FOREWORD

THE HONOURABLE SIR LAURENCE WHISTLER STREET*

It is frequently said that the volume of legal writings, be they judgments, academic treatises or learned periodicals, exceeds the absorption capacity of the reasonable man. This no doubt is true. The answer to this complaint is that, in our life in the law, we are ruthlessly selective in our choice of reading. We do not attempt to cover the field, and we tend, if human, to read first those materials with which we most closely identify ourselves. There is accordingly always to be found a full measure of justification for the Law School of a University, when it reaches maturity and gathers about it a sphere of influence, to produce its own journal from the resources available to it.

The Law School of this great University has reached that stage. I congratulate the Editor, the members of her staff, and the others who have worked to bring into existence this publication. I am delighted to participate by writing this foreword in the confident anticipation that, in the years ahead, this Journal will justify an established and respected place amongst our Australian legal periodicals.

In common with the rest of the western world, Australian society, since the end of World War II, has undergone far-reaching changes. The rapidity of these changes cannot, however, be matched by equally rapid changes in our legal framework. The painful process of sloughing off the old skin lags behind the growth of the new. We as lawyers need to cultivate an awareness of what is the old skin to be sloughed off and an ability to recognize which new skin will really serve to protect the body of our basic human values. After all, when we look back into the mists of history, it is clear that the basic substance of human nature has not changed.

In analysing and evaluating the basic substance of our laws, we can recognize some principles which are ageless – precepts of social conduct which have endured as fundamental truths. If we go back to the famous code of Hammurabi, derived from the Sumerian laws, we find the Babylonians regulating their affairs by detailed precepts closely akin to the principles of morality enunciated some centuries later by Moses in the Ten Commandments and developed in his later teachings.

The Babylonian code may not be within the academic competence of the average lawyer. But the Ten Commandments we all know. And in these Ten Commandments are recognizable many of the basic principles of the Common Law. Indeed, a study in modern times of the Talmud, the Oral Law stemming from the Mosaic principles, parallels to a surprising degree the study of the Common Law. The fact is, of course

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that the legal systems upon which Western civilization is founded – whether Sumerian, Mosaic, Roman or English, the famous codes of Hammurabi and Napoleon – are all of them concerned, no less than the legal systems of the Orient, with human nature. Their province is the regulation of conduct with the object of enabling a group of humans to live together in a community. Laws are the product of a community. A shipwrecked sailor, Robinson Crusoe, is not a member of a society; he needs no laws. Simple tribal societies need simple laws. Complex twentieth century societies are at risk lest their laws proliferate, thereby smothering and discrediting by their very complexities, the whole concept of legal order and regularity.

The risks that we run in modern times of headlong social development are that we will lose sight of the basic precepts. The changeless elements must be identified and accepted as the framework around which the detail is to be constructed. In discarding worn-out laws we must take care to preserve and, if possible, to strengthen the basic substance of our community morality which is regulated by law. Let me take an example from one highly controversial field. The changes and developments in the relationship between the sexes in the community have called in question the whole of this area of the law. We are able to identify some restraints as old-fashioned and irrelevant. There is currently in the crucible for evaluation and possible discard, the criminality of homosexual conduct between consenting adults. Yet is is unthinkable that we would tolerate any relaxation of the basic code which visits a heavy penalty upon the crime of rape.

The changing times in which we live are constantly challenging our awareness and our sense of responsibility as lawyers, requiring that we use our training and our knowledge to assist in this segregation of worn-out or artificial laws from permanent basic human values. In this context of social challenge to the relevance of law and of lawyers it is well that from time to time we stand off and evaluate our legal system with due academic detachment, learning and integrity. The initiating element of such evaluation – the provocation to undertake it – is more often than not found in a journal such as this gives promise of being. I welcome its advent amongst our Australian legal materials. And I commend this inaugural issue as worthily sharing a baptismal year with the imminent graduation of the first group of students who matriculated in this Faculty of Law.