

Foreword

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There are many reasons for welcoming this book. Half a century ago, legal history, while predominately English, was taught regularly in some form in Australian law schools. Today, for the most part, it has been marginalised to the point of near extinction.

This is more than a matter for regret. It impoverished our legal imagination. An understanding of Australian law and of what has informed it presupposes familiarity with its legal history. Likewise an understanding of legal history (together with comparative law) has uncommon importance in the coherent development of legal principles suited to our needs. The contributors to this volume well understand this. As the editors say in their "Introduction" (which declares the volume's purpose):

The understanding and practice of law in the second decade of the 21st century really is assisted by a firm understanding of the historical roots of that law ...

The essays in the collection are eclectic in nature but usefully so. They focus, first, on the English provenance of our law and on the forces and influences which shaped English law including, for example, Roman law, the early treatise writers and early statutes. The story then turns to Australia, to the laws we received, to our own evolution as a nation with our distinctive constitutional arrangements and to the maturing of our legal system.

What gives thematic unity to the breadth of the collection is that each essay, in its own way, is focused on matters which go to the foundations of Australian law. So a chapter dealing with English land tenures, the Torrens system, Crown Lands legislation and *Mabo* can sit comfortably with one on the development of "conscience" in equity.

A real and unexpected bonus is the inclusion of legal biographical essays on two great common law judges – Justice Joseph Story, the 19th century American judge, author and educator, and Sir Owen Dixon. Both, in their time, were the symbols of that understanding of the common law and its methods that this volume addresses.

The editors and contributors are to be congratulated not only for taking up the cause they have, but also for prosecuting it so commendably. The essays are a much needed addition to our legal literature. They inform; they explain; they provide an excellent pedagogical tool; and they invite reflection.

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A second volume focusing on the history of commercial law will, I understand, follow the present one. This said, I would hope that James Watson will, after an appropriate interval, return to this enterprise he so happily began. The Australian legal system has now evolved to the point where it has many great stories from its own legal history waiting to be told to our advantage.

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