

FOREWORD

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In early 1964, the first law students attended their first law lecture, given by the Foundation Dean, Professor David Derham, at the newly established law school at Monash University. Fifty years later, in mid-2014, Prime Minister Tony Abbott delivered a video-taped message to a crowd of more than 400 students, staff, and alumni gathered together in Melbourne to celebrate the 50th anniversary of the foundation of the Faculty of Law at Monash University. In particular, this 50th anniversary dinner celebrated five decades of students passing through the doors of the David Derham Law School Building.

The prime minister's message of congratulations on that occasion is worth recording for posterity in this special 50th anniversary edition of the *Monash University Law Review*. Prime Minister Abbott told the audience: 'I send my very best wishes to everyone celebrating the 50th anniversary of the Monash University Faculty of Law [and] I pay particular tribute to your history of achievement in becoming one of our country's most respected law schools'. He added that 'you have laid the foundation for your students to excel and to strengthen our country', noting that 'members of my own team ... started out as law students at Monash University'.

Almost 40 years after the doors of the Faculty of Law first opened, the first external academic review of the Faculty concluded that '[a]ll the best aspects of the Monash Law School must be celebrated' and '[t]he Faculty has sustained a reputation for quality and innovation for nearly four decades'.¹ More than a decade after that external review, the assessment of the Faculty by historians and co-authors, Peter Yule and Fay Woodhouse, is that 'Monash law school is at a high point as it celebrates its fiftieth anniversary, but it will require continual innovation, reinvention and flexibility if it is to maintain that position until its centenary and beyond'.

The Faculty's proud record of excellence in research and scholarship is part of its 50-year legacy and platform for the next 50 years. As a law school that is consistently ranked in the top 20 law schools in the world, its research quality and impact rests upon a number of pillars, including the presence of world-class research centres and groups, academics who write the publications that others read and use in their work across all arms of the legal profession, and — most importantly — a flagship law journal such as the *Monash University Law Review*. Even a cursory electronic search of judgments available through AUSTLII reveals more than a hundred citations of articles from the *Monash University Law Review*

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¹ As recorded in Peter Yule and Fay Woodhouse, *Pericleans, Plumbers and Practitioners: The First Fifty Years of the Monash University Law School* (Monash University Publishing, 2014).

in landmark judgments in the High Court of Australia, and other federal and state (including Victorian) courts, across all areas of law and practice.

‘Legal research is of different kinds [and] is essential to the intellectual strength of a law school for a number of reasons’, according to former Chief Justice of Australia, Sir Gerard Brennan, adding that ‘[u]niversities have assumed the responsibility of legal education, which extends to legal and historical research, legal analysis and reasoning, legal theory and the influence of law on culture and social institutions’.² The articles appearing in this and earlier issues of the *Monash University Law Review* contribute to the teaching-research nexus in legal education, and inform not only the education of law students but also the work of the judiciary and lawyers in the public, private, and not-for-profit sectors.

In that address, Sir Gerard Brennan paid tribute to the Faculty’s fostering of ‘a culture of deep scholarship and a concern with human rights and social justice [as] attributes of the Law School since its foundation in 1964 [and] characteristics of the distinguished academics who have built the School’s reputation’. This research culture supports not only the Faculty’s own academics, but also the research training of law student editors and the scholarship of academics from many law schools that reaches others throughout the world through the printed and electronic versions of the *Monash University Law Review*.

The current Chief Justice of Australia, Chief Justice Robert French, once described the rule of law as ‘an essential element of the infrastructure of Australian society’ and one requiring ‘continual maintenance, upkeep and innovation’.³ ‘Working upon and within that infrastructure, observing and theorising about it, are legal academics, judges, legal practitioners and the great variety of other law professionals’, he added.⁴ The *Monash University Law Review* continues to serve as an instrument in that collective work and contribution to society, as a collaboration between its student editors and academic advisers, financial sponsors and other supporters, and lawyers from the academic, judicial, and practising arms of the legal profession whose work graces its pages. As Chief Justice Marilyn Warren notes in her Foreword for this 50th Anniversary Special Issue, it contains contributions of relevance to international, public, and private law from two High Court judges (including Chief Justice French), one chief justice from a state Supreme Court (Chief Justice Warren herself), a former Dean of another prominent Australian law school (co-author Professor Ron McCallum), a law student (Liam O’Brien), and past and present academics from this Faculty and other law schools. Some of these contributors to this Special Issue are prominent alumni as well.

Legal research in the 21st century has multiple forms, outlets, and audiences. Those audiences include those who use or benefit from legal research — school

2 Sir Gerard Brennan, ‘“In Review’ Celebration of Scholarship’ (Speech delivered at the Monash University Faculty of Law, Monash University Law Chambers, Melbourne, 2011).

3 Chief Justice Robert French, ‘Swapping Ideas: The Academy, the Judiciary and the Profession’ (Speech delivered at the Australian Academy of Law Symposium Series, Melbourne, 2008).

4 Ibid.

and university students, legal academics and inter-disciplinary scholars, courts and tribunals, legal practitioners, corporate counsel, government lawyers and regulators, community legal centres, and the clients and communities they serve. In this way, contributions such as those contained in this Special Issue and other issues of the *Monash University Law Review* inform legal scholarship and practice, public policy-making and law-making, legal and regulatory reform, and community legal education and literacy, all as part of a grander collaborative project committed to the rule of law and civil society. In doing so, the *Monash University Law Review* and all of those involved in it help to fulfil the Faculty's mission as a community of staff, students, and alumni who are committed to making a difference to the human condition through law and social justice locally, nationally, and throughout the world.

On behalf of that community, I congratulate everyone who has been involved or contributed in any way to the success of the *Monash University Law Review* in its first 50 years, culminating in this 50th Anniversary Special Issue. The Faculty looks forward with much anticipation to what its flagship journal further achieves on the way to its first centenary issue.