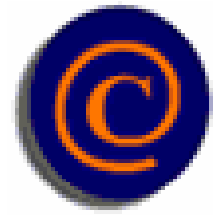


CENTRE FOR
COMPARATIVE
CONSTITUTIONAL STUDIES



ANNUAL REPORT 2001






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1. introduction

The Centre for Comparative Constitutional Studies is one of several specialist centres within the Faculty of Law of the University of Melbourne and was established in 1987. It contributes to the sharing and dissemination of information relating to constitutional issues and debate in Australia and overseas. The Centre makes its knowledge and expertise available as a public resource, by providing information and interviews to the media, responding to official, overseas or public requests for information, and providing speakers to groups and organisations. The Centre also convenes numerous seminars throughout the year involving distinguished Australian and overseas speakers.

1.1 *aims*

To provide a focal point in Australia for analysis of the Australian constitutional system and for comparative study of the constitutional systems of other countries and regions.

1.2 *objectives*

- to examine and evaluate the Australian constitutional system and to contribute actively to the debate on the Australian system of government over the centenary decade;
- to examine and advise on the constitutional and legal framework for relations between levels of government, in theory and practical operation;
- to introduce comparative constitutional concepts and knowledge about comparative constitutional practices into the Australian constitutional debate;
- to develop and promote a sound understanding of the constitutional systems of countries in the neighboring region, both in underlying principle and practical operation;
- to contribute to the debate on constitutional issues elsewhere in the world in the light of the experience of Australia and the Asia-Pacific region;
- to study the underlying principles, structure and operation in practice of existing and proposed international and supra-national arrangements of particular relevance to Australia: the European Community, the North American Free Trade Agreement, ASEAN, Closer Economic Relations with New Zealand and the Asia-Pacific Economic Co-operation arrangements;
- to provide a public and specialist resource on constitutional and comparative constitutional issues.

1.3 *activities*

- conducting research, both independently and in collaboration with others
- providing research training, at graduate and undergraduate levels
- developing and conducting courses
- hosting and contributing to public seminars and conferences
- responding to inquiries from the Australian public and media and from individuals and organisations in other countries
- collecting and disseminating constitutional materials and information, making full use of information technology
- maintaining an active visitors program
- fostering and participating in networks within Australia and overseas
- publishing books, articles, journals and newsletters, and having research results published
- making submissions to public inquiries
- carrying out consultancies

2. people

2.1 *centre members*

director

Professor Cheryl Saunders AO

Professor Saunders is the founding and present Director of the Centre. She has specialist interests in constitutional law and comparative constitutional law, including federalism and intergovernmental relations, constitutional design and change and constitutional theory.

Professor Saunders' long interest in Australian Constitutional review dates from 1973-1985 when she held various positions in connection with the Australian Constitutional Convention. In addition to her research and teaching activities, Professor Saunders is active in public debate on constitutional matters in Australia and internationally. From 1991-2000, she was deputy chair of the Constitutional Centenary Foundation and was closely involved in its pioneering work to encourage wider public participation in constitutional debate. She has also had some involvement in aspects of constitutional design in other countries, including Fiji, South Africa, Zimbabwe, Sri Lanka and East Timor.

In addition to teaching constitutional law and comparative constitutional law at both undergraduate and graduate level, Professor Saunders is also Vice President of the International Association of Constitutional Law, Vice President of the International Association of Centres for Federal Studies and Vice President of the Australian Association of Constitutional Law. She is also an editor of the *Public Law Review* and of the constitutional title of the *Laws of Australia* and a member of the editorial boards of a range of Australian and international journals, including *I.Con* and *Publius*.

In 1994 Professor Saunders was appointed an Officer in the Order of Australia, for services to the law and to public administration.

deputy director

Ms Kristen Walker

Senior Lecturer

Kristen Walker is a Senior Lecturer in Law at the University of Melbourne. Prior to joining the Law Faculty, she completed her articles with Arthur Robinson and Hedderwicks in Melbourne and also served as Associate to Sir Anthony Mason, then Chief Justice of Australia. Kristen teaches Constitutional Law and Law and Sexuality in the LLB program and, in the graduate program, Principles of Public and International Law. She has also taught international human rights law and legal ethics at Columbia Law School in New York. Kristen's research interests are in constitutional law, law and sexuality, and international law, particularly human rights and refugee law.

deputy director

Dr Simon Evans

Senior Lecturer

Dr Simon Evans joined the Faculty and the Centre in 1999. Previously he had served as Associate to Sir Anthony Mason at the High Court of Australia and practised as a lawyer in a commercial firm in Sydney. He holds degrees in Science and Law from the University of Sydney and a doctorate in law from the University of Cambridge. His research interests focus on constitutional rights (especially property rights and socio-economic rights) and mechanisms for government accountability. He teaches Constitutional and Administrative Law and Property at an undergraduate level and Theories of Constitutional Interpretation in the graduate program.

faculty members

Ms Kim Rubenstein

Senior Lecturer

Kim Rubenstein is a Senior Lecturer in Law at the University of Melbourne, lecturing in Constitutional and Administrative Law, Migration Law and Advanced Administrative Law. Kim was awarded both a Fulbright scholarship and the Sir Robert Menzies Scholarship, completing her Masters in Law at Harvard University. Kim is also a Barrister and Solicitor of the Supreme Court of Victoria and the High Court of Australia and, prior to taking up her position with the University of Melbourne in 1993, Kim practised as a solicitor at Corrs Chambers Westgarth.

Kim has a special interest in citizenship law and in 1999 organised the University of Melbourne conference; Individual, Community, Nation: 50 Years of Australian Citizenship.

The following year Rubenstein (ed): Individual, Community, Nation; 50 years of Australian Citizenship (Australian Scholarly Press, 2000) was launched by the Centre. Kim is the editor and author of a number of other texts and is currently working on a new book titled Australian Citizenship Law in Context.

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Mr John Waugh

Senior Lecturer

John holds degrees in Arts and Law from the University of Melbourne and the University of Cambridge. He researches and teaches in Australian constitutional law and history. He is currently completing a book about the Victorian Constitution

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Glenn Patmore
Senior Lecturer

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

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

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

He is also currently editing Labor Essays, an annual volume concerned with law in context, government law, public policy, social justice, democracy and equality.

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Dr Pip Nicholson
Senior Fellow Australian (Graduate Program)

Dr Pip Nicholson is a Senior Fellow of the Faculty. A graduate in Law and Arts from the University of Melbourne with a Masters in Public Policy from the Australian National University, Pip teaches on the Vietnamese legal system in both the undergraduate and graduate programs of the Law School. Pip also works as a consultant to International Programs, assisting to develop and run programs for overseas visiting groups. Pip's research focuses on the Vietnamese court system, the subject of her Ph.D. research. Pip authored the Vietnam chapter in the 1997 and 1995 (with Phan Nguyen Toan) editions of the Asia-Pacific Constitutional Yearbook (Graham Hassall and Cheryl Saunders (eds))

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centre administration

Ms Stacey Watts
Centre Administrator

Stacey Watts is the Centre Administrator and is responsible for the day to day management and administration of the Centre. Stacey also organises the many conferences and seminars hosted by the Centre and the Institute for Comparative and International Law.

associates

Graham Hassall

Graham Hassall is Associate Dean, Faculty of Undergraduate Studies, at Landegg International University, Switzerland. From 1990 until 2000 he was a Research Fellow at the Centre for Comparative Constitutional Studies and is now a Centre Associate. He holds degrees in Education (Alexander Mackie C.A.E.) and history (The University of Sydney) and a Ph.D in Pacific Studies from the Australian National University. He has a particular interest in electoral systems, conflict resolution, and methods of constitutional dialogue and change.

Brian Opeskin

Brian Opeskin is a Research Associate of the Centre and a full-time Commissioner at the Australian Law Reform Commission. He led the Commission's reference on the Judiciary Act 1903 (Cth) and is currently working on the inquiry into the protection of human genetic information. Brian is an Associate Professor in the Faculty of Law at the University of Sydney, where he also served as Associate Dean. He has taught in the fields of constitutional law, international law, human rights and conflicts of law since 1989. He has co-authored *International Law and Australian Federalism* (Melbourne University Press, 1997), *The Australian Federal Judicial System* (Melbourne University Press, 2000), and *Conflict of Laws in Australia* (Oxford University Press, 2001). Brian holds degrees in economics and law from the University of New South Wales and a Bachelor of Civil Law degree from Oxford University.

Marian Schoen

Marian Schoen is the Director, Corporate Services and Public Affairs at the National Native Title Tribunal, Perth. Before joining the Tribunal, Ms Schoen was from 1996-2000 the Executive Director of the Constitutional Centenary Foundation in Melbourne, where she was involved with the CCCS in promoting public discussion and understanding of the Australian constitutional system. From 1994 - 1995, she was with Strategic Review section of the New South Wales Ministry for the Arts. Her experience in constitutional review and administrative law has included positions as Secretary to the Advisory Committee on Executive Government (Constitutional Commission 1986-88), Principal Legal Counsel to the Ombudsman Commission of Papua New Guinea and Secretary/Research Officer in the 1982 Royal Commission into the Tasmanian Constitution Act 1934. She has also practised in arts and media law with the specialist firm, Stephens Innocent, London. She is admitted as a barrister and solicitor of the High Court of Australia and the Supreme Courts of Tasmania, New South Wales and Papua New Guinea. She graduated from the University of Tasmania in 1979 with a Bachelor of Arts/Laws, and in 1991 completed a Masters in Arts Administration at the College of Fine Arts, UNSW.

Fiona Wheeler

Fiona Wheeler (BA/LLB(Hons), PhD (ANU)) is a Senior Lecturer and Sub-Dean in the Faculty of Law, Australian National University. In recent years she has taught constitutional law and introduction to law. Her research is primarily in the area of constitutional law, with a particular interest in courts and the judicial system, including separation of powers. Her various publications include a number of articles on aspects of Chapter III of the Constitution. With Brian Opeskin, she co-edited *The Australian Federal Judicial System* (Melbourne University Press, 2000). She is Comments Editor of the *Public Law Review*, a contributor to the *Oxford Companion to the High Court of Australia* (2001) and has served on the Executive of the Australian Association of Constitutional Law.

Stephen Donaghue

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

Dr John Williams

Dr John Williams is a senior lecturer in law at the University of Adelaide. He holds undergraduate degrees from the University of New South Wales and University of Tasmania and a PhD from the Australian National University. His research interests are in the area of constitutional law and theory and Australian legal history.

2.2 *resident visiting fellows*

In 2001, the following Visiting Fellows were resident at the Centre for Comparative Constitutional Studies:

Professor Maria Isolina Dabove

National University of Rosario, Argentina

Professor Dabove was a visitor to the CCCS for two weeks during March 2002. Her teaching and research interests lie in Bioethics, Legal Theory, Human Rights and Philosophy of Law, in which she has a PhD from the University of Charles III in Madrid.

Professor Paul Marcus

The William & Mary College of Law, Virginia, United States of America

Professor Marcus was with the Centre for 6 months during 2001. He joined the William & Mary College of Law in 1992 and is now the Dean. Prior to joining William & Mary, Professor Marcus clerked for the US Court of Appeals for the District of Columbia Circuit and practiced law at Loeb & Loeb in Los Angeles. He has been the Dean at the University of Arizona School of Law, taught at the University of Illinois and been a visiting Professor at the University of Geneva, the University of Puerto Rico and the University of Texas. His teaching and research interests lie in criminal justice, criminal procedure and entertainment law. During his stay with the Centre, Professor Marcus participated in the JD Guest Lecture series and gave a lecture in the ICIL Twilight Seminar series on the US Criminal Justice System.

Professor Denis Baranger

University of Paris II

Professor Baranger has a Doctorate from the University of Paris II which he wrote on "The Formation of a Responsible Cabinet in England 1742 – 1841". In 1998 he was the Professor of Public Law at the University of Orleans, France where he taught constitutional law and the history of political thought in their graduate program. Most recently, Professor Baranger won the Prix Francois Furet 2000 (Association des Aimes de Francois Furet E.H.E.S.S.). He has been widely published, predominantly in comparative law, legal history and jurisprudence. During his stay with the Centre Professor Baranger undertook research and taught in the graduate program.

Professor Joseph Weiler

New York University

Professor Weiler is the Jean Monnet Professor of Law at New York University. He is also a Professor at the College of Europe in Bruges Belgium; and honorary Professor at University College in London, London University and in the Department of Political Science at the University of Copenhagen. He has served as a member of the Committee of Jurists of the International Affairs Committee of the European Parliament co-drafting their Declaration of Human Rights and Freedoms. Professor Weiler has also been a member of the Grope des Sages advising the Commission of the European Union on the 1996/97 Amsterdam Treaty. During his stay with the Centre, Professor Weiler delivered the Kenneth Bailey Memorial Lecture on "Balancing National Regulatory Sovereignty with the Discipline of Free Trade" and participated in a round table on "Does Europe need a Constitution?"

Professor Thomas Fleiner

Institute of Federalism, University of Fribourg Switzerland

Professor Fleiner is a Member of several federal commissions including the revision of the Federal Constitution, Film Commission etc. He is also an expert in legal affairs concerning the Swiss Confederation, various cantons and the Council of Europe. He has been Head of CSCE-Missions to all Republics of former Yugoslavia 1992-93 and a Member of the "Vereinigung der Deutschen Staatsrechtslehrer" (Member of the executive committee 1991-1993). Professor Fleiner was the founder and Secretary of the Swiss Association of Legislation and has been a teacher and Executive-Director of the Seminars on Legislation for Civil Servants since 1980. He is responsible for co-ordinating of the European Network and the Summer University of the Institute of Federalism on "Dezentralisation and Local Autonomy in European Countries". He was also the President of the International Association of Constitutional Law 1995-99. During his stay with the Centre Professor Fleiner undertook research and participated in a Twilight Seminar on "Constitutions and Diverse Communities in the 21st Century".

Dr Nico Steytler

University of the Western Cape, South Africa

Dr Steytler is the Director of the Community Law Centre at the University of the Western Cape, South Africa. The objective of the Centre is to protect and promote the human rights and democratic norms that have been enshrined in the 1996 Constitution and in international human rights instruments. It is our belief that social justice will be advanced through the establishment of a legal order based on these human rights and democracy norms. In the pursuit of this objective, the Centre pays special attention to the position of women, children and other vulnerable groups such as persons with disabilities. During his stay with the Centre he undertook research on the role of mega-cities in federal dispensations.

Dr Haig Patapan

Key Centre for Ethics, Law, Justice & Governance, Griffith University

Teaching and Research Areas include Political and Legal Philosophy, Comparative Constitutionalism and Human Rights, Democracy and Globalization and Ancient political thought. During his stay with the Centre, Dr Patapan undertook research.

2.3 *research assistants*

Tracey Gurd

Research Fellow

Tracey is currently working on an ARC-funded project dealing with the influence of constitutional theory on Western constitutional traditions. She is also completing her Masters in Public and International Law at Melbourne University, specialising in human rights and humanitarian law. Before arriving in Melbourne, she spent two years working as a policy adviser in the Australian Embassy in Hungary, after working in the international division at the Department of Prime Minister and Cabinet in Canberra. Tracey completed her undergraduate law degree at A.N.U. Canberra in 1998.

Simona Gory

Simona is an LLB student. She is currently assisting Professor Saunders in the research, administration and publication of the Public Law Review.

Ms Liza Miller

Research Grant from the Australian Research Council entitled *"The Influence of Constitutional Theory within Western Constitutional Traditions"*.

2.4 *international visitors with expertise in constitutional law*

Other leading international scholars who visited the Centre in 2001 included:

- Professor Oliver Moréteau, Professor of Comparative Law and Director of the Institute of Comparative Law Edouard Lamberts at the Université Jean Moulin Lyon III
- Professor Elizabeth Zoller, Director of the Centre of American Law, Université Panthéon-Assas (Paris III)
- Professor Susan Karamanian, George Washington University Law School
- Professor Titia Loenen, Professor of Women's Legal Studies, Utrecht University, The Netherlands

3. seminars

public lectures and seminars

February 2001

Remarks on Judicial Independence – the Situation of the US Federal Judiciary

US Supreme Court Justice Ruth Bader Ginsburg recalled the "breathtaking episode" of the Bush v Gore case and spoke on "how important and difficult it is for judges to do what is legally right, no matter what 'the home crowd' wants". This was the second lecture in the Rule of Law Lecture Series. The session was chaired by the Hon Michael Black AC, Chief Justice of the Federal Court of Australia. A response to Justice Ginsburg's lecture was given by the Hon Justice Kenneth Hayne of the High Court of Australia.

April 2001

The Limits of the Rule of Law

Professor Michel Troper, University of Nanterre, France presented the third lecture in a series of international guest lectures on The Rule of Law. Professor Troper spoke on the significant practical limits to the Rule of Law. Professor Cheryl Saunders AO chaired the lecture while the response to Professor Troper was given by Justice Mary Gaudron of the High Court of Australia.

July 2001 – The Rule of Law & The Reach of Accountability

Justice Louise Arbour, Supreme Court of Canada presented the fourth lecture in a series of international guest lectures on The Rule of Law. Justice Arbour spoke on "The Rule of Law & the Reach of Accountability". Justice Arbour is a leading figure in law, both in Canada and on the international stage. She served as prosecutor for the International Criminal Tribunal in The Hague from 1996-99. Professor Tim McCormack, the inaugural Red Cross Chair of International and Humanitarian Law chaired the lecture while The Honourable Justice Marcus Einfeld, AO of the Federal Court of Australia delivered the response.

August 2001 – Does Europe Need a Constitution?

Joseph Weiler is the European Union Jean Monnet Professor of Law at New York University School and Director of NYU's Centre for International and Regional Economic Law & Justice. He is also Professor at the College of Europe in Bruges, Belgium, and honorary Professor at University College London and in the Department of Political Science at the University of Copenhagen. Professor Weiler served as a member of the Committee of Jurists of the Institutional Affairs Committee of the European Parliament, co-drafting the European Parliament's Declaration of Human Rights and Freedoms; and was a member of the Group des Sages advising the Commission of the European Union on the 1996/97 Amsterdam Treaty. He is currently advising on the Commission White Paper on Governance. He is a WTO

Panel Member. He is the author of a collection of essays entitled "The Constitution for Europe" (1999) in which he explores the implication of the integration of Europe for the status of its citizens. This is a round table discussion with Professor Joseph Weiler, European Union Jean Monnet Professor of Law, New York University.

The discussion occurred at a time of renewed debate across the length and depth of the European Union and of the relevance of a constitutional framework for it.

September 2001 – Constitutions and Diverse Communities in the 21st Century

This important and topical issue was addressed by Professor Thomas Fleiner, a leading international authority on comparative administrative and constitutional law.

Professor Fleiner is Director of the Institute for Federalism at the University of Fribourg, Switzerland. Until recently he was President of the International Association of Constitutional Law. He is the author of numerous books and several hundred articles on issues of constitutional, administrative and international law and the general theory of the state. An expert in legal and political theory and philosophy, he has advised numerous governments and groups on the design of Constitutions to accommodate diverse communities in Africa, South Africa, Russia and central and Eastern Europe.

Professor Fleiner's visit to Australia is sponsored by the Swiss Government as a contribution to the celebration of the Australian Constitutional Centenary. Over the next week, Professor Fleiner will give lectures in number of State capitals on federalism, multiculturalism, human rights and other related issues. This generous gesture by the Swiss Government recognises the many common values shared by Australia and Switzerland and the important influence of the Swiss constitutional model in the drafting of the Australian Constitution.

October 2001

Broken Glass – Women, Violence and the Rule of Law

Ms Radhika Coomaraswamy, International Centre for Ethnic Studies, Sri Lanka presented the fifth lecture in a series of international guest lectures on The Rule of Law. Radhika is the UN Special Rapporteur on Violence against Women for the United Nations Human Rights Commission. Professor Jenny Morgan chaired this lecture and Ms Elizabeth Evatt, AO, Former Member, U.N. Human Rights Committee responded to Dr Coomaraswamy's lecture.

October 2001

Boundless Plains to Share? Australia's Response to the M.V. Tampa Asylum Seekers

The MV Tampa asylum seekers have re-ignited Australia's immigration debate, raised issues of sovereignty and national security, prompted judicial scrutiny of executive action and drawn international criticism to a nation proud of its multicultural heritage and human rights record.

The Centre for Comparative Constitutional Studies and the Institute for Comparative and International Law presented a half-day seminar where leading scholars and practitioners explored the legal issues surrounding the Australian Government's response to the MV Tampa asylum seekers and the implications for the future of Australian refugee policy and practice. The seminar was chaired by the Rt Hon Malcolm Fraser AC CH and featured presentations from eight leading Australian scholars and practitioners with expertise in constitutional law, refugee and migration law, and international law.

The interest in this highly topical seminar was enormous - the audience numbering close to 200 - including members of the Victorian Bar, lawyers, staff from community legal centres, government representatives, academics from a number of university faculties and a large number of students with interests in immigration law and human rights. The response from those who attended has been extremely positive and encouraging, the audience finding the seminar to be informative and stimulating.

speakers and focus

- In the Federal Court: A Presentation of the Arguments
Ms Kristen Walker, Senior Lecturer, Faculty of Law, The University of Melbourne
- A Practitioner's Perspective - Litigation on behalf of Asylum Seekers
Ms Debbie Mortimer, Barrister
- Constitutionalism, the Rule of Law & the MV Tampa
Dr Simon Evans, Lecturer, Faculty of Law, The University of Melbourne
- Indonesian Perspectives on Asylum Seekers
Associate Professor Tim Lindsey, Asian Law Centre, Faculty of Law, The University of Melbourne
- Sovereignty over Immigration Control? Australia & its Migration Act 1958
Ms Kim Rubenstein, Senior Lecturer, Faculty of Law, The University of Melbourne
- MV Tampa & the 1951 Refugee Convention: It's Impact & Implications
Dr Graham Thom, Australian Refugee Co-ordinator, Amnesty International
- The Law of the Sea & the MV Tampa Incident: Location, Location, Location!
Associate Professor Don Rothwell, Faculty of Law, The University of Sydney
- International Law Aspects of the Tampa Affair: A Legal Twilight Zone
Professor Gillian Triggs, Co-Director, Institute for Comparative and International Law, Faculty of Law, The University of Melbourne, International Law and Maritime Law

December 2001

Courts and the Rule of Law

Chief Justice Murray Gleeson, High Court of Australia presented the sixth and final lecture in The Rule of Law Lecture Series speaking on "Courts & the Rule of Law". This final lecture was chaired by Professor Michael Crommelin, Dean of the Faculty and Professor Cheryl Saunders delivered the response and closing remarks.

4. research

4.1 *regular publications*

The following regular publications are produced under the auspices of the Centre:

- **Legal Scholarship Network** – University of Melbourne issues of the Public Law and Legal Theory Series;
- **Melbourne Journal of International Law** – Fully refereed, student-edited law journal covering issues of public and private international law relevant to academic and commercial interests in Australia and the Asia Pacific;
- **Melbourne Studies** – Series of monographs published by Kluwer Law International. The first volume, entitled *Centenary of the Hague Peace Conference: An Asian Perspective*, will contain a selection of papers from the Hague Peace Conference co-hosted by the Centre, the Law School and Australian Red Cross, held in February 1999. The second volume is expected to contain a selection of papers from the 2000 Conference on Trade and Cooperation with the European Union in the New Millennium;
- **Public Law Review** – A refereed journal dealing with public law in Australia and New Zealand;

4.2 *publications*

Chapters in Books

- S. Evans, 'Constitutional Constraints on the Redistribution of Wealth' in Glenn Patmore (ed), *The Big Makeover: A New Australian Constitution, Labor Essays 2002*, Pluto Press, Annandale (2001) 87-99.
- G. Lindell, 'Introduction: The Vision in Hindsight Explained' in G Lindell and R Bennett (eds), *Parliament: The Vision in Hindsight*, Federation Press, Annandale (2001) , XIX-XLI.
- J. Morgan, 'Constitutional Right to (Gender) Equality: What's the Difference?' in G Jungwirth (ed), *The Big Makeover: A New Australian Constitution, Labor Essays, 2002*, Pluto Press, Annandale (2001), 166-173.
- G. Patmore, 'Constitutional Renewal – Everything You Might Like to Know!' in G Patmore (ed), *The Big Makeover: A New Australian Constitution, Labor Essays 2002*, Pluto Press, Annandale (2001), 1-34.
- G. Patmore, 'The Head of State as the Guarantor of Democratic Government' in G Patmore (ed), *The Big Makeover: A New Australian Constitution, Labor Essays 2002*, Pluto Press, Annandale (2001), 174-195.
- K. Rubenstein, 'Citizenship and the Republic Debate' in G Patmore (ed), *The Big Makeover: A New Australian Constitution, Labor Essays 2002*, Pluto Press, Annandale (2001), 187-195.
- C. Saunders, 'The Parliament as Partner: A Century of Constitutional Review' in G Lindell and R Bennett (eds), *Parliament: The Vision in Hindsight*, Federation Press, Annadale (2001), 454-485.
- C. Saunders, 'Dividing Power in a Federation in an Age of Globalisation' in C Sampford and T Round (eds), *Beyond the Republic: Meeting the Global Challenges to Constitutionalism*, Federation Press, Leichhardt (2001), 129-145.

Journal Articles

- S. Evans, 'Property and the Drafting of the Australian Constitution' (2001) 29 *Federal Law Review* 121-150.
- P. Nicholson, 'Judicial Independence and the Rule of Law: The Vietnam Court Experience' (2001) 3 *The Australian Journal of Asian Law* 37-58.
- D. Otto, 'From 'Reluctance' to 'Exceptionalism': The Australian Approach to Domestic Implementation of Human Rights' (2001) 26 *Alternative Law Journal* 215-218.
- C. Parkinson, 'George Higinbotham and Responsible Government in Colonial Victoria' (2001) 25 *Melbourne University Law Review* 181-217.
- G. Patmore 'Constitutional Renewal - Everything you might like to know!' in 'The Big Makeover; A New Australian Constitution': Labor Essays 2002 (Pluto Press Australia, 2001), pages 1 - 34.
- G. Patmore 'Should the Head of State be a Guarantor of Democratic Government?' in 'The Big Makeover; A New Australian Constitution': Labor Essays 2002 (Pluto Press Australia, 2001), pages 174 – 195
- G. Patmore 'A New Light on an Old Hill - Building Industrial Democracy in Australia', *Arena* (June - July 2001), pages 45 - 48.
- G. Patmore 'Disability Discrimination' in Blackshield T, Coper M and Williams G (eds), "Oxford Companion to the High Court of Australia" (Oxford University Press, 2001), pages 208-210.
- C. Saunders, 'A New Direction for Intergovernmental Arrangements' (2001) 12 *Public Law Review* 274-287.
- K. Walker, "UN Human Rights Law and Same-Sex Relationships: Where to From Here?", in Robert Wintemute and Mads Andenas (eds), *Legal Recognition of Same-Sex Partnerships: A Study of National, European and International Law* (2001), 743-757.
- K. Walker, *Australian Catholic Bishops Conference v Sundberg* (2001) 26 *Alternative Law Journal* 257-258.
- J. Waugh, 'The First Governor-General' (2001) 6 *The New Federalist* 62-70.
- A. Winkel, 'A 21st Century Constitutional Preamble – An Opportunity For Unity Rather Than Partisan Politics' (2001) 24 *University of New South Wales Law Journal* 636-651.
- C. Saunders, contributions to *Oxford Companion: Sir Daryl Dawson, Bank Nationalisation case, nationhood power, Commonwealth-State relations*
- C. Saunders, "Australian Federalism" in (2001) 78 *Reform* 5 - 10

4.3 grants

Recipient	Type of Grant	Research
Dr Simon Evans	MRD	Interpreting fundamental rights provisions: a comparative study of property clauses
Dr Michelle Brown, Dr Chris Cregan & Mr Glenn Patmore	Melbourne Research Development Grant	Employee Willingness to Participate in Organisational Decision Making Systems: Causes & Consequences
Professor Cheryl Saunders	ARC Large Grant	The Influence of Constitutional Theory within Western Constitutional Traditions

KEY: 'ARC' - Australian Research Council Grant
 'MRD' - Melbourne Research Development Grant

4.4 work in progress

The following is a list of research activity in the area of comparative constitutional law being undertaken by Faculty staff in 2002:

- S. Evans and S. Donoghue, 'Standing to Raise Constitutional Issues in Australia' Constitutional law and constitutionalism (2001).
- S. Evans, 'Public Law Aspects of Refugee and Migration Law: Constitutionalism, the rule of law and the MV Tampa' Constitutional law and constitutionalism (2001).
- S. Evans, 'Public Law Aspects of Refugee and Migration Law: Of protection visas and privative clause decisions: Hickman and the Migration Act 1958 (Cth)' Constitutional law and constitutionalism (2001).
- S. Evans, 'Interpreting fundamental rights provisions: a comparative study of property clauses' Constitutional law and constitutionalism (2001).
- K Walker "The Bishops, The Doctor, His Patient And The Attorney-General: The Outcome of the McBain Litigation"
- J.Waugh & Professor McCallum 'The Labor Power and Works Councils', for a book edited by Ross I, Markey R and Gollan P, "Works Councils for Australia" (Federation Press, forthcoming publication, 2002).
- J.Waugh & A Thwaites, entitled "Fundamental Doctrines for the Protection of Civil Liberties in the United Kingdom: A V Dicey and the Human Rights Act 1998 (UK)" (2002) 13(1) Public Law Review 52-77.
- J.Waugh - convenor 'Marking the Constitutional Centenary: An Agenda for Reform', held at The Melbourne Law School, The University of Melbourne on 15 June 2001.

4.5 supervision of research

- Andrew Serpell, SJD: Judicial Law-Making in the High Court of Australia: Independence and accountability (passed)
- Jane Winter PhD (joint supervision): The rights of individuals born of Donor Gametes to Access Identifying information about their genetic origins.
- Hashim Tewfik (PhD): Ethnic Federalism in Ethiopia: a Case Study
- Rebecca French, (PhD): Legal issues in outsourcing government services
- Alayas Hajisalah (PhD) The Treaty-Making Process in Thailand
- Denny Indrayana (PhD) Constitution-making in Indonesia

5. teaching programs

Many of the Faculty's courses and subjects have a constitutional or a comparative constitutional law dimension. Such courses and subjects offered in 2001 are set out below.

5.1 *bachelor of laws*

Comparative Law Subjects

Comparative Constitutional Law

5.2 *postgraduate courses and subjects*

Graduate Diploma of Government Law

Master of Public and International Law

Comparative Law Subjects

Constitutional Litigation

Current Issues in Administrative Law

Comparative Constitutional Law

Constitutional Rights

Law of Intergovernmental Relations

5.3 *the melbourne jd*

The Melbourne JD curriculum also offers a constitutional law subject:

Constitutional Law

6. other activities

6.1 *conference presentations*

- C Saunders, "The Double Dissolution of 1951": to Menzies Research Centre, 29 March 2001.
- C Saunders, Address on Constitutional Issues to Cranlana Symposium "Australian Identities: Towards a Common Future, 25-27 May 2001.
- C Saunders, "The International Association of Constitutional Law" speech to the 20th anniversary commemoration of the IACL, Paris, 31 May 2001
- C Saunders, "The Reception and Use of Direct Democracy in Australia" address to a seminar, Institute of Federalism, Fribourg, 5 June 2001
- C Saunders, "The Distinction between Federal and State Jurisdiction", an address to the Federal Court Judges' conference, 30 August, 2001
- C Saunders, Andrew Inglis Clark, an address to the Constitutional Centenary celebration, Hobart, Tasmania 27 September
- C Saunders, "Australian Legal System"; an address to a delegation of judges from the Philippine Judicial Academy, Federal Court, Melbourne, 22 October 2001
- C Saunders, Comment on "Contemporary Federalism: Challenges to Commonwealth/State Co-operation", Annual Public Law Weekend, Australian National University, 3 November 2001
- C Saunders, "Some observations on the Appellate Process"; address to Appellate Judges' Seminar, 30 November, 2001
- C Saunders, Panellist, symposium on the Constitution, Parliamentary Education Office, Canberra, 29 March 2001
- C Saunders, Chair, Sir Samuel Griffith: the Law and the Constitution, session 3, Supreme Court of Queensland History Society, 31 March, 2001.
- C Saunders, Speaker, Federation Youth Convention, "Lessons for the Republic from the Making of the Australian Constitution" 12 May 2001

- C Saunders, Moderator, session one, "Exploring Possible Constitutional Arrangements for Meeting Tamil Aspirations within a Unified Sri Lanka", Locarno, Switzerland, 11-15 June 2001.
- C Saunders, Address, "The work of the Constitutional Centenary Foundation", Vision Australia, 29 June 2001
- C Saunders, Address to seminar on federalism organised by Griffith Key Centre, 3 September 2001
- C Saunders, Address to the Local Government Association of Queensland Annual Conference: "Structure and Delivery of Government: What does the Future Hold?" 4 September 2001
- C Saunders, Rapporteur, Election Audit, Citizens' Constitutional Forum, Fiji, 12-14 October 2001

6.2 organisation of external conferences

- C Saunders, Member, organising committee, Garma Festival
- C Saunders, International expert, theme on federalism, conflict management and multi-ethnicity, International Forum of Federations, Switzerland 2002.
- C Saunders, Member, organising committee, World Congress, International Association of Comparative Law, Brisbane, 2002; General Reporter, Budgetary Federalism
- C Saunders, Member, program commission, World Congress, International Association of Constitutional law, Chile 2004
- C Saunders, AACL centenary conference (with Justice French, Geoffrey Lindell)

6.3 other formal links

- International Association of Constitutional Law
- International Academy of Comparative Law
- Centre for Southeast Asian Law, Faculty of Law, Northern Territory University
- International Association of Centres for Federal Studies (from October 1998)
- Australian Association of Constitutional Law (from October 1998)
- Comparative Constitutional Law Standing Committee