

**CENTRE FOR COMPARATIVE CONSTITUTIONAL STUDIES**

# **ANNUAL REPORT 2000**

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# Centre for Comparative Constitutional Studies

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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 Aim**

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 neighbouring 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

In early 2000, the Centre farewelled several members of staff who had been associated with it for many years and who were instrumental in its early growth. Dr Graham Hassall has taken up a new position as Dean of Undergraduate Studies at Landegg Academy in Switzerland. The Centre also said goodbye to Tracey Cromby in 2000 and welcomed Stacey Watts as the new Administrator. Anne Mullins has undertaken research work with a variety of Government departments. The Centre is extraordinarily grateful to all three and looks forward to remaining in contact with them.

### 2.1 Centre Members

#### *Directors*

Dr Graham Hassall (to June 2000) – Associate Director Asia Pacific Region

Anne Mullins (to June 2000) – Associate Director Australia

Professor Cheryl Saunders AO

#### *Administrator*

Ms Tracey Cromby (to October 2000)

Ms Stacey Watts (from October 2000)

### 2.2 Resident Visiting Fellows

In 2000, the following Visiting Fellows were resident at the Centre for Comparative Constitutional Studies ('CCCS'):

#### *Dr Robin Coupland, FRCS*

Dr Coupland was the Faculty's Senior Fellow International while on sabbatical leave from his position as Chief Surgeon, International Committee of the Red Cross, Geneva. Author of a series of articles about the effects of anti-personnel mines, Dr Coupland's writing contributed to the campaign which culminated in the 1997 Ottawa Treaty banning these mines. He taught "Weapons, Health and Law" in the Graduate Studies program and also participated in The Melbourne JD Guest Lecture Series.

#### *Mr Peter Johnston*

Mr Johnston teaches undergraduate units in Constitutional Law, Administrative Law, International Law, and Human Rights and Equal Opportunity in the Faculty of Law, University of Western Australia. His research interests include the law of freedom of political speech in relation to parliamentary privilege under the State and Commonwealth Constitutions, the doctrine of proportionality in administrative decision-making, and the constitutional and international status of islands and reefs on the North West Shelf. Mr Johnston undertook research during his time as a visitor to the CCCS.

#### *Mr John Tobin*

Senior Fellow Australian in the Graduate Program and visitor to the CCCS, Mr Tobin is currently working on a Commentary to the Convention on the Rights of the Child with Prof Philip Alston of the European University Centre, Florence. Mr Tobin will teach "International Law on the Rights of the Child" as part of the 2001 Graduate Studies program.

#### *Dr John Williams*

*Faculty of Law, University of Adelaide*

Taught "Constitutional Rights" in the Graduate program and was a visitor to the Centre.

#### *Professor Elisabeth Zoller*

##### *University Paris II*

Professor Zoller taught Comparative Constitutional Law in the Graduate Program. Professor Zoller is a professor of constitutional law at University Paris II. Her expertise is in international law, constitutional law and American Law, and she runs the American Law Centre at University Paris II. She was recently awarded the Legion d'Honneur, in recognition of her scholarship

## 2.3 Research Assistants

Ms Anna Thwaites  
Mr Kevin Yam  
Ms Chelsea Candy

## 2.4 International Visitors with Expertise in Constitutional Law:

Other leading international scholars who visited the Centre in 2000 included:

- Professor Hugh Corder, Department of Public Law, University of Capetown (in conjunction with the CCCS)
- Professor Andrew Le Sueur, University College, London
- Professor Terence Daintith, Centre for Advanced Legal Studies, London
- Professor Henning Koch, University of Copenhagen
- Professor Elizabeth Zoller, Paris II
- Professor Gerald Dworkin, King's College, London
- Professor David Dyzenhaus, University of Toronto
- Mr Soli Sorabjee, Attorney-General of India
- Professor Akira Osuka, Wasada University Japan

## 3. Seminars

### Public Lectures and Seminars

The following public lectures and seminars were held in 2000:

- **March 2000 – A Colloquium: Comparative Japanese & Australian Law**  
A 5 day workshop featuring a delegation from the Institute for Comparative Law, Waseda University Japan, staff from the Institute for Comparative & International Law and the Centre for Comparative Constitutional Studies
- **May 2000 – Freedom of the Media: Constitution and Courts**  
Public lecture delivered by Mr Soli Sorabjee, Attorney General of India.
- **June 2000 – The Constitutional Setting for Administrative Law in South Africa**  
Public lecture delivered by Professor Hugh Corder, Professor of Public Law and Dean of the Faculty at the University of Cape Town.
- **August 2000 – Staying Autonomous in the EU: The Dilemma for Nation States**  
Public lecture delivered by Professor Henning Koch from the University of Copenhagen.
- **November 2000 – The Justice of the Common Law: Judges, Democracy & the Limits of the Rule of Law**  
First lecture in the year long “Rule of Law” series, sponsored by the Judges’ Trust and run under the auspices of the ICIL and the Law School Foundation.

## 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

#### *Books*

- K Rubenstein (ed), *Individual, Community, Nation: 50 Years of Australian Citizenship* (2000).

#### *Chapters in Books*

- K Rubenstein, 'The High Court of Australia and Legal Dimensions of Citizenship' in K Rubenstein (ed), *Individual, Community, Nation: 50 Years of Australian Citizenship* (2000) 21-32.
- K Rubenstein and L Halonkin, 'Introduction', in K Rubenstein (ed), *Individual, Community, Nation: 50 Years of Australian Citizenship* (2000) xiii-xxiv.
- C Saunders, 'Human Rights and the Nation State', in P Haberle and J Muller (eds), *Menschenrechte und Bürgerrechte in einer vielgestaltigen Welt* (2000) 135-160.
- S Evans, 'Commentary' on 'Mr Egan, The Legislative Council and Responsible Government' in Stone, A; Williams, G (ed), 'The High Court at the Crossroads: Essays in Constitutional Law' (2000) 66-76.
- C Saunders, 'The Implications of Federalism for Indigenous Australians', in Y Ghai (ed), *Autonomy and Ethnicity: Negotiating Competing Claims in Multi-Ethnic States* (2000) 266-286.
- C Saunders, 'The Head of State – The Australian Experience: Lessons, Pointers and Pitfalls', in C James (ed), *Building the Constitution*, Institute of Policy Studies, Wellington (2000) 276-286; also 'Involving the People' 58-64.
- C Saunders, 'The Parliament as Partner: A Century of Constitutional Review'; a paper prepared for the Centenary of Federation Project: *The Vision in Hindsight* (2000) published initially as Information and Research Services Research Paper No. 3 (2000-1).

### *Journal Articles*

- K Rubenstein and D Adler, 'International Citizenship: The Future of Citizenship in a Globalised World' (2000) 7 *Indiana Journal of Global Legal Studies* 519-548.
- K Walker, 'Capitalism, Gay Identity and International Human Rights Law' (2000) 9 *Australasian Gay and Lesbian Law Journal* 58-73.
- K Walker, 'Sexuality and Refugee Status in Australia' (2000) 12 *International Journal of Refugee Law* 175.
- C Saunders, 'Administrative Law and Relations Between Governments: Australia and Europe Compared' (2000) 28(2) *Federal Law Review* 263-290.
- C Saunders, 'Australian Federalism and the Role of the Governor-General' (2000) 28 *International Journal of Legal Information* 407-423.
- K Walker, 'Evolving Human Rights Norms Around Sexuality' (2000) 6 *ILSA Journal of International and Comparative Law* 343-353.
- P Nicholson and N Minh, 'Commercial Disputes and Arbitration in Vietnam' (2000) 17 *Journal of International Arbitration* 1-18.
- S Evans, 'When Is an Acquisition of Property Not an Acquisition of Property?' (2000) 11 *Public Law Review* 183-204.
- S Evans, 'Property, Proprietary Remedies and Insolvency: Conceptualism or Candour?' (2000) 5 *Deakin Law Review* 31-45.
- S Evans, 'From Private Property to Public Law' (2000) 28 *Federal Law Review* 155-167.
- C Saunders, 'Religion and Constitutional Rights', (1999) 21 *Cardozo Law Review* 1295-1302 (special issue on *Constitutionalism, Constitutional Rights and Changing Civil Society*).
- C Saunders, 'Separation of Powers' in B Opeskin and F Wheeler (eds) *The Australian Federal Judicial System*, Melbourne University Press (2000) 3-36.
- 'Reflections on the Referendum' (2000) *ALSA Reporter*, 5-7.
- 'Applications of Republican Liberty' (2000) 25 *Australian Journal of Legal Philosophy* 137-142.
- 'Australian Experiments in Administrative Law' (1997-2000) *Law and Justice* 53-65.
- 'Federal Fiscal Reform and the GST' (2000) 11 *Public Law Review* 99-105.
- Foreword to Akira Osuka (ed) *Comparative Studies on Asian-Oceanian Legal Systems* (publication expected in 2001).
- 'Is Constitutional Change beyond us?' in (2000) *About the House*, House of Representatives Bulletin, 16-17.
- C Saunders, "Australian State Constitutions" (2000) 31 *Rutgers Law Journal* 999-1018.
- C Saunders, "A Constitutional Culture in Transition" in Miroslaw Wyrzykowski (ed) *Constitutional Cultures*, 37-54 Institute of Public Affairs, Warsaw (2000) ISBN 83-86917-93-8

### 4.3 Grants

Recipient	Type of Grant	Research
Dr S Evans	Small ARC	'Private Property and the Constitution: An Investigation of Section 51(31) of the Commonwealth Constitution', <i>Comparative Constitutional Law and Section 51(31): The High Court's Track Record</i>
Dr S Evans	MRD	<i>Interpreting Fundamental Rights Provisions: A Comparative Study of Property Clauses</i>
Prof C Saunders	Large ARC	<i>The Influence of Constitutional Theory within Western Constitutional Traditions</i>
Ms M Stewart	MRD	<i>Acts of Citizenship: The Legislation Mosaic of Membership</i>

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 2000.

- P Nicholson, *Judicial Independence and the Rule of Law: The Vietnam Court Experience*
- P Nicholson, *Vietnamese Labour Law*
- K Rubenstein, *Australian Citizenship Law in Context* (Law Book Co/Thomson) (2001) (forthcoming).
- C Saunders, *The Influence of Theory in Different Constitutional Traditions*
- C Saunders, *Intergovernmental Relations, Sub-national and Supra-national*
- K Walker, *The Australian IVF Debate: National and International Aspects*
- K Walker, *Sexuality and Human Rights Law in Europe*
- K Walker, *Sexuality and Refugee Status*



## 4.5 Postgraduate Research

A list of graduate research students in 2000 whose topics relate to the work of the Centre appears below.

*P Corne*, The System of Administrative Law and Its Implementation in the PRC

*P Nicholson*, Vietnamese Court Development Since 1945

*A Winckel*, The Constitutional and Legal Significance of the Preamble to the Commonwealth Constitution, Past, Present and Future

*Y Yin*, Jurisprudential and Cultural Perspectives on the Implementation of Procedural Justice in Administrative Law in the People's Republic of China

*Sryriya Amukotuwa* The Role Which the 'Investor Protection' Objective Plays in the Exercise of the Discretionary Powers of the ASC under Part 7.12 of the Corporations Law

*Rebecca French* Legal Issues in Outstanding Government Services

*Alayas Hajisalah* The Impact of International Treaties on the Implementation of Domestic Legislation Under the Constitution of Thailand

*Mohammed H Tewfik* Ethnic Federalism in Ethiopia: A Case Study

## 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 2000 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

### 5.3 *The Melbourne JD*

The Melbourne JD curriculum also offers a constitutional law subject:

Constitutional Law

## 6. Other Activities

### 6.1 Conference Presentations

- 'Constitutional Change - What Now?' Presented to the Constitutional Centenary Foundation, SA Chapter, 27 March 2000
- 'The Australian Experience: Lessons, Pointers and Pitfalls' presented to a conference on *Building the Constitution*, Wellington, New Zealand, 7-8 April 2000. Also keynote address on 'Involving the Public in Constitutional Change'.
- 'Politics of the High Court', to Maddocks, 20 March.
- 'The Australian Constitution: 100 years on', to Oxford Society, 14 April.
- Presentation, 'Judicial Review in Australia' to a workshop on *Constitutional Justice, East and West: Democratic Legitimacy and Constitutional Courts in Postcommunist Central and Eastern Europe, in Comparative Perspective* organised by the European University Institute, 26-27 May, 2000
- Address 'Dividing Power in Contemporary Society', to Round Table of the International Association of Constitutional Law, *The Doctrine of Separation of Powers at the Change of the Millennium* Lisbon, Portugal, 3 June 2000
- Presentation, 'What is 'Necessary in a Democratic Society?', Senior Practitioner Seminar Series 7, *The New Constitutional Litigation*, University College, London, 8 June 2000
- Address 'An Australian Republic: Act One', to a conference on *Parliamentary Government at the Millennium: Continuity and Change in Westminster Systems* organised by the Canadian Study of Parliament Group, Ottawa, 10,11 June 2000
- Address 'Deciphering Hughes', to Centre for Corporate Law and Securities Regulation seminar, *Hughes and Wakim: The Challenges for Corporate Regulation*, 22 June 2000
- Address 'Human Rights and Governance' to a Symposium on *Governance for Social Justice* Sri Lanka, Colombo, 8 July 2000
- Address 'Constitutional Protection for Human Rights' to the Bar Association of Sri Lanka, 11 July 2000
- Address 'Australian Constitution: Future Tense' to the Department of Justice Seminar Series, Victoria, 21 August 2000.
- Address 'The Parliament as Partner: A Century of Constitutional Review', Parliamentary Library's Centenary of Federation Seminar Series, Commonwealth Parliament, 30 August.
- Address 'Making the Australian Constitution relevant to the new century', to The Melbourne Republican Group, 18 September 2000.
- Respondent, 'The Pink Slip: Dismissing the President', AACL Roundtable on *Planning for A New Republic*, Fremantle, 7,8 October.
- Address 'Possible Futures for Co-operative Schemes' to AACL (etc) conference, *The Future of Corporate Regulation: Hughes, Wakim and the Referral of Powers*, Sydney, 3 November 2000.
- Address 'The Universality of the Rule of Law and the Challenges of Globalisation' to a conference on *The Rule of Law and the 21<sup>st</sup> century*", Beijing, China, 28-30, 2000.

## 6.2 Organisation of External Conferences

Constitutional Centenary Conference (for Australian Association of Constitutional Law)

Roundtable on ATSI, 5 October 2000 (with Paul Chartrand, Canada, and QUT)

Member of organizing committee, Comparative Law Congress (Brisbane 2002)

General Reporter, Budgetary Federalism, Comparative Law Congress.

National Schools Constitutional Convention, 8-10 March 2000

Youth Constitutional Forum 15 June, 17-18 August

Federalism Forum, 27-28 July, 18-20 December

## 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