

THE ADELAIDE LAW SCHOOL CENTENARY ESSAYS

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ADELAIDE LAW REVIEW

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Law School
University of Adelaide

The Review is published twice a year by the Adelaide Law Review Association of the Faculty of Law, the University of Adelaide.

Articles and other contributions for possible inclusion are welcomed, and these as well as books for review should be addressed to:

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A Style Guide to editorial practice will be forwarded on request.

Subscriptions to the Review may be placed with the following distributors, who will also supply single copies:

The Law Book Company Ltd,
31 Market Street,
Sydney NSW 2000

Dennis and Company Inc,
251 Main Street,
Buffalo NY 14203
USA

This issue may
be cited as
(1983) 9 Adel LR

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APRIL 1983

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PREFACE

The publication of this special edition of the Adelaide Law Review is one of a number of events intended to mark the Centenary of the Faculty of Law, the University of Adelaide. Not uncommonly such anniversaries are celebrated by publishing a history of the institution concerned, as was done when the University celebrated its centenary in 1974. It is a fortunate coincidence that Dr Edgeloe, Registrar Emeritus of the University and a past secretary of the Faculty of Law (1927-1948), felt prompted, after his retirement in 1973, to write historical accounts of the University's Faculties of Law, Medicine and Music. The first part of that trilogy forms Dr Edgeloe's important contribution to these Centenary Essays.

The suggestion that a volume of essays be published on the occasion of the Law School Centenary was made by Dr Crawford and endorsed by the Faculty's Centenary Committee. At first the Committee considered the possibility of inviting present members of the full-time and part-time staff of the School and of the Judiciary to contribute essays; however, it was felt that a centenary publication should focus upon the past and, perhaps, the future rather than upon the present. Thus, it was decided that contributions should be sought from a number of distinguished people who had substantial past associations with the Law School. Almost all those invited have contributed papers. Their generous participation in this venture is a vivid and reassuring demonstration of their continuing friendship and their loyalty to the institution with which they were once closely linked. One hopes that it is representative of the attitudes of all those who were once members of staff or students in the Law School.

It is particularly gratifying to have Sir Richard Blackburn and Professors Norval Morris and Arthur Rogerson amongst the contributors. Although they did not receive their legal education at this Law School, they occupied the Bonython Chair of Law, the Headship of the Law Department and the Deanship for substantial periods, spanning in all a period of nearly thirty years. Each, in his own way, made a great and lasting impact upon the development and orientation of the Law School.

All the other contributors to this volume of essays — Dr Bray (LL B 1932, LL D 1937), Professor Shearer (LL B 1960), Sir Charles Bright (LL B 1934), Dr Finnis (LL B 1962), Professors Clark (LL B 1962), Cornish (LL B 1960) and Trebilcock (LL M 1966) — received all or some of their formal legal education at the Adelaide Law School. Their professional success in Australia and in a number of other countries, in different spheres and areas of the law, reflects credit upon the institution which imparted to them the fundamentals of their professional skills and which helped form their professional attitudes, their thinking and their work as lawyers. Their essays, like their careers, also bear the stamp of many other influences; they will enrich the intellectual life of the Law School. One regrets that it has proved impossible to include an essay written by the late D P O'Connell: no suitable unpublished material could be found amongst his papers.

No common theme runs through these essays. In view of the diverse interests of the contributors, the sensible course seemed to be to give each writer complete freedom of choice of topic. However, the essays fall quite readily into three groups and this is reflected in the order in

which they have been printed. The first four are concerned with legal education. Although only the first of these is confined to legal education in South Australia, the other three have been written with the Adelaide Law School especially in mind. They will give rise to some soul-searching on the part of the Curriculum Committee and the Faculty. The next group of three essays (Bright, Finnis, Clark) deals with important and topical issues concerning Australia's and South Australia's constitutional arrangements at a time of transition.

In the third group of four essays the authors have addressed problems in widely divergent societies and in equally divergent fields of law. Nevertheless, these four essays share a common characteristic of special interest to a reform-minded institution like the Adelaide Law School: they are all concerned to discover ways in which social, economic and legal change can be managed sensibly, and perhaps to some extent promoted, for the betterment of mankind. Practical experience, legal-professional expertise and careful study of a wide range of non-legal materials have all been brought to bear upon sometimes very elusive problems of reforming the substance and the procedures of the law.

If this publication has a message, it is certainly not a single-minded plea for vigorous reform. Taken as a whole, the essays strike a nice balance between innovation and tradition, between the need for change and the need for continuity. In his contribution Sir Richard Blackburn gives eloquent expression, with special reference to University education, to this balance when he says: "Continuity is not only a necessary element in any worthwhile academic field of study, but also the most fertile soil for the growth of fruitful change." This observation may be applied, with no less justification, to legal institutions. Those who approach our existing legal institutions and traditions without a spirit of sympathy are unlikely to prove effective as critics. As Jethro Brown, a true Australian progressive, said many years ago:

"An examination of an important doctrine, if it is to be truly critical should be sympathetic. True progress consists less in making a clean sweep of ancient doctrine than in affecting a revision and re-statement of ancient doctrine in accordance with new conditions, advancing knowledge and higher ideals of social justice."

The preservation of what is good and the promotion of worthwhile innovation should be seen as two related aspects of the one endeavour: to cultivate and create a fair and efficient legal system which serves society well.

These essays are published as a special edition of the Adelaide Law Review. This involves a departure from the usual format of the Review. The Association hopes that subscribers will receive this slight change just as favourably as they did a similar departure in 1980, on the occasion of the retirement of the Hon Dr JJ Bray from the office of Chief Justice of the Supreme Court of South Australia (see the Bray Edition — (1980) 7 Adel LR, No 1).

The Association is very grateful to the authors of these essays for their contributions. It remains for me, as editor, to thank Mrs Christine Swift and Miss Belinda Wells for their assistance with the editorial work as well as those student members of the Association who have helped with proof-reading.