights Team, Crown Law Office. The Human Rights team of Crown Law is responsible for vetting all Justice department legislation for consistency with the Bill of Rights Act. She is often called upon to give advice on rights implications (BORA and international covenants) during the policy development stage.

Paper Title: Federal Parliamentary Debate and the Protection of Human Rights
Author: Thomas John, Commonwealth Parliamentary Library

Abstract: This paper will examine the contribution of debate in Australia's federal parliament to the protection of human rights.

The first part of the paper intends to look at the quality of parliamentary debate in federal parliament on critical human rights issues, including the thoroughness of such debate and the sources of information drawn on by parliamentarians. This part will also discuss the 'scrutiny mechanisms' available at the federal level, including the role of the Opposition, question time, party and parliamentary committees and the Parliamentary Library.

The second part of paper will look more specifically at the contribution of the Australian Senate as a chamber of supervision and control on human rights issues. In particular it will examine the extent to which it acted as a human rights watch dog in the year since the Howard Government gained majority control of the Senate on 1 July 2005.

The third part of the paper will discuss possibilities for strengthened parliamentary protection of human rights. For example, does the requirement for responsible and representative government inherent in the Australian Constitution also require a minimum level of scrutiny of executive action and a minimum standard of parliamentary debate on legislation that directly affects the rights of the Australian people? Or is the decision of the Australian people to deny federal government's majority control of the Senate the only effective option to ensure proper parliamentary scrutiny and protection on human rights issues?

Biographical Note: Thomas Johns works with the Australian Parliament House, Library Research Service.

1:45pm – 3:00pm

Panel: Deliberating about Rights: Law or Politics

Paper Title: Governing Under a Bill of Rights: What Does a Compliance Culture Entail?

Author: Professor Janet Hiebert, Queen's University, Kingston Ontario, Canada

Abstract: Constitutional commentators have observed variations on the traditional court-centred bill of rights in several parliamentary jurisdictions (Canada, New Zealand, the United Kingdom and Australia). This model differs from the more court-centred model of the United States in the following two respects. First, judicial review is distinguished from judicial supremacy. Second, this new model envisages non-judicial rights-review; manifested in new procedures and incentives that result in the systematic review of proposed legislation from a rights perspective by public and political officials that is prior to, and potentially independent of, judicial review. This paper focuses on this concept of non-judicial rights review, which represents a radically different approach to conventional understanding about the function of a bill of rights. But it is a concept and practice in its most nascent stages.

How the idea of political rights review evolves, and what influences it has on political behaviour and on inter-institutional relationships are far from clear. The paper asks the following questions. How does the institutionalisation of new incentives and obligations for rights-based evaluations of legislative proposals influence policy development and political behaviour? Does rights-vetting within the executive and parliament contribute to the legalization of legislative decision making? In short, do institutional differences in rights instruments make a difference in terms of how rights influence and constrain political decision making? The jurisdictional focus will be on the United Kingdom, although the constraints and challenges incurred are also relevant for other parliamentary jurisdictions that have introduced judicial review while also preserving a capacity for political dissent from judicial interpretations of rights.

Biographical Note: Janet Hiebert is Professor of Political Studies in the Department of Political Studies at Queen's University in Kingston Ont. , Canada. She received her B. A. (Hons) from UBC in 1985 and M. A. (1986) and Ph. D (1991) from Toronto. She is author of two books about the Canadian Charter of Rights and Freedoms. These are: *'Charter Conflicts: What is Parliament's Role?'* (short-listed in 2003 for the Donald Smiley Prize for best book on Canadian government and politics), and *'Limiting Rights: The Dilemma of Judicial Review'* (1996). She is co-editor of *'Canada: The State of the Federation'* (1994), editor of *'Political Ethics: A Canadian Perspective'* (1991), and author of numerous papers and chapters on the politics of rights and on campaign finance laws in Canada. In 2002-2003 she served on the Ontario Electoral Boundaries Commission, an independent body with the responsibility to readjust the federal electoral boundaries of the province of Ontario.

Paper Title: The effectiveness of Australian Parliaments in the Protection of Rights: Empirical Evidence

Authors: Dr Carolyn Evans and Dr Simon Evans, Centre for Comparative Constitutional Studies, University of Melbourne

Abstract: Since 2004 we have been carrying out a detailed empirical analysis of how Australian Parliaments protect human rights. Our research has involved an investigation of all the existing parliamentary and pre-parliamentary processes for ensuring that proposed legislation is compliant with rights; an analysis of whether, during a three year study period, those processes detected rights-issues and triggered parliamentary debate on human rights; and interviews with key players in these parliamentary processes. This paper presents the interim findings of our research. In particular, it identifies the attributes of parliamentary and pre-parliamentary processes that promote effective consideration of human rights issues. These attributes include: clarity of purpose and focus; timeliness; effective formal and informal communication; expertise. In this talk we will focus, in particular, on what parliamentarians consider rights to be and the role of parliamentary scrutiny committees in vetting legislation for rights violations.

Biographical Note:

Dr Simon Evans is Director of the Centre for Comparative Constitutional Studies and a Senior Lecturer in the Faculty of Law. He was Director of Teaching from July 2003 to December 2005. He researches and teaches in constitutional law, constitutional theory, and property law. His particular fields of research are the constitutional provisions that limit the ability of governments to take or regulate private property for public purposes and the mechanisms for ensuring the accountability of the executive government. He has worked as an Associate to Sir Anthony Mason at the High Court of Australia and as a solicitor at Mallesons Stephen Jaques in Sydney.

He is a member of the Australasian Law Teachers Association, the Australian Association of Constitutional Law, the Australian Institute of Administrative Law and the Australian Society of Legal Philosophy.

Dr Carolyn Evans is a Senior Lecturer with the Faculty of Law, University of Melbourne. Her teaching and research are in the areas of public law and she is a Deputy Director of the Centre for Comparative Constitutional Studies.

Carolyn graduated with degrees in Arts and Law (with honours) from the University of Melbourne in 1993 and then completed her Articles with Blake Dawson Waldron. In 1995 she won a Rhodes Scholarship which allowed her to study at Oxford University where she completed a doctorate on *Religious Freedom under the European Convention on Human Rights*. Her thesis was published subsequently as a monograph by Oxford University Press. She is also the co-editor of *Religion and Law* (Martinus Nijhoff, 1999) and *Mixed Blessings: Laws, Religions and Women's Rights in the Asia-Pacific Region* (Martinus Nijhoff, 2006). She has spoken on religious freedom in the United States, United Kingdom, China, Russia and Australia.

She is currently in the final year of a three year ARC funded project on the role of parliament and human rights which she has undertaken with Dr Simon Evans. Results

of the study are being published in international and Australian journals over the next 12 months.