

August 2007

newsletter

GILBERT + TOBIN
CENTRE
OF
PUBLIC
LAW

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Dear Friend

Welcome to the 12th newsletter of the Gilbert + Tobin Centre of Public Law.

The Centre has had a successful six months marked by two major events. The first has been our annual conference looking at the decisions of the High Court and State and other Federal courts on constitutional law. That event again attracted around 250 people and culminated in one of our largest ever dinners at New South Wales Parliament House. The dinner included an excellent and erudite speech by Justice

Heydon of the High Court and the traditional light hearted High Court trivia quiz. There is more about this event inside, but I want to take the opportunity now to thank our Parliamentary host, former Attorney-General Bob Debus. As Attorney-General, Bob Debus has supported this event for several years. We are delighted that our 2008 conference dinner will be supported by the new New South Wales Attorney-General John Hatzistergos.

Our other major event has been the two and a half day Symposium held at the University of New South Wales as part of our five year project on public law and terrorism. That event was highly successful in attracting speakers and attendees from around the world to debate a wide variety of perspectives on Australia's new anti-terror laws. We were delighted that the event featured speakers ranging from Federal Attorney-General Philip Ruddock to practitioners involved in prosecuting and defending terrorism suspects. A full report of this event is also inside.

Centre staff have again had a productive semester in producing a large number of books, articles and submissions to public inquiries. In particular, it is important to note two major publications of international significance by Dr Jane McAdam. In the past six months she has published a work dealing with complementary protection in refugee law and is a co-author of what is commonly regarded as the leading international work on the subject of refugee law. The addition of Jane to the Centre has greatly strengthened our work in this area and we are very pleased to have her on board for her work in this field as well as her new project dealing with climate change and international refugee law.

On the postgraduate research front I am delighted to acknowledge the completion of a PhD by Dan Meagher. Dan's PhD on racial vilification law in Australia is a major piece of work on this highly contested area of law. Much of the PhD has already been published in leading Australian journals and his achievement was marked at the May graduation ceremonies. Also graduating in May was Fulbright Scholar Katie Nesbitt whose Masters by Research on preventative detention in Australia and the United States was glowingly accepted by its markers and is due to be published soon.

Professor George Williams
Director



2007 Constitutional Law Conference

2008 Constitutional Law Conference and Dinner

Our next Constitutional Law Conference and Dinner will be held on 8 February 2008 at the Art Gallery of New South Wales. The dinner will be hosted by NSW Attorney-General, the Hon John Hatzistergos MLC at NSW Parliament House.

Centre Activities

'The confrontation between nations like the US and groups like Al-Qaeda must also be won at the level of ideas. Countries like Australia must reject terrorism while retaining the high moral ground. If we do not, we risk motivating people to take up arms against us.'

Edwina MacDonald and George Williams
'Hicks sees a new dawn', *Herald Sun*, 28 March 2007.



Andrew Lynch with Centre Visitor David Bogen (University of Maryland), at the 2007 Constitutional Law Conference

2007 Constitutional Law Conference

On 16 February 2007 the Centre with the support of the Australian Association of Constitutional Law again hosted a major constitutional law conference at the Art Gallery of New South Wales.

The conference, the sixth in the series of annual events, gathered together practitioners, judges, scholars and members of the general community to discuss recent events and future trends in Australian constitutional law.

The event attracted over 250 participants and a number of high profile speakers and chairpersons. Professor Leslie Zines AO updated participants on the 2006 Term of the High Court, with the Hon Duncan Kerr SC MP doing the same for the State and Federal Courts.

The second session looked at recent cases such as *Forge v ASIC* and *Theophanous v The Commonwealth*; and in the third session Professor Andrew Stewart, Mr Peter Applegarth SC and Associate Professor Kris Walker discussed the *Work Choices Case*. The final session of the conference looked at the prospects and politics of constitutional change. Professor Larissa Behrendt spoke on the 1967 Referendum 40 years on and Dr Carolyn Evans focused on State Charters of human rights.

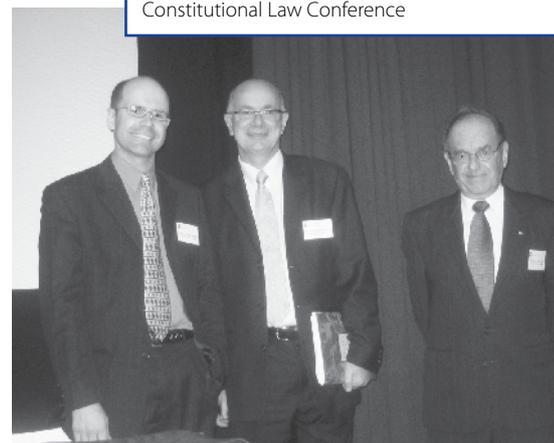
Participants at the conference also enjoyed the dinner that night at New South Wales Parliament House. The speaker was Justice JD Heydon AC of the High Court. By popular demand a High Court trivia quiz again followed the dinner.

The 2007 High Court Trivia Quiz proved to be one of the hardest on record with no tables scoring over 70%. After two gruelling rounds and two sets of table questions, the winner was table 4 – 'Heydon'. The people on this table were Professor Michael Coper, Justice Heydon, Associate Professor Helen Irving, The Hon Duncan Kerr, Dr Andrew Lynch, Mr Alex Reilly, Dr James Renwick, Ms Gabrielle Upton, Justice Margaret White and Dr Michael White.

Placed in equal second place were tables 11: 'Gavan Duffy' and 15: 'McTiernan' both on 66%. Fortunately, the application of the UNSW grading curve meant that all achieved a respectable result.

Papers from the conference and the trivia questions and answers are available on the Centre website.

Centre Director George Williams with Duncan Kerr MP and Leslie Zines (ANU) at the 2007 Constitutional Law Conference



Fourth Session Panel at the 2007 Constitutional Law Conference with Larissa Behrendt (UTS), Carolyn Evans (University of Melbourne), Senator Linda Kirk MP and Sir Gerard Brennan



2007 Constitutional Law Trivia Quiz Questions

- In 2006 the High Court unveiled a new visitors' film for the first time in 13 years. At its launch, Chief Murray Gleeson revealed that his wish had been to be filmed doing which activity?
 - Drinking tea
 - Strolling barefoot down a beach
 - Reading a book
 - Swimming in Lake Burley Griffith
- On the first day of the *Work Choices Case*, the public gallery was packed but not nearly as full as the barristers' benches. How many barristers appeared in the *Work Choices Case*?
- Today it is customary for High Court judges to employ two associates, and they usually stay in that role for one or two years. Edward Best has the record as the longest serving associate. For how long did he serve?
- Until 1924, what were associates of the High Court judges permitted to sell to supplement their incomes?
- Which two associates to High Court judges have gone on to be appointed to the High Court bench? Bonus points: which judges did they serve as associates?
- In 2006, well-known dissenter Justice Michael Kirby recorded his highest rate of dissent yet, disagreeing with the majority in nearly every second case. By contrast, one judge in 2006 had a dissent rate of zero. Who was it?
- Of the 45 judicial appointments made to the High Court, five were not born on Australian soil. Name any three of those born overseas.
- Who was the last judge to be appointed to the High Court to have been born in the 1800's?

Answers: Page 6

Centre Submissions

The Centre has continued to contribute to parliamentary and government inquiries concerning Australia's anti-terrorism regime. In February, the Centre Director, the Terrorism and Law Project Director and the Senior Research Director made a submission to the Parliamentary Joint Committee on Intelligence and Security's Review of the Listing Provisions of the Criminal Code Act 1995. This follows on from the PJCIS's Review of Security and Counter Terrorism Legislation, which reported in December 2006 and in which the Centre's submission received a favourable response in a number of respects. This latest review is focussed exclusively on the mechanisms surrounding the Attorney-General's power to add organisations to the list of banned terrorist groups and we made a number of arguments for building further safeguards on to that process. All three staff appeared as witnesses at the Committee's hearings in April and subsequently provided a range of comparative material in response to questions on notice.

In May, the same Centre staff also made a submission to the Attorney-General's Department public review of proposals to amend the National Classification Scheme to include 'material that advocates terrorist acts'. Our concern is that the need for the amendment is unclear given that material which 'promotes, incites or instructs in matters of crime or violence' is currently able to be refused classification. The proposal does though have the potential to catch additional material which may be perceived as 'praising' terrorism in such a way that it encourages a person – regardless of their immaturity or any mental impairment – to engage in a terrorist act. We expressed concern over that low threshold, the lack of clear exemptions for academic access to materials in order to study terrorism issues, and the potential for the amendment to restrict discussion of political conflicts.

Lastly, just prior to going to print, the Centre made a submission in response to the New South Wales Ombudsman's Issues Paper for a review of Parts 2A and 3 of the Terrorism (Police Powers) Act 2002. Those provisions deal with that State's scheme for preventative detention orders and covert search warrants. Copies of Centre submissions can, as always, be found at: <<http://www.gtcentre.unsw.edu.au/publications/submissions.asp>>.

'Without an effective WTO, inefficiencies would burden the world economy, individual traders would see their administrative difficulties increase and profits decrease and consumers would suffer from less choice, higher prices and a lower standard of living.'

Bryan Mercurio,
'The WTO and its Institutional Impediments' (2007) 8(1) *Melbourne Journal of International Law*.

A Symposium on Law & Liberty in the War on Terror

In the first week of June, the Centre held its Symposium on Law & Liberty in the War on Terror. Across three days, over 180 people gathered to hear from 41 invited speakers and chairpersons discussing a range of topics at the intersection of law and national security. The event took place in the main theatre of the new Faculty of Law building on campus – indeed it was something of a test run for use of our new facilities for a meeting of this sort! The venue proved to be more than up to the job.

The symposium began with a revised program due to the unavoidable absence of our first scheduled keynote speaker, Professor David Dyzenhaus. David and his colleague from the University of Toronto (and 2006 Centre visitor) Professor Kent Roach had an unscheduled and rather lengthy hiatus in Honolulu on their way to Sydney due to a mechanical fault on their plane. Fortunately Professor Clive Walker from the University of Leeds graciously stepped up to the podium early so that the first session could proceed. Clive's discussion of the United Kingdom's anti-terrorism laws was both informative and absorbing. His contribution to the event received a great deal of media attention in light of the very recent terrorist attempts in London and Glasgow.

Clive's session was followed by one which was for many delegates a highlight – a panel of speakers comprising Professors Chris Kutz (University of California) Sarah Joseph (Monash University) and Mr Neil James, executive director of the Australian Defence Association. The range of philosophical, legal, moral and practical arguments which all three panellists drew on in order to discuss the law's attitude to torture and the so-called 'ticking bomb' scenario produced a highly satisfying discussion.

About one hundred delegates convened at the Parliament House of New South Wales that Wednesday evening for the symposium's formal dinner. Our special guests for the dinner were Sir Gerard and Lady Brennan. Sir Gerard delivered an impressive speech laying out his concerns over some aspects of Australia's anti-terrorism regime which was widely reported in the press and an



abridged version appeared in the *Sydney Morning Herald*. Delegates continued to discuss and draw upon Sir Gerard's remarks for the remainder of the symposium.

Over the course of the two full days of the symposium a diverse collection of speakers presented a range of perspectives on the legal framework supporting counter-terrorism. The Commonwealth Attorney-General, Mr Philip Ruddock gave delegates an insight into the motivations guiding the government's strategies for achieving national security. Senior members of the Minister's department spoke to specific aspects of the laws in subsequent sessions. There were, on the other hand, those who expressed concern over parts of the law due to their width or impact upon important civil liberties such as free speech and the right to a fair trial.

Professor Roach and Dr Ben Saul held a vigorous and learned debate centred on the inclusion of motivation as an element in the legal definition of 'terrorism'. Senator Marise Payne, Dr Carmen Lawrence MP and the ABC's Leigh Sales discussed the principles and pragmatism underpinning the politics of terrorism. Justice White of the Queensland Supreme Court provided a judicial perspective on preventative detention orders while Dr James Renwick considered the High Court's jurisprudence in the area – leading to some speculation as to the likely outcome of the constitutional challenge by Jack Thomas to the validity of his control order.

Morning Tea at the Symposium on Law & Liberty



'The mere risk of committing terrorism offences in teaching or research, or of being detained by ASIO, is leading to self-censorship.'

Edwina MacDonald and George Williams, 'Censorship: Meaningless, counterproductive', *Australian Financial Review*, 9 March 2007,



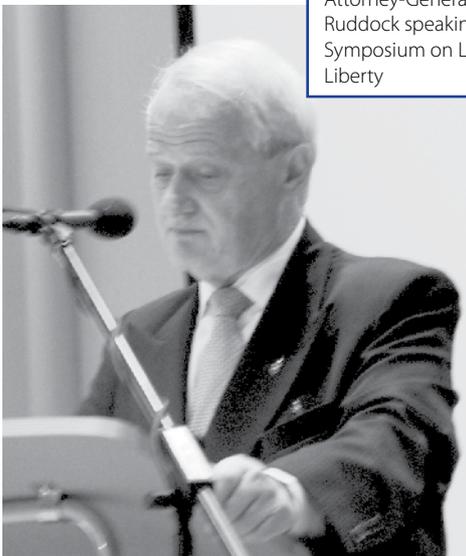
Panel at the Symposium on Law & Liberty with Professor Brian Tamanaha, Dr David Neal SC, Professor Clive Walker and Professor Kent Roach

On Friday morning, Professor Dyzenhaus delivered his rescheduled keynote address on the role of the judiciary during emergencies. It was more than worth the wait. Drawing on the arguments made in his recent book, *The Constitution of Legality*, David presented a highly persuasive case for a continued judicial obligation at times of national insecurity to uphold a conception of the rule of law which is more than a thin veneer of legality upon the exercise of arbitrary power by the state.

The symposium concluded on Friday afternoon with a four member panel reporting on the health of the rule of law in their respective jurisdictions – Dr David Neal SC (Australia), Professor Walker (UK) and Professor Roach (Canada) were joined by Professor Brian Tamanaha from St John's University New York who discussed developments since September 11 in the United States. The broad comparative discussion provided by these four experts was a fitting end to two and a half days debate and exchange amongst academics, private and government lawyers, police, politicians and media figures.

For those who were unable to attend, an edited book featuring contributions from many of the speakers at the symposium is now in production and will be published by Federation Press.

Lastly, thanks are due to Ben Golder, Paul Kildea and Tessa Meyrick for their fantastic assistance during the symposium. Edwina MacDonald and Belinda McDonald were integral to the long-term planning and logistics of the event and contributed immeasurably to its success.



Commonwealth Attorney-General Philip Ruddock speaking at the Symposium on Law & Liberty

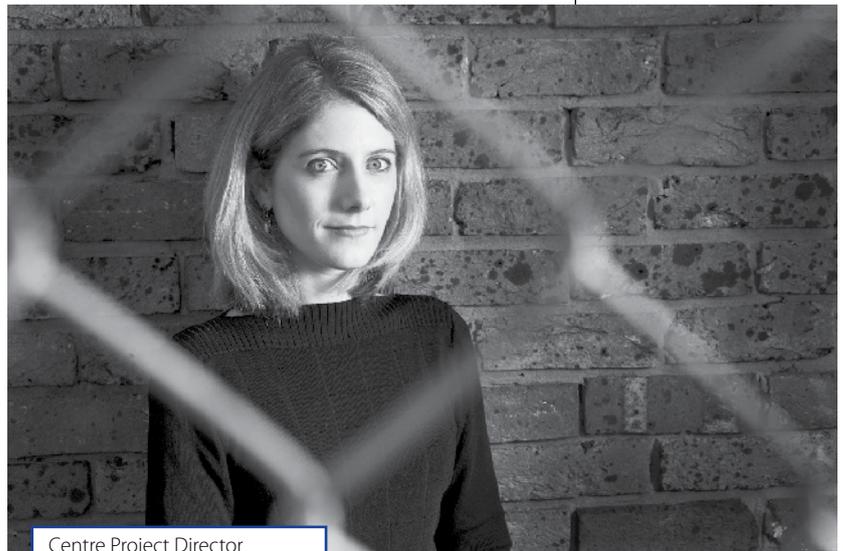
New Books Published by Centre Project Director Jane McAdam: *Complementary Protection in International Refugee Law*

(Oxford University Press, Oxford, 2007)

This book represents an exciting new contribution to the field of international refugee law and human rights law. It considers the legal obligations which countries have to people who do not meet the legal definition of a 'refugee' but who have nonetheless been forcibly displaced from their homes, whether due to war, generalized violence, humanitarian disaster, or torture, inhuman or degrading treatment or punishment. This is known as 'complementary protection', because it complements the central international instrument in this area, the 1951 Refugee Convention. The book analyses international human rights law to discern where such legal obligations to protect might arise, and considers the legal status which countries ought to provide to such people. It provides a comprehensive overview of States' current responses to this issue, and offers original and thoughtful suggestions for protecting such persons within the international legal framework.

'Protection comprises two elements: the threshold qualification (refugee) and the rights that attach (status). How these two elements are defined in international law at any given time crystallizes a particular conceptualization of refugee protection.'

Jane McAdam, *Complementary Protection in International Refugee Law* (Oxford University Press, Oxford, 2007).



Centre Project Director Jane McAdam



Centre Helpers, Hernan Pintos-Lopez, Paul Kildea and Nicola McGarrity marking at the Trivia Quiz

'When it comes to Hicks, an Australian charter would have provided a source of shared values and legal principles. These might have had an impact from the time he was first detained. Instead, many people were understandably ready to trade away freedoms in the hope this might better protect them and their families. For several years, this included the freedom of David Hicks.'

George Williams, 'Australian Freedom goes on Trial' *Sydney Morning Herald* (31 March 2007).

The Refugee in International Law

(3rd ed, Oxford University Press, Oxford, 2007) (with Guy S Goodwin-Gill)

Millions of people today are forced to flee their homes as a result of conflict, systemic discrimination, persecution, and other violations of their human rights. The core instruments on which they must rely to secure international protection are the 1951 Refugee Convention and its 1967 Protocol, now complemented by international and regional human rights treaties. This book, the leading text in a field where refugee law is now a subject of global importance, examines key challenges to the system of international protection, including those arising from within the asylum process, increased controls over the movements of people, and the 'new' concern with security. It has been thoroughly revised and updated, including a new chapter on complementary protection. Reviews from a previous edition describe the work as 'a thoughtful and comprehensive treatise [that] illustrates profound and careful scholarship' (Immigration & Nationality Law & Practice) and 'the most authoritative text available on international refugee law' (Refugee Reports).

Political Finance Roundtable

In early March, Edwina MacDonald, Bryan Mercurio, Alex Reilly and George Williams participated in a roundtable on political finance reform. The roundtable brought together a select group of parliamentarians, policy-makers and academics, including Mr Peter Andren MP, the Hon Dr Carmen Lawrence MP, Mr Daryl Melham MP and Senator Andrew Murray. Discussion covered reform options for private funding and public funding of parties and candidates at all levels of government.

Discussion papers on election funding, political donations, parliamentary entitlements and government advertising will be developed by early 2008, with a view to the roundtable meeting again in mid 2008.

Centre Lunches

The Centre has continued to meet every Friday fortnight for lunch. The lunches provide an opportunity for the Centre to meet informally with people who work in areas of interest to the Centre or who are interested in the Centre's work. Guests at our lunches this year have included Centre Visitors Alex Reilly, Brice Dickson, Indira Rosenthal, Michael Murphy and Dave Bogan, Simon Rice from Macquarie University, Kath Gelber and Sarah Madison from UNSW's School of Social Sciences and International Studies, and staff from the Public Interest Advocacy Centre, Get Up and Amnesty International. If you're interesting in joining us for lunch, please contact Edwina MacDonald on e.macdonald@unsw.edu.au.



The Hon Dr Carmen Lawrence MP, Dr Joo-Cheong Tham, Daryl Melham MP and Peter Andren MP at the Political Finance Roundtable

Trivia Quiz Answers

1. (b) Strolling barefoot down a beach.
2. 39.
3. 44 years.
4. Copies of the judgments of the Court. Until the Court employed typists in the 1930s, the associates were responsible for typing and distributing judgments.
5. Edward McTiernan and Keith Aickin. Bonus answer:

6. Justice Susan Crennan.
7. Sir Samuel Griffith (Wales); Henry Higgins and Sir Frank Gavan Duffy (both from Ireland); Sir Ninian Stephen (England) and John Dyson Heydon (Canada).
8. Justice Williams Owen (b. 1899).

Centre Visitors

Michael Murphy – University of Northern British Columbia

The time I spent with the Gilbert and Tobin Centre in 2007 was enormously stimulating and rewarding. The purpose of my visit was to conduct research in several different areas: the relationship between electoral representation and indigenous self-determination, the Australian reconciliation process, and the role of cultural difference in the High Court's Native Title jurisprudence. I gathered a wealth of information that will feature prominently in a number of forthcoming publications and in the course material for my fourth year seminar on Comparative Aboriginal-State Relations.

The only regret I have about my visit to the Centre is the fact that I could not remain longer in such a fertile and supportive research environment. I would like to express my sincere appreciation to all of the staff at the Centre for making my visit both comfortable and productive. A special note of thanks to George Williams, for making my visit possible, and to Sean Brennan for helping me find my bearings in an unfamiliar area of research, and for pointing me in the direction of UNSW's most distinguished coffee shops.



Centre Visitor Alex Reilly

Alex Reilly – Macquarie University

I began six months at the Centre in January, braving the arduous trek across the Harbour from Macquarie University, and coping with the shift in culture. It took a month to work out the most efficient route to my office across the clean purple and green lines of the new building. Once settled, I worked with Andrew Lynch on an article considering the constitutional validity of control orders and preventative detention orders. I have also begun a project on the regulation of political advertising, and continued work on a book project subtitled, History, Law

and Indigenous Rights. The Faculty of Law has provided a wide range of distractions through the vibrant staff and visitor seminar programs, book launches and, of course, the lively Centre lunches on Fridays. There were several highlights of my visit, including participating in the Round Table on Electoral Reform at NSW Parliament House organised by Bryan Mercurio and Melbourne's Joo-Cheong Tham, sitting next to Justice Heydon at the Constitutional Law Conference Dinner, and leading our table to victory in the quiz. I would like to thank George Williams and Andrew Lynch for making me feel so welcome at the Centre. It has been a most rewarding and engaging time. I look forward to our future meetings.

Professor Brice Dickson – Queen's University

Universities in the UK now have to tolerate league tables measuring virtually every aspect of what they do, and no doubt Australia will soon experience the same phenomenon. If and when that happens UNSW, and the Gilbert + Tobin Centre in particular, should lobby for a league table that records how good a welcome universities give to visitors. You would win hands down!

I enjoyed six splendid weeks at the G + T Centre in February and March. To be given an office and computer on the day I arrived, to have a library card and an email address just a couple of days later, and to be made feel part of a real community of scholars within my first week was all just terrific. There was an intellectual buzz about the place, most obviously at seminar times but also at the Wednesday mornings teas, Friday lunches and occasional joint coffee breaks. I've experienced several university environments in my 30 years in academic life – the G + T Centre at UNSW is certainly one of the best.

The British Academy gave me a small grant to do some work comparing the ways in which the UK and Australia conduct reviews of their anti-terrorism laws. I did a fair bit of work on this while at the Centre and was lucky that George and Andrew's little book, *What Price Security?*, was one of the first readings I stumbled across. For a Hiberno-Brit it made a change to encounter a jurisdiction where the anti-terrorism laws seem even more ill-conceived and anti-libertarian than those at home. I was genuinely appalled at some of the powers which are accorded to your police and security services. One of my medium-term plans is to write a piece entitled 'Is Australia European?'. I reckon, sadly, that many of the Commonwealth's laws would be found to breach the European Convention on Human Rights.

Being able to attend the Constitutional Law Conference in February was a bonus – not that I was able to contribute one jot to the efforts made by our table at the fiendish High Court quiz. We did have Sir Gerard Brennan to help us, but even he was unable to name the present Chief Justice of India!

'It seems absurd to exclude known protection categories from the ambit of the EU Qualification Directive ... Doing so does not delete such categories, but simply recasts the class of non-removable people with an ill-defined legal status.'

Jane McAdam,
Complementary Protection in International Refugee Law (Oxford University Press, Oxford, 2007).

'In order for the Doha Round to succeed and the WTO to continue its progress, WTO Members must reach an agreement which includes significant market access gains, some regulatory consolidation and a meaningful development platform which addresses both preference erosion and special and differential treatment.'

Bryan Mercurio, 'The WTO and its Institutional Impediments' (2007) 8(1) *Melbourne Journal of International Law*.



Postgraduate Student Dan Meagher

Bookshop frenzy at the 2007 Constitutional Law Conference



Having now read some of the leading constitutional law cases in Australia I have come to the conclusion that Britain is actually better off without a written constitution after all. Rather than being hide-bound by an out-of-date text, and getting bogged down in arguments over approaches to interpretation, how much more liberating it is to make things up as one goes along. And how unfortunate that the one part of a constitution which is worth writing down – the human rights part – somehow got forgotten back in 1901! I still can't get my head around the fiction whereby some things done by Australian judges are deemed to be done in their personal capacity in order to avoid a breach of the separation of powers doctrine. There's something surreal about that.

Visiting the High Court was a highlight too, as was my lunch with Michael Kirby (yes, he did send me a photo afterwards). At the hearing into Jack Thomas's application I witnessed the fascinating dynamics of the bench. Most of what George and Andrew had talked about in their paper to the Constitutional Law Conference was borne out. The inevitable outcome of the case was as clear as daylight to me after the first few minutes of the initial judicial interventions.

I was also able to spend some time finishing an edited book on judicial activism in common law supreme courts (I'm afraid the Australian chapter is not by UNSW scholars but by Fiona Wheeler at ANU and John Williams at Adelaide.) I'd like to thank those colleagues who came along to my seminar on judicial activism in the House of Lords, especially to those who asked the probing questions. I fear I tried to squeeze too much in but, then again, there has been a lot of activism to take note of.

Project Director Sean Brennan speaking at the 2007 Constitutional Law Conference



I've been raving about the G&T Centre since returning to Belfast, so expect lots more visitors from these quarters in years to come. They'll be looking for a nice pad in Coogee, like Patricia and I enjoyed. And I hope some of you will venture to Ulster. We're now a safe destination, sweetness and light having broken out across the land. You'll still need your rain mac though. And, sadly, our Gay Pride March isn't a patch on Sydney's Mardi Gras.

Professor David Bogen - University of Maryland

During my time at the Centre, I was studying aboriginal history and legal issues as part of a plan to write materials on comparative law of the law relating to indigenous people. It was a fabulous opportunity to meet with the enormously strong faculty involved in these issues and with other visitors to the Centre. So far I have given a talk at QUT based in part of my research at the centre and now that I am back at Maryland I will try to incorporate it into course materials.

Postgraduate Research

Dan Meagher

And with the following, unsettlingly brief, email received on April 20, it was over:

'Dear Dan

I have sent the executive minute to the GRS informing them that you should be awarded the degree. Congratulations.'

Not sure what I was expecting, but this brutally concise communication caught me a little off guard. What appeared in 2003 to be the unconquerable mountain had - with this electronic official communique - been climbed. In any event, I celebrated in a manner I considered appropriate: a lunch-time surf and the purchase of a bottle of expensive red wine. A (gainfully unemployed) surfing colleague, a little surprised at my appearance in the waves at this time of the day, asked what was up. I told him: he replied that he didn't realise I was a medical expert. Fair enough.

My thesis was an examination of the constitutional and legal frameworks for the regulation of racial vilification in Australia. It had two aims. First, to discern the consti-



Discussion at the Political Finance Roundtable

tutional parameters for Australian laws where political communication - which racial vilification can sometimes be - forms part of the conduct sought to be regulated. That is, what is the scope of the implied right to freedom of political communication recognised by the Australian Constitution and might the validity of racial vilification laws be threatened as a consequence. And second, I wanted to critically evaluate the normative legitimacy of Australian racial vilification laws and propose legislative reform in the event that my analysis reveals any serious flaws in the current legal framework.

In the result, I concluded that most Australian racial vilification laws are compatible with the implied freedom and valid as a consequence. However, my evaluation of Australian civil and criminal racial vilification laws reveals that most are seriously flawed. I argued that the former are in need for significant reform whilst the latter ought to be repealed and replaced with penalty enhancement statutes.

Racial vilification laws do have and can play an important (though limited) role in the regulation of this harmful and dangerous form of conduct. But the limited nature of this role must be kept firmly in mind, for the law is not and will never be a panacea for the root causes of racial vilification. These are complex, polycentric and deep lying. Acts of unlawful racial vilification are often simply the tangible manifestation of attitudes and prejudices formed in a person over time through a mix of social, economic, cultural, political, religious and familial events and influences. It is certainly reasonable and prudent in my view to have precise and well-targeted laws to proscribe and punish this conduct but policy and law-makers should not overestimate the ability of (racial vilification) law to effect grass roots attitudinal and behavioural changes on matters of race.

Thanks again to George Williams for his friendship, support and supervision; and to my friends at the Gilbert + Tobin Centre of Public Law for being my home away from home during the writing of my thesis.

Post-graduate Terrorism Roundtable

As a precursor to the Symposium on Law & Liberty in

the War on Terror, the Centre convened a roundtable meeting for postgraduate research students working in the field of terrorism and law. The roundtable brought together a dozen students who were able to discuss their work with each other and exchange thoughts on methodology and areas of mutual interest – all a very welcome respite from the usual isolation of postgraduate study!

The roundtable meeting was organised (and by all accounts superbly catered for) by the Centre's own student Dominique Dalla-Pozza – just days before her own wedding! Dom was assisted in chairing the meeting by the Centre's 'UK correspondent' and old friend, Ben Golder. Our thanks to them both and to all those who attended

Centre Social Justice Intern Ya'el Frisch

Social Justice Intern Report: Ya'el Frisch

My internship at the Centre has provided me with insights into the work of research centres and their contribution to social justice. While at the Centre, I assisted with the Terrorism and Law and Charter of Rights projects.

My work on the Terrorism project illustrated that 'small detail' work can contribute to social justice. I assisted with preparation for the Centre's submission into the review of Australia's proscription laws, comparing the Centre's views to those of other stakeholders and also conducting a comparative review of international proscription legislation.

I was excited to attend the launch of the NSW Charter Group, a coalition of groups including the Centre advocating consultations around a Charter of Human Rights in NSW. I wrote an article promoting the Charter Group, and explaining how a Charter of Rights in NSW would benefit mental health consumers, specifically 'forensic patients'; found not guilty by virtue of mental illness but currently subject to indefinite detention because of unfettered ministerial discretion over their release. My article has been published in 'On Line Opinion' and various newsletters for mental health consumers, spreading publicity for the Charter Group.

Overall, I've enjoyed my time at the Centre, and have gained an academic perspective on the policy process. Many thanks to Centre staff for their help and support.

'However, the non-refoulement norm has been decontextualized. Within the Refugee Convention, it works to legally secure for refugees the remaining rights in the Convention. In the human rights context, however, it has been separated from these other rights to provide the trigger for protection without any corresponding legal status. The result is a protection gap.'

Jane McAdam, *Complementary Protection in International Refugee Law* (Oxford University Press, Oxford, 2007).



Centre Social Justice Intern Ya'el Frisch

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Project Reports



'In order to provide maximum protection, international human rights treaties must not be viewed as discrete, unrelated documents, but as interconnected instruments which together constitute the international obligations to which States have agreed.'

Jane McAdam,
Complementary Protection in International Refugee Law (Oxford University Press, Oxford, 2007).

Charter of Rights Project

Acting Project Director: George Williams

On 1 January 2007 key parts of the Victorian Charter of Human Rights and Responsibilities came into force. Departments and other agencies in Victoria have begun their work to comply with the Charter and the instrument is already affecting the making of decisions by bodies such as Cabinet and the deliberations of the Victorian Parliament on laws that affect human rights.

The Victorian Charter is the subject of a new book by Centre Director George Williams called *A Charter of Rights for Australia*. The book was published in April 2007 by University of New South Wales Press. It sets out in a form accessible both for lawyers and non-lawyers the current problems with the protection of human rights in Australia as well as the case for a national Charter of Human Rights and equivalent laws in the States and Territories. The book is the third edition on this topic and has been very substantially revised in light of the momentum built up around Australia for national change to better protect human rights.

Victoria and the Australian Capital Territory stand out as the two Australian jurisdictions to have brought about a Human Rights Act or Charter. Other states have also begun this process. Tasmania has initiated a community inquiry into whether to adopt a Victorian style Charter in that State, as did Western Australia in early May. The Western Australian inquiry is chaired by Fred Chaney, former Federal Minister for Aboriginal Affairs and Co-Chair of Reconciliation Australia. That process is inviting submissions from across the community in Western Australia to help determine whether the West Australian Government should enact a Victorian-style Charter to better protect the rights of people in that State.

Prime Minister John Howard has indicated his opposition to enacting anything like Bill of Rights or Charter at the national level. This has been echoed by Federal Attorney-General Philip Ruddock. On the other hand, at the Australian Labor Party national conference held in late April a motion was passed including words in that Party's platform committing any future Labor Government to holding a public inquiry involving the community like those that have been run or are being run in the Australian States on whether there should be a national law to better protect human rights.

The movement around Australia to enact Human Rights Acts or Charters will be examined at a major conference to be held at The University of Melbourne Law School on 25 September 2007. That event, a collaboration between the Centre for Comparative Constitutional Studies at that Law School, RegNet at the Australian National University and the Gilbert + Tobin Centre of Public Law, will deal

with the protection of human rights around Australia and will feature leading international speakers Murray Hunt, legal adviser to the United Kingdom Joint Committee on Human Rights, and Professor Sandra Liebenberg of Stellenbosch University South Africa. The event will be opened by Justice Chris Maxwell, President of the Victorian Court of Appeal. A feature of that event will be an examination of the work to date under the Victorian Charter and the impact of this on law and practice.

Climate Change "Refugees" and International Law

Project Director: Jane McAdam

This is an exciting new Centre project focusing on contemporary concerns about climate change through the lens of human displacement. With estimates that somewhere between 50 and 250 million people will be forcibly displaced by 2050 as a result of global warming, the issue of climate change 'refugees' is one in need of serious and principled legal consideration. Climate-induced displacement is of particular relevance to Australia, given its geographical proximity to islands in the South Pacific where sea levels are swiftly rising. Islanders from some parts of the region have already had to abandon their homes, and more will do so in the near future. The project considers what international legal obligations countries have towards climate change 'refugees'. It investigates whether human-precipitated climate change imposes special responsibilities on countries with high greenhouse gas emissions, and if so, whether they can be enforced by international courts or tribunals. Importantly, it asks whether flight from habitat destruction should be viewed as another facet of traditional international protection, or as a new challenge requiring new solutions.

The project is directed by Jane McAdam, who joined the Faculty of Law in January 2007 and has extensive expertise in international refugee law. She has published two monographs with Oxford University Press this year: *Complementary Protection in International Refugee Law*, about asylum claims based on States' obligations under human rights and humanitarian law, and the third edition of *The Refugee in International Law* with Guy S Goodwin-Gill.

The project has already attracted significant public interest, with the project director interviewed on Radio National, News Radio, ABC 702 and Triple J. She has also given a number of public lectures about climate change 'refugees', including at the Australian Human Rights Centre's interdisciplinary symposium 'Securing the Environment: The Challenge of Protecting Human Rights in a Changing Climate'; to HSC students at NSW Parliament House; to the Law Faculty; and to the UNSW Law Society. Lawyers Weekly and Uniken (the UNSW magazine) have published articles about the project director's research. The project director will teach a new course for the Law Faculty in the second part of 2007 called 'Forced Migration and Human Rights in International Law', which will allow undergraduate students to explore aspects of the project through independent research.

In the past few months, the project director has re-designed the legal component of Oxford University's Refugee Studies Centre Summer School, held annually for UN staff, government officials, academics and practitioners. She will again teach at the summer school in Oxford this July. Earlier this year, she re-wrote the chapter on 'International Refugee Law' for the training manual produced by the Diplomacy Training Program for the Asia-Pacific region; presented a paper at La Trobe University's Refugee Health Research Centre Seminar Series; and participated in an expert round-table on 'Protection Elsewhere: International Law and the Offshore Processing and Protection of Refugees' at the University of Melbourne. The project director became an Associate of the UNSW Centre for Climate Change Research and an Associate of the Australian Human Rights Centre. She has been invited to present a paper at the European chapter of the International Association of Refugee Law Judges' conference in Strasbourg later this year.

The project director is currently finalizing an edited book called *Forced Migration and Human Rights in International Law*, to be published in 2008 by Hart Publishing, Oxford.

Homelessness Legal Rights

Project Director: Cassandra Goldie

Since the beginning of 2007, the Project Director has been involved in a number of international and grassroots events associated with promoting economic, social and cultural rights including the right to adequate housing and security of tenure. In February 2007, the Project Director co-authored a paper for UN Habitat with Malcolm Langford, Visiting Fellow at the Norwegian Centre on Human Rights entitled 'Creating Space, Changing the Space: Effective Grassroots Participation for the Global Land Tool Network'. The Paper sets out key lessons which have been learned by communities about the better ways to ensure grassroots participation in processes aimed at normalising land tenure and administration system, particularly in developing country and informal settlement contexts. The Project Director then attended the Workshop in Nairobi, Kenya, March 2007, for which the Paper was the key resource document. Sponsored by UN-Habitat on behalf of the Global Land Tool Network, the Workshop brought together grassroots land and housing activists, NGO, academics, and agencies to discuss how UN Habitat and its partners could develop ways for ensuring grassroots participation in its own work of designing and evaluating large scale land tenure improvements. UN Habitat is a key international agency working towards achieving the important Millennium Development Goal No 7. Goal 7 sets the target of achieving a significant improvement in the lives of at least 100 million slum dwellers by 2020.

Improving security of tenure in the informal settlements is a vital part of this agenda. However, experience has shown that, unless the people living on the land are directly involved in designing ways to formally recognise their rights to occupy that land, efforts to formalise land administration systems, such as introducing individual titling, may only lead to greater poverty, with the land being sold off to wealthier persons, leading to increased forced evictions.



Participants in Housing Rights Workshop, Tagaytay City, Philippines, March 2007

With the international Centre on Housing Rights and Evictions (www.cohre.org), the Philippines' Urban Poor Associates (<http://jlagman17.blogspot.com/>) and SALIGAN (<http://www.saligan.org/>), the Project Director co-facilitated a workshop in Tagaytay City, Philippines on 30-31 March 2007 with housing and land activists and lawyers from the Philippines, Indonesia, Cambodia, India, South Africa and Australia. The objectives of the workshop were to 'share information regarding the legal and non-legal human rights based advocacy strategies used to fight forced evictions in the Philippines, regional and international contexts, to develop strategies to halt and remedy evictions in the Philippines context, and to provide opportunities for further development of plans for national and international action against forced evictions by drawing on shared expertise, both from the Philippines and elsewhere.' (COHRE, 2007).

In addition to co-facilitating the workshop, the Project Director presented a paper on 'Using International Mechanisms to promote Housing Rights,' with an emphasis on successful examples from local communities who have used international mechanisms, such as the UN Special Rapporteur on the Right to Adequate Housing, and the Reporting Procedures under the UN Human Rights Treaty System, to help improve domestic conditions. Workshop participants also met with a number of community groups who had recently been forcibly evicted by Philippines authorities, living in destitute circumstances, to hear of their own efforts to provide better lives for their families and peoples in the face of such intense deprivations.

On 11 June 2007, the UN Special Rapporteur on Adequate Housing, Miloon Kothari, presented his final report on his Mission to Australia to the Human Rights Council in Geneva. The Australian Permanent Representative to the UN, Caroline Millar, made a response, and there were two interventions, one from the National Association of Community Legal Centres, and the Centre on Housing Rights and Evictions. To view webcasts of these exchanges at the Human Rights Council, go to:

<http://www.un.org/webcast/unhrc/archive.asp?go=070611> and

<http://www.un.org/webcast/unhrc/archive.asp?go=070612>.

Note that, in May 2007, Cassandra Goldie accepted a position with the Australian Human Rights and Equal Opportunity Commission as Director of the Sex and Age

'Later High Court judges have diluted the legal principles established in Mabo. They have done so with apparently little felt obligation to integrate their reasoning with pre-existing common law decisions, let alone principles of justice and non-discrimination.'

Sean Brennan, (2007) 6(26) *Indigenous Law Bulletin* 21.

Discrimination Unit. Whilst she remains a Visiting Fellow with the Gilbert + Tobin Centre of Public Law, Cassandra has ceased her role as Project Director of the Homelessness Legal Rights Project and is currently working with the Centre on developing the Project's future plans.

Indigenous Rights, Land and Governance

Project Director: Sean Brennan

Full bench appeals in the Federal Court have dominated native title litigation over the last six months. Two decisions have been handed down and several more are reserved or part heard. In June, Project Director Sean Brennan gave a seminar at the Human Rights and Equal Opportunity Commission reviewing these and other developments in native title law since the High Court's decision on the Yorta Yorta people's claim in 2002. A copy of the paper is available on the Centre website. More detailed articles on the concepts of society and continuity in native title law will follow soon.

Meanwhile, highly regressive changes made to the Commonwealth Electoral Act in 2006 will have a disproportionate impact on Aboriginal people, particularly in remote communities. The amendments put additional obstacles in the path of those seeking to enrol, they permit much earlier closure of the rolls upon the calling of an election and they ban all prisoners from voting. In March, Sean appeared in a half-hour story by ABC TV's Message Stick that analysed the likely impact of these new electoral laws.

The Project also continued its focus on land rights in the Northern Territory. Sean's article on township leasing and the potential diminution of land council power appeared in the Australian Indigenous Law Reporter (now Review) at the start of the year. It built on work carried out during 2006, in Alice Springs and for a Centre submission to a Senate inquiry, that was referred to in the last newsletter. The coming six months will see further research in native title and more work at the interface of public law with Indigenous rights.

International Trade & Development

Project Director: Bryan Mercurio

During the last six months, the International Trade and Development Project has been closely tracking the ongoing WTO Doha Round negotiations. The controversial topics holding up progress in the Round are first and foremost agriculture, followed by industrial tariffs and services. Several times during the last few months, media outlets have reported an agreement is close to be reached. At this point, however, an agreement does not appear forthcoming any time soon. In this regard, Project Director Bryan Mercurio published a piece entitled 'The WTO and its Institutional Impediments' in volume 8(1) of the Melbourne Journal of International Law which evaluates how the Doha Round negotiations became a seemingly endless charade and why the possibility of a substantial and workable agreement continues to

elude WTO Members. The article concludes that several systemic institutional impediments exist, which not only hinder the successful conclusion of the Doha Round, but also prevent effective long-term institutional governance and vision.

Given the current impasse in the multilateral process, bilateral and regional trade agreements (FTAs) have taken on a greater level of importance. In this regard, Bryan Mercurio (together with Simon Lester of www.worldtrad-elaw.net) have collaborated on a series of edited books providing a comprehensive study of recent FTAs. There are two main aspects to the books. The first book surveys the most important recent agreements in relation to each substantive topic (eg. intellectual property, investment, services, and social policy) and provides an overview of the law being created in these areas. The second book offers case studies of many of the most important FTAs. The books will be published by Cambridge University Press in late 2007/early 2008.

Bryan has also continued his work on the linkage between trade and development and has several publications in this regard forthcoming. One of those pieces, it should be noted, will be part of a special thematic issue of the UNSW Law Journal focussing on international trade law. The issue is to be published in September 2007.

Terrorism and Law Project

Project Director: Andrew Lynch

Over the first half of 2007, a great deal of energy has gone into the organisation of the Centre's Symposium on Law & Liberty in the War on Terror. A full report on that event is found earlier in this newsletter.

Apart from planning and preparations for the symposium, the project continued to make contributions to the public and academic discussions about legal responses to terrorism. Centre staff made a number of submissions to important parliamentary and government reviews and inquiries about current and proposed laws (see the report in the Centre Activities section of this newsletter). At the same time, we regularly provided comment and opinion to media outlets on developments in the war on terror – most notably in respect of the culmination of the David Hicks saga in March. In step with these efforts, a number of major articles were published by Centre staff in leading law journals on terrorism issues.

The next six months of the Project will be dedicated to the production of an edited collection of papers arising from the symposium. Additionally, staff will continue to publish their research in the area and add to public debates in the ways already described. At the time of going to press, there is growing consternation over the detention of a terrorism suspect without charge on Queensland's Gold Coast. There have been signals from the Attorney-General that some fresh changes to police powers of detention – perhaps in step with those also being suggested in the United Kingdom, the jurisdiction which has most influenced the Commonwealth government's own laws to date – may be in the pipeline. Developments of that sort may also dictate the nature of the Project's work over coming months.

'The Minerals Council of Australia is a powerful stakeholder group that frequently has the ear of government. When it sides with land councils and says that the amendments could have 'extraordinary unintended consequences' including 'disjunctive processes, increased complexity and inefficiencies to the detriment of all interested parties', the suspicion that ideological agendas might be at work within government intensifies.'

Sean Brennan, 'Economic Development and Land Council Power: Modernising the Land Rights Act or Same Old Same Old?' (2006) 10 AILR 1.

Publications and Presentations

PUBLICATIONS

Joint Publications

Andrew Lynch and George Williams, 'The High Court on Constitutional Law: The 2006 Statistics' (2007) 30 *UNSWLJ* 188;

Andrew Lynch and George Williams, 'The High Court of Australia: Some Statistics' (2007) 16 *The Commonwealth Lawyer* 30;

Edwina MacDonald and George Williams 'Response to *Satire – or Sedition?* The Threat to National Insecurity' (2007) 11 *Platform* 50.

George Williams

A Charter of Rights for Australia (UNSW Press, 2007);

Work Choices: What the High Court Said (Federation Press, 2007) (with Andrew Stewart);

'Victoria's New Charter: Human Rights and the Community' (2007) 43 *Just Policy* 6;

'When Laws Fail us', *Uniken*, Issue 41, May/June 2007, 7;

'Charter of Rights Needed' *Official Spin: Censorship and Control of the Australian Press*, 2007 Australian Press Freedom Report, Media, Entertainment & Arts Alliance, 5;

'Expensive Way to Run a Country' *Australian Options*, Autumn 2007, No 48, 30;

'The State of Human Rights', *Right Now*, March 2007, Issue 1, 5;

'Lessons from Victoria's Charter of Human Rights and Responsibilities' (2007) 45(1) *Law Society Journal* 68;

'The Victorian Charter of Human Rights and Responsibilities: Origins and Scope' (2007) 30 *Melbourne University Law Review* 880.

Sean Brennan

'Book review: *Compromised Jurisprudence: Native Title Cases Since Mabo* by Lisa Strelein' (2007) 6(26) *Indigenous Law Bulletin* 21;

'Economic Development and Land Council Power: Modernising the Land Rights Act or Same Old Same Old?' (2006) 10 *Australian Indigenous Law Reporter* 1;

'Dramatic Changes to Land Rights Law', *The Australia Institute Newsletter*, No 49, December 2006, 9.

Andrew Lynch

'The Intelligence of a Future Day': The Vindication of Constitutional Dissent in the High Court of Australia – 1981-2003' (2007) 29 *Sydney Law Review* 195;

'The Constitutional Validity of Terrorism Orders of Control and Preventative Detention' (2007) 10 *Flinders Journal of Law Reform* 105 (with Alex Reilly);

'The Once and Future Court? A Review of Jason L Pierce, *Inside the Mason Court Revolution*' (2007) 35 *Federal Law Review* 145;

'Legislating with Urgency – The Enactment of the *Anti-Terrorism Act [No 1] 2005*' (2006) 31 *Melbourne University Law Review* 747.

Jane McAdam

Complementary Protection in International Refugee Law (Oxford University Press, 2007);

The Refugee in International Law (3rd edn, Oxford University Press, 2007) (with GS Goodwin Gill);

'The Qualification Directive: An Overview' in K Zwaan (ed) *The Qualification Directive: Central Themes, Problem Issues, and Implementation in Selected Member States* (Wolf Legal Publishers, 2007);

'International Refugee Law', *Manual*, UNSW Diplomacy Training Program for the Asia-Pacific Region (2007).

Bryan Mercurio

'The WTO Dispute Settlement Understanding: How A Rules-Based System Benefits Australia' in Department of Foreign Affairs and Trade (ed), *Australian Perspectives on WTO Dispute Resolution*, (DFAT 2007) 105;

'Resolving the Public Health Crisis in the Developing World: Problems and Barriers of Access to Essential Medicines' (2007) 5(1) *Northwestern Journal of International Human Rights* 1;

'The WTO and its Institutional Impediments' (2007) 8(1) *Melbourne Journal of International Law*, 198.

Cassandra Goldie

'Creating Space, Changing the Space: Effective Grassroots Participation for the Global Land Tool Network' Report, (UN-Habitat, 2007) (with Malcolm Langford).

'...we need to acknowledge that dissents – even by their non-acceptance – exert some level of influence over the law which the court declares as an institution. This represents a far subtler impact upon the High Court's interpretation of the Constitution, but it is no less valuable for that.'

Andrew Lynch, "The Intelligence of a Future Day": The Vindication of Constitutional Dissent in the High Court of Australia - 1981-2003' (2007) 29 *Sydney Law Review* 195.

PRESENTATIONS

George Williams

'Banned Books and Seditious Speech: Anti-Terrorism Laws and Other Challenges to our University Community', University of Sydney NTEU, 30 May 2007;

'A Charter of Rights for Australia', Human Rights Forum, Social Justice Committee, Sydney University Law Society, 29 May 2007;

'Censorship, Free Speech and Australian Law: Where are we Heading?' Centre for Cultural History, Macquarie University, Sydney, 25 May 2007;

'Free Speech and the Legislative Framework', Big Ideas with Griffith Review – Freedom of Expression, Art Gallery of New South Wales, Sydney, 21 May 2007;

'An Australian Charter of Rights: Lessons from the Victorian Charter of Human Rights and Responsibilities', Faculty Seminar, UTS Faculty of Law, Sydney, 22 May 2007;

'Harmony Lost: Why Multicultural Australia Needs a Human Rights Act in the Era of Anti-Terror' Forum on Race Discrimination and Security Responses to Terrorism, Amnesty Australia New South Wales Human Rights and Security Network, Sydney, 16 May 2007;

'A Charter of Rights for the Northern Territory' 2007 Charles Darwin Symposia – Securing Territorians Rights: Statehood and a Bill of Rights?, Charles Darwin University, Darwin, 10 May 2007;

'What Price Security? A Perspective on Five Years of Australian Anti-Terror Law', Deakin Law Oration, Deakin Law School, Melbourne, 30 April 2007;

'What Price Security? Human Rights, Anti-Terror Laws and the Trial of David Hicks', Forum, Parramatta, 18 April 2007;

'Launch of the NSW Charter Group' NSW Parliament House, 16 April 2007;

'Criminal Law a Century On – Control Orders – Sword or Shield?' 35th Australian Legal Convention, Sydney, 24 March 2007;

'What is the Role of the State in Setting Moral Standards & Boundaries?' *Food for Thought: Democracy Series*, In Conversation with Marcus Strom, Sydney Mechanics' School of Arts, 21 March 2007;

'Academic Freedom and the War on Terror', Public Forum, University of Sydney Anti-War Action Group, 20 March 2007;

'Banned Books and Seditious Speech: Anti-Terrorism Laws and Other Challenges to our University Community', NTEU Annual General Meeting, UNSW, 15 March 2007;

'Justice for David Hicks?', Public Forum, Goulburn, 1 March 2007;

'A Human Rights Act for Australia', Cross-party Parliamentary Briefing on the Proposed New Matilda Human Rights Bill, Parliament House, Canberra, 28 February 2007;

'Magnificent or Defective? Protecting Human Rights in Australia', Politics in the Pub, Canberra, 27 February 2007;

'Rebuilding Australian Federalism: Labor's Challenge on Water and Climate Change to Industrial Relations after WorkChoices', ALP Central Branch, Sydney, 26 February 2007.

Sean Brennan

'Recent Developments in Native Title Case Law: Continuity, Connection and the Group', Human Rights and Equal Opportunity Commission Legal Bulletin Seminar, Sydney, 4 June 2007;

'The State of Play in Acquisition of Property: *Theophanous v The Commonwealth*', Gilbert + Tobin Centre of Public Law Constitutional Law Conference, Sydney, 16 February 2007.

Cassandra Goldie

"Using International Human Rights Mechanisms to Promote Housing Rights" at Halting Forced Evictions: Making Housing Laws Work for the Poor Workshop, 29 March - 2 April, COHRE and Taskforce Housing Rights Along the Railway Lines, Tagatay, Philippines.

Dominique Dalla-Pozza

The Australian Approach to Enacting Counter-Terrorism Laws'- Presentation to Amnesty International Australia Legal Network, 6 March 2007;

'Securing Democratic Traditions and Processes? Some Vital Statistics of the Australian Approach to Enacting Counter-Terrorism Law', *Australasian Law and Society Conference 2006* 13-15 December 2006, University of Wollongong.

Andrew Lynch

'The Use of History by Lawyers in Debating Responses to Terrorism', Inaugural Research Network for a Secure Australia Terrorism History Conference, Canberra, 13 June 2007;

'Incapacity not Misbehaviour: Illness, Independence and Judicial Removal' Staff Seminar, University of Tasmania, Hobart, 1 May 2007.

Jane McAdam

'Extra-Convention Refugees: Complementary Protection under Human Rights Law', Refugee Health Research Centre Seminar Series, La Trobe University, 18 April 2007;

'Climate Change "Refugees" and International Law: On or Off the World Map?', Australian Human Rights Centre symposium 'Securing the Environment: The Challenge of Protecting Human Rights in a Changing Climate' 2 May 2007;

'Climate-Induced Displacement and International Law' UNSW Faculty of Law Staff Seminar, 23 May 2007;

'Climate Change "Refugees"', HSC Legal Studies Student Conference, NSW Parliament House 25 May 2007;

'Climate-Induced Displacement and International Law', UNSW Law Students' Society 29 May 2007.

'Section 51(xxxi) is a difficult area of the law. But in Australia it is also a casualty of legalism and its tendency to obscure rather than illuminate the process of judicial decision making. And as most of the court retreats further into its legalistic shell and increasingly spurns the notion of proportionality, the problem becomes worse.'

Sean Brennan, 'The State of Play in Acquisition of Property: *Theophanous v The Commonwealth*', Sydney, 16 February 2007.

MEDIA PUBLICATIONS

Joint Media Publications

Edwina MacDonald and George Williams, 'Hicks sees a new dawn' *Herald Sun* (28 March 2007);

Edwina MacDonald and George Williams, 'Setback to terror war' *Courier-Mail* (28 March 2007);

Edwina MacDonald and George Williams, 'Heinous crime evolved into a sick heroism' *Daily Telegraph* (28 March 2007);

Edwina MacDonald and George Williams, 'Censorship: Meaningless, counterproductive' *Australian Financial Review* (9 March 2007);

Edwina MacDonald and George Williams, 'End the Hicks hypocrisy' *Mercury* (6 March 2007);

Edwina MacDonald and George Williams, 'No excuse for not bringing Hicks home' *The Age* (5 March 2007);

Edwina MacDonald and George Williams, 'Five years of Legal Shame' *Courier-Mail* (5 March 2007);

Andrew Lynch and George Williams, 'Fix-it later legislation no way to govern' *The Australian* (28 December 2006).

George Williams

'Watching What We Read' *Hobart Mercury* (7 June 2007);

'Terrorism Proposal is a Clumsy Extension of Censorship Laws' *Sydney Morning Herald* (4 June 2007);

'Sensible to Enshrine Freedoms we Hold so Dear' *West Australian* (5 May 2007);

'Fear Factor' *Geelong Advertiser* (2 May 2007);

'Dilemma of too much Choice' *The Australian* (28 April 2007);

'Why Youngsters will Lose their Right to Vote' *Daily Telegraph* (27 April 2007);

'Righting the Wrongs in Perilous Times' *Lawyers Weekly*, Issue 333, 13 April 2007, 36-37;

'Hicks Gag Surprises' *Courier Mail* (4 April 2007);

'Australian Freedom goes on Trial' *Sydney Morning Herald* (31 March 2007);

'Lessons from an Injustice' *The Age* (31 March 2007);

'Federation Needs a Fix' *The Age* (21 March 2007);

'Federal System Past its Use-by Date' *Courier Mail* (21 March 2007);

'Dated System Rips us Off' *Hobart Mercury* (14 March 2007);

'So Much Government, So Little Done' *Sydney Morning Herald* (13 March 2007);

'How to Avoid Making Hicks a Martyr' *Daily Telegraph* (6 March 2007);

'End the Hicks Hypocrisy' *Hobart Mercury* (6 March 2007);

'Move Hicks out of the Election Limelight' *Canberra Times* (6 March 2007);

'Australia's Anti-terror Laws' *Perspective*, ABC Radio National (28 February 2007) <http://www.abc.net.au/rn/perspective/stories/2007/1857402.htm>;

'We Should have a say on who Judges us' *Daily Telegraph* (24 January 2007);

'Law and Disorder' *Hobart Mercury* (4 January 2007);

'Missing Out on a Vote' *Herald Sun* (24 May 2007);

'Justice for All has Become Justice for Some' *The Age* (3 January 2007).

Andrew Lynch

'Legislate for safety, not persecution' *The Courier-Mail* (3 July 2007);

'Guilt in the Minor League' *The Age* (28 March 2007);

'Little Comfort in Guilty Plea' *Sydney Morning Herald* (28 March 2007);

'Jack Thomas and Control Orders' *Perspective*, ABC Radio National (27 February 2007) <http://www.abc.net.au/rn/perspective/stories/2007/1857397.htm>.

SUBMISSIONS

Joint Submissions

Andrew Lynch, Edwina MacDonald and George Williams, Submission made to NSW Ombudsman on 'Review of Parts 2A and 3 of the Terrorism (Police Powers) Act 2002', June 2007.

Andrew Lynch, Edwina MacDonald and George Williams, Submission made to the Attorney-General's Department 'Review of Proposals to Amend the National Classification Scheme to Include Material that Advocates Terrorist Acts', May 2007.

Andrew Lynch, Edwina MacDonald and George Williams, Submission made to the Parliamentary Joint Committee on Intelligence and Security, 'Review of the Power to Proscribe Organisations as Terrorist Organisations' April 2007.

Andrew Lynch, Edwina MacDonald and George Williams, Submission made to the Parliamentary Joint Committee on Intelligence and Security on 'Review of the Listing Provisions of the Criminal Code Act 1995', February 2007.

George Williams

Submission made to the Senate Legal and Constitutional Legislation Committee 'Inquiry into the Australian Citizenship Amendment (Citizenship Testing) Bill 2007', 27 June 2007.

'Admittedly, the classified nature of national security information presents a particular challenge to the dynamics of responsible government, but that just makes it more important that whenever possible Government proposals are presented with adequate opportunity for scrutiny, public input and useful debate. Certainly, invocations of 'urgency' should be rare. Indeed, the adoption of a more methodical parliamentary process for anti-terrorism laws should itself minimise the need for urgent enactments in the future.'

Andrew Lynch, 'Legislating with Urgency - The Enactment of the Anti-Terrorism Act [No 1] 2005' (2006) 31 *Melbourne University Law Review* 747.

Centre Personnel

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Deputy Director and Project Director, Terrorism and Law Project

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Belinda McDonald, BA UNSW

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Cassandra Goldie, *Visiting Fellow*, LLB (Hons) UWA, LLM Dist University College London, Homelessness Legal Rights Project

Jane McAdam, *Senior Lecturer*, BA (Hons) LLB (Hons) Syd, DPhil Oxon, Climate Change 'Refugees' and International Law

Bryan Mercurio, *Senior Lecturer*, BA (Hons) Ohio Wesleyan University, JD (Hns) Case Western Reserve University, LLM UNSW, International Trade and Development Project

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Arthur Glass, *Associate Professor*, BA LLB PhD Syd

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Alex Reilly, *Senior Lecturer*, Macquarie University and *Visiting Fellow*, BA (Juris) UNSW, LLB (Hons) Adel, GDLP SA, LLM British Columbia

Jeremy Webber, *Visiting Professor*, BA British Columbia, LLB McGill, LLM Osgoode

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Dominique Dalla-Pozza, BA (Hons) LLB (Hons) Syd

Cassandra Goldie, B Juris LLB (Hons) UWA, LLM Dist UCL

Paul Kildea, BA (Hons) LLB UNSW

Mitchell Landrigan BA LLB (UNSW), SJD (Syd)

Katherine Lindsay, BA (Hons) MA LLB UQ, LLM Newcastle

Dan Meagher, BEc, LLB LLM Monash

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Associate Professor Andrea Durbach, Faculty of Law, UNSW

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