

# **CENTRE FOR COMPARATIVE CONSTITUTIONAL STUDIES**

## **Annual Report 2003**

### **Contents**

#### **Introduction**

Objectives / Goals

Activities

#### **People**

Directors

Centre Members

Centre Associates

Centre's Reference Group

International Visitors with Expertise in Constitutional Law

Research Assistants

Research Higher Degree Students

#### **Seminars / Events**

Lunchtime Seminars

Evening Seminars

Whole Day Events

Conferences

Participation in External Conferences

#### **Research**

Regular Publications

Publications

Grants

Supervision of Research

#### **Teaching Programs**

Teaching

Bachelor of Laws

Postgraduate Courses and Subjects

The Melbourne JD

#### **Other Activities**

## INTRODUCTION

The Centre for Comparative Constitutional Studies is a focal point for research, scholarship, teaching and information about Australian constitutional law and the constitutional law of other countries.

It is one of the Law School's nine specialist research centres and operates in close association with the Institute for Comparative and International Law.

The Centre provides a unique Australian focal point for constitutional studies from a distinctive comparative perspective.

The Director of the Centre is Professor Cheryl Saunders AO and its members are drawn from the Law School's faculty.

Its advisory board consists of leading Australian and international public lawyers.

Its purpose is to focus greater attention on Australian constitutional law and government and of other countries whose systems are most relevant to Australia. This is reflected in the Centre's current objectives which it pursues through its many activities - teaching, research, exchange of information, resource centre, consultancies and collaboration.

### Objectives/goals

The objectives of the Centre for Comparative Constitutional Studies are:

- to examine and evaluate the Australian constitutional system and to contribute actively to the debate on the Australian system of government;
- 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 practises 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 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 provide a public and specialist resource on constitutional and comparative constitutional issues.

The Centre pursues these objectives through its activities - research, teaching, information exchange, resource centre, consultancies and research collaboration.

## 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

## PEOPLE

### Directors

#### **Professor Cheryl Saunders AO**

##### *Director*

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 (since October 1998)

- Vice President of the Australian Association of Constitutional Law (since October 1998)
- Associate Member of the International Academy of Comparative Law
- External examiner in Constitutional and Administrative Law, University of Hong Kong 2001-2004
- Member, Judicial Remuneration Tribunal, 2002-2005
- Member, Register of Auditors, New Zealand, 2003-2006

Professor Saunders is an editor of the *Public Law Review*; Government Title 19 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*. She is a member of the International Advisory Board, *Review of Constitutional Studies (Alberta)*; the Advisory Board, Australian section, *Asian Law Journal*; and Co-Chair of the Editorial Board, *Global Dialogue on Federalism in the 21<sup>st</sup> century: Practices, Perspectives and Prospects*. In 2003, for the fifth successive year, she will be a visiting professor at l'Université Paris II.

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

**Ms Kristen Walker**  
*Associate Professor*  
*Deputy-Director CCCS*

Kristen Walker is an Associate Professor at the University of Melbourne. Prior to joining the Law Faculty, she completed her articles with Arthur Robison 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.

**Dr Simon Evans**  
*Senior Lecturer*  
*Deputy-Director CCCS*

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.

## Centre Members

### **Dr Carolyn Evans** *Senior Lecturer*

Dr Carolyn Evans is a graduate of the Universities of Melbourne and Oxford. After completing her undergraduate degrees in Arts and Law at Melbourne University, Carolyn completed Articles of Clerkship and practiced as a solicitor with Blake Dawson Waldron. She is a Barrister and Solicitor of the Supreme Court of Victoria. In 1995 Carolyn was awarded the Victorian Rhodes Scholarship which allowed her to undertake a doctorate at Oxford University. The topic of Carolyn's thesis (published as a monograph by Oxford University Press in 2001) was Religious Freedom under the European Convention on Human Rights. While at Oxford, Carolyn also co-edited *Religion and International Law* with Professor Mark Janis. Carolyn was appointed to a lectureship at Exeter College, Oxford for two years where she taught International Law, Jurisprudence, Introduction to Law and Contract Law.

Carolyn returned to a Senior Fellowship and then a Senior Lectureship at the University of Melbourne. She now teaches Constitutional and Administrative Law, International Law, and Protecting Rights. She publishes in the areas of religious freedom/Church-State relations, the relationship between international and domestic law, national human rights institutions, and on international and constitutional law topics generally. She is currently co-editing a book on Women, Religion and Law in the Asia-Pacific Region with Amanda Whiting of the Asian Law Centre.

### **Professor Geoffrey Lindell** *Professorial Fellow*

Geoff Lindell is a Professorial Fellow of the University of Melbourne and also holds appointments as an Adjunct Professor of Law at the Adelaide University and the Australian National University. He joined the Melbourne University Law School in 1994 and retired from full-time teaching in early 2002. Since that time he has continued to research and write, in addition to being available to undertake some sessional teaching and consulting. Throughout his long career he has taught and published widely in the field of Australian constitutional and public law, including the publication, as editor, *Future Directions in Australian Constitutional Law* (1994), senior co - editor of *Parliament: The Vision in Hindsight* (2001 with R Bennett) and also as co - author of *Sawer's Australian Constitutional Cases* (4th ed., 1982 with Professor L Zines).

Geoff served as a member of the Distribution of Powers Advisory Committee to the Constitutional Commission (1986 - 1987), and was a consultant to the Australian Constitutional Convention (1975 - 1985). Before joining the Australian National University Law School in 1975, where he taught until the end of 1993, he held a senior position in the Commonwealth Attorney - General's Department and has frequently since acted as a consultant to the same Department. He appeared as counsel in two major High Court constitutional cases (*Fencott v Muller* (1983) and *McGinty v Western Australia* (1995)).

**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.

**Mr 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.

**Ms Kim Rubenstein**  
*Associate Professor*

Kim Rubenstein is an Associate Professor 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 also the author of *Australian Citizenship Law in Context* (Lawbook Co, 2002).

**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)).

## Centre 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 PhD 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.

### **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.

## **Centre's Reference Group**

### **Richard Tracey QC**

A former student and senior lecturer at the University of Melbourne, Richard Tracey is Queen's Counsel in both Victoria and Tasmania and was appointed as Senior Counsel in New South Wales in 1993. Richard specialises in administrative law, industrial law and military practise and, in addition to appearing before the most superior courts and tribunals in Australia, Richard is also a Judge Advocate and Reviewing Judge Advocate (Defence Force Magistrate). Richard's other appointments include the position of Hearing Commissioner for the Human Rights and Equal Opportunity Commission from 1997 to 2000 and his continuing role as Editor for the Australian Journal of Administrative Law. Richard has published a number of articles and texts, with a focus on industrial and administrative law.

### **Ian Cunliffe**

Ian Cunliffe is a solicitor in private practice with his own firm. For the past 10 years he was a member of large Australian legal partnerships. Prior that Ian was successively head of the Legal Section of the Department of Prime Minister and Cabinet, Secretary and Director of Research of the Australian Law Reform Commission and chief executive of the Australian Constitutional Commission. At the beginning of his career, Ian was Associate to Sir Cyril Walsh at the High Court of Australia. He holds degrees in Arts and Law from the Australian National University. His constitutional interests focus on the role of the Constitution as a brake on government and as a guarantor of freedom of

interference by government. He was the unsuccessful litigant (3:4) in the implied rights case *Cunliffe v. the Commonwealth* (1994) 182 CLR 272.

### **Wendy Harris**

Wendy Harris is a Melbourne barrister, specialising in constitutional and commercial law, with a particular interest in free expression. She has been involved in a number of leading constitutional cases, including *Theophanous v Herald & Weekly Times; Kruger v Commonwealth*; *Kartinyeri v Commonwealth* and *Grain Pool of WA v Commonwealth*. She has an active public law practice, and has spoken and written in national and international fora on free expression and other constitutional issues. She is a member of the CCCS reference group and of the London-based Interights Freedom of Expression Project Advisory Panel.

### **Stephen McLeish**

Stephen McLeish is a Victorian barrister practicing mainly in the areas of Administrative Law (including Immigration and Freedom of Information), Constitutional and Corporate/Commercial Law. He is experienced also in Equity and Trusts, Tax, Stamp Duty and Native Title. He was formerly Associate to Chief Justice Sir Anthony Mason (High Court of Australia) and a Solicitor with Arthur Robinson & Hedderwicks. He completed a Master of Laws Degree at Harvard in 1991 concentrating on Constitutional Law and Jurisprudence and has published articles on Public and Corporate Law.

### **Peter Hanks QC**

Peter Hanks practises predominantly in public law - administrative law and constitutional law. He appears regularly for Commonwealth and State government agencies, and against those agencies, in the Federal Court, High Court, Supreme Court, Commonwealth AAT and VCAT. He has published several books on constitutional law and administrative law. He is a principal contributor to Butterworths' "High Court and Federal Court Practice" and "Administrative Law Service".

### **Jason Pizer**

Admitted to the Victorian Bar in 1999, Jason's areas of practise include Administrative Law (Judicial Review) and Administrative Law (Merits Review). From May 1994 until April 1995, prior to completing his articles at Mallesons Stephen Jaques, Jason worked as an associate to Sir Anthony Mason, the then Chief Justice of the High Court. Jason is currently the co-editor of Kyrou and Pizer, *Victorian Administrative Law*, the author of the chapter entitled "Applications to the Victorian Civil and Administrative Tribunal" in the *Lawyers Practice Manual*, and has published articles in numerous journals on various areas of the law, including the Victorian Civil and Administrative Tribunal, freedom of information, company law, intellectual property law, torts law and equity.

### **International Visitors with Expertise in Constitutional Law**

- Mr Ben Seyd, University College London (January '02 – January '03)
- Mr Peter Johnston, University of Western Australia (22 September – 3 October '03)
- Ms Helene van Lith, Erasmus University of Rotterdam (1 September - 31 December '03)
- Jennifer Woodbury, Jim Talent for U.S. Senate (6 January – 31 August '03)

## 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 Gory is the Editorial Assistant for the *Public Law Review*. Her role involves work of an administrative, research and editorial nature. As Editorial Assistant, Simona works under the auspices of Cheryl Saunders and is responsible for dealing with authors, referees and publishers. She researches and writes the New Developments section of the Review which covers recent public law developments in Australia, New Zealand and the Pacific region. Apart from her *Public Law Review* commitments, Simona is one of the Editors of the *Melbourne University Law Review* and also occasionally undertakes research work for various academics. Her interests include constitutional law, feminist legal theory and law and popular culture.

## RhDs

### Cheryl Saunders

- Hashim Tewfik (PhD): "Ethnic Federalism in Ethiopia: a Case Study"
- Rebecca French, (PhD): "Legal issues in outsourcing government services"
- Denny Indrayana (PhD): "The Importance of the Democratic Legal System in Indonesia; a Legal Study of the Indonesian People's Consultative Assembly's meeting 1998-2000"
- Susi Harijanto (PhD): "The Ombudsman in Indonesia"
- Max Howlett (LLM, minor thesis): "Constitutional Separation of Powers in the Kingdom of Cambodia; Theory and Practice"
- Joanna Davidson (LLM, minor thesis): "Incorporation of international human rights into domestic law in New Zealand and the United Kingdom – some lessons for Australia?"
- Sarah Biddulph (PhD)
- Fiona Hanlon (PhD): "Role of the Attorney-General"
- Emily Hammond (PhD): "Judicial Review and Courts created by Parliament"
- Katy LeRoy (PhD): "Constitution-making in the Asia-Pacific Region"

## SEMINARS / EVENTS

### Lunchtime seminars

19 March

*Privative Clauses*

Simon Evans & Cameron Rider

Simon Evans spoke about recent developments on the Migration Act privative clause and Cameron Rider spoke about privative clauses in the taxation context.

**24 April**

*Bishop's Case*

Round table chaired by Ms Kris Walker

**29 May**

*Overlegalizing Human Rights: International Relations Theory and the Commonwealth Caribbean Backlash Against Human Rights Regimes*

Professor Laurence R Helfer of Loyola Law School, Los Angeles

**5 August**

*Constitutional Making in East Timor*

Mr Aderito Soares

**12 August**

*The New Scepticism of Bills of Rights*

Dr Adrienne Stone

**24 October**

*Access to the Courts in Public Interest Cases: A British and European Perspective*

Professor Carol Harlow

Professor of Law, London School of Economics and Political Science

Professor Carol Harlow is Emeritus Professor of Law at the London School of Economics. She has published widely in the fields of administrative law, comparative public law (including European Community law) and the law of torts. Among her best known works are *Law and Administration* (2<sup>nd</sup> ed. 1997) and *Pressure through Law* (1992) (both with Richard Rawlings). She is currently working on state liability at the Law Programme, Research School of Social Sciences, Australian National University.

Access to the courts in public interest cases, by litigants, interveners and amici curiae, is an important issue in Australia, most recently discussed by the High Court in *Re McBain; Ex parte Australian Catholic Bishops Conference*. The issues include: Who should have access to the courts to pursue their vision of the public interest? Do public interest claims belong in the political arena rather than the courts?

This seminar presented a British and European perspective on the potential impact of wider standing and intervention rights to the traditional distinction between legal processes and political processes. Are wider standing and intervention rights necessary in

a liberal democracy under the rule of law? Or do they imperil the qualities of independence, rationality and finality for which legal processes are valued?

## **29 October**

*Constitutional Reform and Public Attitudes to Government: Britain and Australia in comparative perspective*

Mr Ben Seyd

## **Evening Seminars**

### **23 April**

*The Ends of Human Rights*

Professor Costas Douzinas

Birkbeck College, The University of London

The Centre for Comparative Constitutional Studies held the first in the 2002 Twilight Series. This seminar was presented by Professor Costas Douzinas from Birkbeck College at the University of London at 5.30pm on Tuesday 23 April 2002 in Lecture Theatre G08.

Professor Douzinas is a leading scholar in the field of human rights and critical theory. He is the author of "The End of Human Rights: Critical Legal Thought at the turn of the Century" (Hart 2000) in which he explores "the powerful promises and disturbing paradoxes of human rights". Professor Douzinas argues for the need to re-invent the utopian ideal of human rights if they are to maintain their force in the modern world. Professor Douzinas LLB (Athens) LLM PhD (London), Attorney at Law, joined the Law Department at Birkbeck in 1992 as the Rudolph Palumbo Senior Lecturer in Law. He is now a Professor of Law and also Head of Department. Professor Douzinas was educated in Athens during the Colonels dictatorship where he joined the student resistance. He left Greece in 1974 and continued his studies in London, where he received the Masters in Law and PhD degrees from the LSE and, in Strasbourg, where he received the degree for teachers of Human Rights. He taught at Middlesex, Lancaster and Birkbeck where he was appointed in 1992 as a member of the team which established the Birkbeck School of Law.

### **19 November 2002**

*The War Against Terrorism, National Security And The Constitution*

Dr James Renwick

Commentator: Dr Gavan Griffith AO QC

Over 200 years ago Alexander Hamilton considered the effects of war on civil liberties in *The Federalist Papers*. He wrote, "To be more safe, [citizens] at length become willing to run the risk of being less free." After September 11, 2001, and now, the Bali bombings, have we reached the point where we are willing to run the risk of being less free? Are the anti-terrorist laws which Parliament has passed in the last year likely to make us safer? Should the Bill amending the ASIO Act be enacted? This highly topical seminar provided an overview of Australia's legal responses to the war against terrorism and considered some of the related constitutional and legal policy issues, which have confronted, or might confront, Australia.

**Dr James Renwick**

Dr Renwick is a barrister in private practice at the NSW Bar, where he has a general commercial and government law practice, with particular interests in constitutional law, administrative law, native title, and national security law. He is a graduate of the University of Sydney. He was the first person to receive the degree of Doctor of Juridical Studies (SJD) from an Australian university. He was a member of the NSW Bar Council in 2000 and 2001. He has recently published articles on national security law topics in the Victorian and NSW Bar News.

#### **Dr Gavan Griffith AO, QC**

Gavan Griffith was Solicitor-General of Australia 1984 to 1997, and continues to practise at the Australian Bar and at Matrix Chambers, London, as counsel and as an international arbitrator, having just completed hearings as a Member of the Tribunal sitting at the Permanent Court of Arbitration, Peace Palace, The Hague in the MOX dispute between Ireland v UK. He was agent and counsel for Australia in The Nauru and East Timor Cases, and also in the Nuclear Weapons Advisory Opinions at the International Court of Justice, and has had various other international appointments, including as Special Counsel to the Legal Advisor at the United Nations.

## **Whole Day Events**

### **27 September**

#### *Reflections on the Role of the Attorney General*

The role of the Attorney-General in a Westminster-style parliamentary system has recently come under critical scrutiny. First, there was debate about how an Attorney should respond to criticisms or attacks on the judiciary. The Heffernan/Kirby affair recently brought this issue into relief, although it arises in other contexts also, and involves both Commonwealth and State Attorneys. Second, the Attorney's role as a party to litigation — as an intervener or through the issue of a fiat — has been in issue, most recently in the *McBain* case in the High Court.

In both respects, the role of Attorney-General raises questions about the separation of powers and the relationship between the executive and judicial branches of government. Underlying these is the ambiguity of a role that combines the historical legal position of First Law Officer of the Crown with elected political office in an adversarial political system.

This seminar examined these questions in the context of principle, policy and practise in all Australian jurisdictions. It offered perspectives from Britain and New Zealand, as two closely comparable systems. It considered best practise for the future.

The speakers included the Attorneys-General of Australia and New Zealand, the Solicitor-General of South Australia, leaders of the Australian legal profession, and scholars from Australia and the United Kingdom. One session included a report of the results from a survey of practise in all Australian jurisdictions.

## **Conferences**

### **6-8 December**

### *Dead Hands or Living Tree? (and other constitutional conundrums)*

The Australian Association of Constitutional Law and the Centre for Comparative Constitutional Studies presented a conference to pay tribute to the work of Geoffrey Lindell who has contributed enormously to the practise and teaching of Australian constitutional Law. The conference comprised of an exciting program of topical questions in Australian constitutional law, and a very distinguished range of speakers.

The speakers included: Sir Anthony Mason AC KBE, The Hon Justice Robert French, Professor Leslie Zines AO, Professor George Winterton, Mr John Waugh, Dr John Uhr, Mr Bret Walker QC, Dr Fiona Wheeler, Dr Jim Thomson, Dr Adrienne Stone, Dr Simon Evans, Dr Genevieve Ebbeck, Ms Wendy Harris, Chief Justice John Doyle, Dr Melissa Perry, Professor Cheryl Saunders AO, Mr Christos Mantziaris, Mr Stephen Gageler SC, Mr Peter Johnston, Professor Michael Coper, Mr Dennis Rose AM QC, Professor Jeffrey Goldsworthy, Dr Haig Patapan, Professor Brian Galligan and Ms Kris Walker.

## **Participation in External Conferences**

### **Cheryl Saunders**

#### Australian

- Organiser, 13<sup>th</sup> Commonwealth Law Conference: rapporteur "W(h)ither the Common Law?"
- Organiser, Melbourne Round Table, IACL, "Constitutional Courts", 4-5 October 2003
- Chair, AACL Annual Conference "The Evolving Role of the Governor-General", ANU, November 9, 2003
- "Constitutional Structure and Australian Federalism" a paper presented to the High Court of Australia Centenary Conference 10 October 2003
- Presentation "The Australian Constitution" Legal Studies Teachers of South Australia Annual Conference 2003, 22 August.
- Participation in Australian Country Dialogue Workshop on Constitutional Origins, Structure and Change in Federal Democracies, Adelaide, 23 August 2003
- Conference presentation: "What do w(om)e(n) want State Constitutions to do?", to conference on South Australian Constitution *Put Gender on the Agenda* 30 January 2003
- Commentator, "Comparative Constitutional Law", Commonwealth Law Conference, Melbourne, 15 April 2003
- "Active Constitutional Citizenship", to 32<sup>nd</sup> Triennial Conference, Australian Federation of University Women, *Women, Education and Citizenship*, 25 April 2003

#### International

- Organiser, workshop on Minority Rights, VI World Congress, IACL, to be held in Santiago, Chile, 11-17 January 2004
- Participant, International Theme Development Conference "Distribution of Responsibilities in Federal Democracies" Delhi, India, November 2003
- Cambridge Lecture, 2003 "Comparing Federal Constitutions", July 14 2003
- "*Marbury v Madison* and the common law constitutional tradition", a paper delivered to a conference on *Marbury v Madison: 1803-2003*, organised by the Centre for American Law, University Paris 2, 28 February – 1 March 2003
- "Comparative Fiscal Federalism" to a seminar conducted by the Centre for Policy Alternatives, Colombo Sri Lanka on *Fiscal Federalism and Constitutional Reform in Sri*

*Lanka: Lessons for the Future*, 7 April 2003

- "Options for Federal Models"; a presentation to officials of the Sri Lankan Ministry for Constitutional Affairs and the Sri Lanka Bar Association, 7 April 2003
- "Constitution-making and Power Sharing: Fiscal and Financial Issues- Challenges for the Future"; a public lecture organised by the Faculty of Law, University of Colombo, Sri Lanka, 8 April 2003

### Simon Evans

- "Privative Clauses and Time Limits in the High Court" (2003) 5:4, *Constitutional Law and Policy Review* 61, presented at the Gilbert + Tobin Centre of Public Law Constitutional Law Conference, February 2003.
- "The High Court's Equity Jurisprudence" to appear in Peter Cane (ed), *Centenary Essays for the High Court of Australia* (2004) presented at the High Court Centenary Conference, October 2003.
- "Maximising Social Utility and Protecting Private Rights: Constitutional Property Rights in Australia" for an international workshop on rights (December 2003), to appear in a book edited by Jeff Goldsworthy in 2004.
- "Word Meaning in Constitutional Interpretation" presented at a staff seminar at the University of Adelaide in May 2003 and at a University of Melbourne Faculty Seminar in August 2003.

## RESEARCH

### Regular Publications

*Public Law Review*- A refereed journal dealing with public law in Australia and New Zealand

*I.CON, The International Journal of Constitutional Law* – Published by Oxford University Press as a project of NYU's School of Law. Cheryl Saunders is the Symposium Editor along with Barry Friedman, NYU.

### Publications

#### Books

- French, Lindell and Saunders (eds) *Reflections on the Australian Constitution*, Federation Press, 2003 ISBN 1 86287 462 X
- Saunders, C., *It's Your Constitution: Governing Australia Today*, Federation Press (1998) 1 – 157, second edition (2003)
- Saunders and LeRoy (eds), *The Rule of Law*, The Federation Press, 2003 xiii+197, ISBN 1 86287 459 X

#### Articles and chapters

- Evans, S., "Privative Clauses and Time Limits in the High Court" (2003) 5:4 *Constitutional Law and Policy Review* 61
- Evans, C., "Entrenching Constitutional Reform in Victoria" (2003) 14 *Public Law Review* 133-137

- Rubenstein, K., "Can the Right to Vote be Taken Away? The Constitution, Citizenship and Voting Rights in 1902 – 2002" in A. Chesterman and D. Phillips (eds), *Selective Democracy: Race, Gender and the Australian Vote*, Melbourne Publishing Group/Circa, Armadale (2003), 100-111.
- Rubenstein, K., "An Unequal Membership: The Constitution's Score on Citizenship" in L. Jayasuriya, D. Walker and J. Gothard (eds). *Legacies of White Australia*, University of Western Australia Press, Nedlands (2003), 145-162.
- Rubenstein, K., "'As a Woman, I Want No Country': Citizenship, Nationality and International Law" (2003) *Pandora's Box* 85-88.
- Rubenstein, K., "The Centrality of Migration to Citizenship" (2003) *7 Citizenship Studies* 255-265.
- Saunders, C., "Asia, Oceania and Constitutionalism" in Akira Osuka (ed) *Perspectives of Constitutionalism in Asia*, Shinzansha International, 2003, ISBN4-7972-3133-5, 405-424.
- Saunders, C. and Le Roy, K., "Perspectives on the Rule of Law" in Saunders C and LeRoy K (eds) *The Rule of Law*, The Federation Press, 2003 xiii+197, 1-20, ISBN 1 86287 459 X
- Saunders, C., "Australian Federalism, State Constitutions and the Protection of Minority Rights" in International IDEA *The Role of State Constitutions in Protecting Minority Rights under Federalism: Dialogues in Support of a Democratic Transition in Burma*, 2003, 29-42
- Saunders, C., "Australia", in A. Tarr and J. Kincaid (eds) *Constitutional Origins, Structure and Change*
- Saunders, C., "Ways and Means of Constitutional Reform" in Clement Macintyre and John Williams (eds) *Peace, Order and Good Government*, 10-21, Wakefield Press, 2003, ISBN 1 86254 617 7
- Saunders, C., "The Australian Republic: Act 1" in F. Leslie Seidle and David C Docherty (eds) *Reforming Parliamentary Democracy* McGill-Queen's University Press, 2003, 56-82 ISBN 0-7735-2507-6
- Saunders, C., "Building Federal-State Co-operation" in Ian Marsh (ed) *Australia's Choices: Options for a Prosperous and Fair Society*, UNSW Press, 2003, 225-238, ISBN 0 86840 764 X
- Saunders, C., "Budgetary Federalism: Balancing Federalism and Representative Government" in Peter Hanni (ed) *Mensch und Staat: Festschrift for Thomas Fleiner*, Universitätsverlag Freiburg Schweiz ISBN 3-7278-1434-9, 175-199
- Saunders, C., "Future prospects for the Australian Constitution" in French, Lindell and Saunders (eds) *Reflections on the Australian Constitution* Federation Press, 2003, 212-235, ISBN 1 86287 462 X
- Saunders, C., "It seems...to be a leading case" in Zoller E (ed) *Marbury v Madison 1803-2003, A French-American Dialogue*, Dalloz 2003, 97-116 ISBN 2247053289
- Saunders, C., "The Uniform Income Tax Cases" in Lee HP and Winterton G (eds) *Australian Constitutional Landmarks* Cambridge University Press, 2003, 62-84 ISBN 0 521 83158 X
- Saunders, C., "The Peculiarly Australian Preoccupation with Removal of a Head of State" (2002) *4 Notre Dame Law Review*, 171-179.
- Walker, K., "Defending the 1951 Convention Definition of Refugee" (2003) *17 Georgetown Immigration Law Journal* 583610
- Walker, K., "New Uses of the Refugees Convention: Sexuality and Refugee Status", in Susan Kneebone (ed), *The Refugees Convention 50 Years On: Globalisation and International Law* (2003) 251-277
- Walker, K., "The Intersection of International Law and Australian Constitutional Law" in John MacMillan & Judith Jones (eds), *Public Law Intersections* (2003) 97-123

- Walker, K., "Should There be Limits on Who May Access Assisted Reproductive Services? A Legal Perspective", in Jennifer Gunning and Helen Szoke (eds), *The Regulation of Assisted Reproductive Technology*, 123-140 (2003)

## Grants

Associate Professor Kris Walker, Dr Simon Evans and Dr Carolyn Evans were awarded a three-year Australian Research Council grant for 2004-2006. The project will focus on the role of parliament and the executive in the protection of human rights. It will explore the current non-judicial mechanisms for the protection of rights in Australia and assess their strengths and weaknesses. It will also compare the Australian system with other Commonwealth countries to examine alternative ways in which the parliament and executive can become involved in human rights protection. Ms Leanne McKay has been employed as a research fellow on the project.

## Supervision of research

### Cheryl Saunders

- Hashim Tewfik (PhD): Ethnic Federalism in Ethiopia: a Case Study
- Rebecca French, (PhD): Legal issues in outsourcing government services
- Denny Indrayana (PhD) The Importance of the Democratic Legal System in Indonesia; a Legal Study of the Indonesian People's Consultative Assembly's meeting 1998-2000
- Susi Harijanto (PhD) The Ombudsman in Indonesia
- Max Howlett (LLM, minor thesis) Constitutional Separation of Powers in the Kingdom of Cambodia; Theory and Practice.
- Joanna Davidson (LLM, minor thesis). Incorporation of international human rights into domestic law in New Zealand and the United Kingdom – some lessons for Australia?
- Sarah Biddulph (PhD)
- Fiona Hanlon (PhD) Role of the Attorney-General
- Emily Hammond (PhD) Judicial Review and Courts created by Parliament
- Katy LeRoy (PhD) Constitution-making in the Asia-Pacific Region
- Visaal Kishore (LLM Minor thesis): Filling the hole in the dough-nut: Teoh, Lam and the juridification of politics; Invalidity and the rule of law; devising principled options for the judiciary

## Review of research

### Cheryl Saunders

- Examination of PhD thesis, for University of Sydney: *The Sovereignty of the People*
- Review of article for MULR
- Review of work of South African scholar for SA granting institution

## TEACHING PROGRAMS

Centre members have principal teaching responsibilities in the Faculty's wide range of public law subjects across all Faculty programs. In 2003 these included:

## **Bachelor of Laws**

### **Comparative Law Subjects**

Comparative Constitutional Law  
Advanced Constitutional Law  
Constitutional and Administrative Law

## **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 (with Elizabeth Zoller)  
Constitutional Rights  
Law of Intergovernmental Relations  
United States Constitution in Comparative Perspective (Walker, Saunders, Friedman)

## **The Melbourne JD**

The Melbourne JD curriculum also offers a constitutional law subject:  
Constitutional Law

## **OTHER ACTIVITIES**

The Centre for Comparative Constitutional Studies has links to and participates in networks with other centres, institutes and associations with interests in constitutional law within the University, across Australia and throughout the world, including:

### **Australian Association of Constitutional Law**

The Australian Association of Constitutional Law is a forum for scholars and practitioners of constitutional law throughout Australia. It is affiliated with the International Association of Constitutional Law. It aims to develop and promote the discipline of constitutional law in Australia; to support teaching, research and the practise of the law which relates to the discipline; to provide a forum for the exchange of knowledge and information between practitioners, teachers and other interested persons regarding the discipline; to increase public awareness and understanding of the discipline; and to liaise with other bodies in the promotion of any of the above objects.

### **Forum of Federations, Canada**

The Forum of Federations is a non-profit, international organization based in Ottawa, Canada. It undertakes a wide range of programs designed to bring tangible improvements to the practise of federal governance around the world. Since its creation in 1998, the Forum has engaged in two major areas of activity, namely the establishment of an international network on federalism, and a program of consultation for governments at the federal and constituent-unit levels, both in Canada and abroad. The Forum's international board of directors includes members from Australia, Nigeria, India, Germany, Switzerland, Brazil, and Canada.

**LAWASIA, The Law Association for Asia and the Pacific International Association of Constitutional Law**

LAWASIA is a professional association of representatives of bar councils, law associations, individual lawyers, law firms and corporations principally from the Asia Pacific region. LAWASIA's main objective is to foster professional and business relations between lawyers, businesses and government representatives in the Asia Pacific region and also to promote the rule of law in a diverse range of political, cultural, social and economic contexts throughout the region.

**Institute of Federalism, Fribourg Switzerland**

The Institute of Federalism of the University of Fribourg is an international centre engaged in research, teaching, consulting and documentation. The Institute's activities focus on the understanding of various and diverse issues of federalism, decentralization, human rights, minority protection and good governance. Through its activities, the Institute aims at contributing to the development of multicultural communities within federal/decentralized States, under the rule of law and committed to domestic and international peace.

**International Association of Constitutional Law**

The Association provides a forum for the exchange of knowledge and information and the development of understanding of constitutional systems. Drawing its members from as wide a variety of countries as possible, the Association fosters a network of constitutionalists from countries throughout the world allowing for the examination and comparison of common constitutional issues and phenomena.

**International Association of Centers for Federal Studies**

The International Association of Centers for Federal Studies (IACFS) is an association of Centers and Institutes throughout the world with interests in independent research and publication about political, constitutional, legal, administrative, fiscal, economic, historical and philosophical issues relevant to political systems which have federal features. The Association was established to further the study and understanding of federal principles and patterns in all their variety.