

EDITORIAL

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An independent judiciary is seen as a hallmark of a successful democracy and of the operation of the rule of law.¹ Since federation, the maintenance of the impartiality and independence of the judiciary has been critical to an effective separation of powers in Australia.² This idea of independence is as much validated by the following of correct legal procedures and regulations as by public opinion and impression of the courts.³ Unsurprisingly, the role and importance of judges in Australia has historically been analysed through a framework which considers the judiciary as an institution or the relatively anonymous third arm of government. The individual judge has remained somewhat obscured within the functions of the larger judicial body.

The thematic component of Issue 40(2) invites academic attention to issues affecting, and affected by, the judiciary through the lens of individuality. The public call for submissions to this Issue was intentionally broad, and it has been a pleasure to witness the sixteen authors drawing upon their respective areas of expertise to provide eight meaningful contributions to this developing body of literature. The articles which make up the thematic each consider ‘The Individual Judge’ in different ways. Some provide detailed – and somewhat personal – accounts of specific judges, whether through detailed analyses of judgments or anecdotal evidence from associates and court staff. Others do not so much endeavor to consider a personalised account of judges, but rather examine the role and potential of judges (and magistrates) as *individuals* in relation to issues

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1 Sir Gerard Brennan, ‘Judicial Independence’ (Speech delivered at the Australian Judicial Conference Australian National University, Canberra, 2 November 1996). The principle has received almost universal acknowledgment. Notably, Article 1 of the United Nations *Basic Principles on the Independence of the Judiciary* requires that all governments ensure judicial independence is achieved and observed: *Basic Principles on the Independence of the Judiciary*, UN Doc A/CONF.121/22/Rev.1 (26 August – 6 September 1985) principle 1.

2 Justice J A Dowsett, ‘The Australian Judges – Who do They Think They Are?’ (Speech delivered at the Centre for European Studies Conference, Reappraising the Judicial Role –European and Australian Comparative Perspectives, Australian National University, Canberra, 14 February 2011) <<http://www.fedcourt.gov.au/publications/judges-speeches/justice-dowsett/dowsett-j-20110214>>.

3 Chief Justice Murray Gleeson, ‘Public Confidence in the Judiciary’ (2002) 76 *Australian Law Journal* 558, 558. See also Sir Anthony Mason, ‘The State of the Judicature’ (1994) 20 *Monash University Law Review* 1. Lord Devlin summarised this effect when he said: ‘the Judge who does not appear impartial is as useless to the process as an umpire who allows the trial by battle to be fouled or an augurer who tampers with the entrails’: ‘Judges and Lawmakers’ (1976) 39 *Modern Law Review* 1, 4.

such as court process and the administration of justice. All of the articles explore different conceptual and normative questions raised by this thematic. What is the value of learning about our judges as people? Why is this so much rarer in Australia than in the United States? Should the Court only have one, or a number of voices?

All these articles are brought together by their focus on judges as individuals. I am most indebted to those authors who responded to the thematic call for submissions, and helped to transform the original vision into a reality. It is my hope as editor that this collection of articles will encourage further academic attention to issues of judicial individuality, and the number of manuscripts submitted for consideration appears to justify my optimism.

The *Journal* also relies upon articles of the highest quality being submitted to the general component throughout the year, and those published in this Issue are no exception. The six articles uphold the *Journal's* tradition of publishing excellent and topical scholarship. The topics discussed in this Issue include: flexibility in the decision-making process of the Australian Takeovers Panel; effects-based tests for misuse of market power; tort law defences; informed consent and the relevance of performance data; expert reports and the forensic sciences; and access to legal representation in Victoria between 1861–1961.

This Issue is the result of the hard work of many different people, to whom I am deeply grateful. First, I would like to thank Professor Andrew Lynch and Associate Professor Gabrielle Appleby from the UNSW Faculty of Law, and joint project directors of The Judiciary Project at the Gilbert + Tobin Centre of Public Law. Their assistance in formulating and developing the initial ideas for the thematic component of this Issue was invaluable. I am sure that the number and quality of articles submitted to the thematic was in no small part a result of their encouragement and support of the Issue.

Next, my sincerest thanks go to the authors for entrusting their work to the *UNSW Law Journal* for publication. It has been a pleasure working with all of the authors to create this Issue.

I would also like to express my gratitude to The Hon Robert French AC, former Chief Justice of the High Court of Australia, for his insightful foreword to the thematic component, and likewise, to The Hon Virginia Bell AC, Justice of the High Court of Australia, for taking the time to deliver the keynote address at the launch event for this Issue on 29 May 2017. It is humbling to have two eminent judges dedicate their time to the *Journal*, and we are very lucky to have had the benefit of their insights on the topic.

I would also like to thank Professor George Williams AO, Dean of the UNSW Faculty of Law, for his ongoing support of the *Journal*. I must of course also thank the *Journal's* Faculty Advisors, Professor Rosalind Dixon and Associate Professor Lyria Bennett Moses, for their ongoing dedication and hard work. Their support has not only been invaluable throughout the editorial process, but also in making possible many exciting upcoming changes in the *Journal's* process and production.

I would like to acknowledge the generous contributions of the anonymous peer reviewers, whose detailed feedback on each submission was invaluable not

only to the Executive Committee, but to all the authors in the refinement of their articles.

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Finally, I would like to express my deepest gratitude for my colleagues on the Editorial Board, who, despite the number of articles in this Issue, have worked tirelessly to ensure they are all meticulously edited. Special thanks go to those who took on extra editing during the process. I am also most grateful to the Executive Committee, both past and present, for their support, friendship, and good humour over the past year. I feel privileged to have worked alongside, and learnt from all of you.

On a more personal note, I would like to express my heartfelt thanks to my friends and family who have supported me over the last year, and without whom, none of this would have been possible.