

Centre for Comparative Constitutional Studies

ANNUAL REPORT 2002

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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.

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.

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 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 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

Centre members

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 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 2002, for the fourth 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
Senior Lecturer
Deputy-Director CCCS

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.

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.

Academics

Professor Cheryl Saunders AO
Dr Simon Evans
Dr Carolyn Evans
Ms Kristen Walker
Professor Geoffrey Lindell
Mr John Waugh
Mr Glenn Patmore
Ms Kim Rubenstein

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 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.

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 practice 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. Experience 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 practice 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

Professor Rihito Kimura, Waseda University, Japan (February 2002)

Professor Jörg Luck, Universität Mainz, Germany (October 2001 – April 2002)

Heike Stintzinf, University of Konstanz, Germany (March 2001- April 2002)

Associate Prof Kazhiro Nishida, Kagoshima University, Japan (September 2001 – August 2002)

Mr Ben Seyd, University College London, UK (January 2002 – January 2003)

Professor Masaki Ina, Asia University, Tokyo (January – February 2002)

Professor Lourens du Plessis, Stellenbosch University, South Africa (June – July 2002)

Professor Thomas Fleiner, University of Fribourg, Switzerland (September 2001 – August 2002)

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.

Paul Rabbat - International Intern

Paul is currently pursuing a six-month internship at the Centre funded by the Department of Foreign Affairs and International Trade of Canada, in collaboration with the Forum of Federations. Before this, he worked as a research assistant in the fields of International public law and International criminal law at the law faculty of l'Université de Montréal, where he completed his undergraduate law studies. One of his articles on constitutional issues relating to the ratification of the Statute of the International Criminal Court will be published in a forthcoming issue of *La Revue Québécoise du Droit International*.

Simona Gory

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

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

Bishops Case - Roundtable 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* (2nd 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 presents 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?

It is of particular interest to all administrative and public interest lawyers.

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, University of London

The Centre for Comparative Constitutional Studies presents the first in the 2002 Twilight Series. Professor Costas Douzinas from Birkbeck College at the University of London presents this seminar 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 will provide an overview of Australia's legal responses to the war against terrorism and will consider some of the related constitutional and legal policy issues, which have confronted, or might confront, Australia.

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 and 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 was Solicitor-General of Australia 1984 to 1997, and continues in practice 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 has been a 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 will examine these questions in the context of principle, policy and practice in all Australian jurisdictions. It will offer perspectives from Britain and New Zealand, as two closely comparable systems. It will consider best practice for the future.

The speakers include 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 will include a report of the results from a survey of practice in all Australian jurisdictions

This seminar will be of interest to:

- practising barristers
- activists and organisations involved in public interest litigation
- academic public lawyers and political scientists
- government lawyers advising on government involvement in litigation
- solicitors with a practice involving government law

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 with Barry Friedman, NYU.

Publications

Carolyn Evans

- Evans, C, 'Criminal Liability for Heads of State, Heads of Government and Ministers in Australia' in G A Moens and R Biffot (eds), *The Convergence of Legal Systems in the 21st Century: An Australian Approach*, CopyRight Publishing Company Pty Ltd, Queensland (2002), 269-285
- Evans, C, 'Chinese Law and the International Protection of Religious Freedom' (2002) 44 *Journal of Church and State* 749-774

Simon Evans

- Simon Evans & Stephen Donaghue, 'Standing to raise constitutional issues in Australia' in G A Moens and R Biffot (eds), *The convergence of Legal Systems in the 21st Century: An Australian Approach* (2002) 53-108
- Simon Evans, 'The Rule of Law, Constitutionalism and the MV Tampa' (2002) 13 *Public Law Review* 94-101
- Simon Evans, 'Protection Visas and Privative Clause Decisions: Hickman and the Migration Act 1958 (Cth)' (2002) 9 *Australian Journal of Administrative Law* 49-64
- Evans, S, 'Constitutional Constraints on the Redistribution of Wealth' in G Patmore (ed), *The Big Makeover: A New Australian Constitution: Labor Essays 2002*, Pluto Press, Annandale (2002), 87-99

Kim Rubenstein

- Rubenstein, K, *Australian Citizenship Law in Context*, LBC Information Services, Sydney (2002)
- Rubenstein, K, 'Citizenship and the Republic Debate' in G Patmore (ed), *The Big Makeover: A New Australian Constitution: Labor Essays 2002*, Pluto Press, Annandale (2002), 187-195
- Rubenstein, K, 'Citizenship, Sovereignty and Migration: Australia's Exclusive Approach to Membership of the Community' (2002) 13 *Public Law Review* 102-109

Cheryl Saunders

- Saunders, C and Hassall, G, *Asia-Pacific Constitutional Systems*, Cambridge University Press, Cambridge (2002)
- Saunders, C and Triggs, G (eds), *Trade and Cooperation with the European Union in the New Millennium*, Kluwer Law International, The Hague (2002)
- Saunders, C, 'Insights from the Experience of the Constitutional Centenary Foundation for the Future Republican Movement' in J Warhurst and M MacKerras (eds), *Constitutional Politics: The Republic Referendum and the Future*, University of Queensland Press, St Lucia (2002), 201-215
- Saunders, C, 'Protecting Rights in Common Law Constitutional Systems: A Framework for a Comparative Study' in D Carter and M Palmer (eds), *Essays in Honour of Sir Ivor Richardson*, Victoria University Press, Wellington (2002), 83-112
- Saunders, C, 'Australia' in A Griffiths (ed), *Handbook of Federal Countries 2002*, McGill University Press, Montreal (2002), 30-43

- Saunders, C, 'Der australische Bundesstaat' F T Europaisches Zentrum (ed), *Jahrbuch des Foederalismus 2002*, Nomos Verlag, Baden-Baden (2002), 439-449
- Saunders, C, 'A Federation without Federalism' in E Thompson (ed), *Keeping the Show Together: The "Federalism Forums" 2001*, NSW Centenary of Federation Committee, New South Wales (2002), 18-22
- Saunders, C, 'Collaborative Federalism' (2002) 61 *Australian Journal of Public Administration* 69-77
- Saunders, C, 'Courting Danger' (2002) 12 *Eureka Street* 28-30
- Saunders, C, 'The Peculiarly Australian Preoccupation with Removal of a Head of State' (2002) 4 *Notre Dame Law Review* 171-179
- Saunders, C., Fleiner, T., Kalin, W. and Linder, W., 'Federalism, Decentralisation and Conflict Management in Multicultural Societies' in Conference Reader, International Conference on Federalism 2002, *Federalism in A Changing World – Learning from Each Other*, 227-258

Kristen Walker

- Walker, K, "The Bishops, The Doctor, His Patient And The Attorney-General: The Conclusion Of The *McBain* Litigation" (2002) 30 *Federal Law Review* 507-534
- Walker, K, "Should There Be Limits on Who May Access Assisted Reproductive Services?" (2002) 6 *Flinders Journal of Law Reform* 67-93
- Walker, K, "International Law as a Tool of Constitutional Interpretation" (2002) 28 *Monash University Law Review* 77-92
- Waler, K, "The High Court: Maker or Breaker of Federalism?" in Elaine Thompson (ed), *Keeping the Show Together: The 'Federalism Forums' 2001* (2002) 47-52.

Grants

- Professor Cheryl Saunders, Peter Jones, Michael Tilbury; Multimedia and Educational Technologies Project Grant, "Introduction to the Common Law"

Works in Progress

- Evans, S, *Property and the Constitution: Lessons from South Africa*
- Evans, S, *Connotation, Concepts and Categories in Constitutional Interpretation*
- Evans, S, *Why is the Constitution Binding? Authority, Obligation and the Role of the People*
- Saunders, C, *Constitutional Framework for Intergovernmental Relations*
- Saunders, C, *Comparative Protection of Human Rights in Common Law Systems*
- Saunders, C, *The Influence of Theory within Different Constitutional Traditions*

Supervision of Research

Cheryl Saunders

- Hashim Tewfik (PhD): Ethnic Federalism in Ethiopia: a Case Study
- Rebecca French (PhD): Discrimination and the Australian Constitution
- 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)

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.

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

International Subjects

Comparative Constitutional Law: University of Paris II, France
Comparative Human Rights Law: University of Auckland, New Zealand
Institution of Federalism: University of Fribourg Summer School, Fribourg, Switzerland

OTHER ACTIVITIES

Conference Presentations

- 22 March, C Saunders, speaker at National Schools Constitutional Convention, Canberra
- 24 March, C Saunders, speaker at Victorian Women's Forum, Australian Republican Movement: "An Australian Republic: Background and Issues."
- 2 – 6 May, C Saunders, speaker at international conference on *Women, Peace Building and Constitution Making*, organized by the International Centre for Ethnic Studies, Colombo, Sri Lanka: "Women and Constitution-Making"
- 13 June, C Saunders, speaker at *House on the Hill* series presented by the DOFA Learning Centre (Department of Finance): "The Constitution and Intergovernmental Relations"

- July, C Saunders, speaker at *XVI World Congress of the International Association of Comparative Law* in Brisbane, Queensland: "Budgetary Federalism: A Balance of Interests and Contradictions"
- 17-18 August, C Saunders, speaker at conference on *Constitutional and Parliamentary Reform for South Australia*: "Constitutional Reform: Ways and Means"
- 27-30 August, C Saunders, speaker to a plenary session of the International Conference on Federalism, St Gallen, Switzerland, at *Federalism in a Changing World – Learning from Each Other*: "Federalism, Decentralization and Conflict Management in Multicultural Societies"
- 14 October, C Saunders, presentation to a delegation of judges from the Philippines, on the topic of "Australian Legal System," hosted by the Federal Court of Australia
- 8-9 November, C Saunders, presentation to conference at the Menzies Foundation, King's College London: "Federalism and Human Rights"
- 2002, C Saunders, presentation to workshops in New Delhi, India and Changmai, Thailand on the role of State Constitutions in the protection of National and Minority Rights under Federalism. The workshops were presented with a particular reference to issues that might be relevant to a democratic transition in Burma: "Australian Federalism, State Constitutions and the Protection of Minority Rights"

Organisation of Conferences

National

- Cheryl Saunders with Katy LeRoy, organizers, Sovereignty Series, Institute for Comparative and International Law (Anthony Lewis – 22 August; Xin Chunying – 10 September)
- Cheryl Saunders, member of the organizing committee, World Congress, International Association of Comparative Law, Brisbane, July 2002; General Reporter, Budgetary Federalism
- "The Role of the Attorney General": a CCCS conference, 27 September
- "Dead Hands or Living Tree? (and other Constitutional Conundrums); a conference for a Festschrift to honour Geoffrey Lindell; also the AACL annual conference, 6-8 December 2002
- Cheryl Saunders with Katy LeRoy and Paul Rabbat, organizers of the Round Table, Australia, Global Dialogue Theme 1, 5 December 2002
- Cheryl Saunders, organizer, theme on "W(h)ither the Common Law", Commonwealth Law Conference, Melbourne, April 2003

International

- Cheryl Saunders (with Thomas Fleiner, Walter Kalin and Wolf Linder), international expert, theme on federalism, conflict management and multi-ethnicity, International Conference on Federalism, *Federalism in a Changing World – Learning from Each Other*, St Gallen, Switzerland 27-30 August 2002
- Cheryl Saunders, member, program commission, World Congress, International Association of Constitutional Law, Chile 2004

Consultancies

- C Saunders, Constitutional Expert, Asia Foundation, East Timor, 4 days, November 2002
- C Saunders, participant in workshops and preparation of a paper from an Australian perspective on "The Role of State Constitutions in the Protection of Nationality and Minority Rights Under Federalism Dialogues in support of a Democratic Transition in Burma"; with International IDEA
- C Saunders, International IDEA, para 6.3: preparation of short address and paper; presentation at workshops in India and Thailand over 5 days
- C Saunders, international teaching, para 3.1.4.

Membership of Professional Bodies

Cheryl Saunders

- First Vice-President, International Association of Constitutional Law
- Associate Member, International Academy of Comparative Law
- Adjunct Professor, Centre for Southeast Asian Law, Faculty of Law, Northern Territory University (from May 1995; renewed 1998)
- Vice-President, International Association of Centres for Federal Studies (from October 1998)
- Vice President, Australian Association of Constitutional Law (from October 1998)
- Member, Advisory Committee to the ALRC on the Judiciary Reference.

Other Formal Links

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:

International Conflict Resolution Centre

The International Conflict Resolution Centre is based with the School of Behavioural Science at the University of Melbourne. The aim of the Centre is to research, teach, and disseminate information about the theory and practice of non-violent conflict resolution, with a particular focus on cultural aspects of conflict resolution strategies in Australia and the Asia Pacific Region.

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 practice 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 practice 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.