

## EDITOR'S NOTE

JAMES EMMETT\*

The *University of New South Wales Law Journal's* Thematic Issue is 'intended to be a source of rigorous and thought-provoking legal scholarship on a topic of current legal – and indeed general – interest'.<sup>1</sup> Possibly the most difficult task for an editor of a Thematic Issue with this topic is to justify the articles collected as linked with a meaningful theme.

The theme is threefold, reflecting three 'levels' at which the expression is used to describe a system of law:

- 'common law' as opposed to equity;
- 'common law' as opposed to statute; and
- 'common law' as opposed to civil law (and other legal systems).

Each article contains a contemplation of what it means, at one level or another, to have law governed by judicial decision-making. Perhaps the point that this Thematic Issue hopes to address is whether and to what extent Blackstone's words still ring true, *mutatis mutandis*, for Australia in the 21<sup>st</sup> century:

Far be it from me to derogate from the study of the civil law, considered (apart from any binding authority) as collection of written reason. No man is more thoroughly persuaded of the general excellence of its rules, and the usual equity of its decisions; nor is better convinced of its use as well as ornament to the scholar, the divine, the statesman, and even the common lawyer. But we must not carry our veneration so far as to sacrifice our Alfred and Edward to the *manes* of Theodosius and Justinian: we must not prefer the edict of the praetor, or the rescript of the Roman emperor, to our own immemorial customs, or the sanctions of an English parliament; unless we can also prefer the despotic monarchy of Rome and Byzantium, for whose meridians the former were calculated, to the free constitution of Britain, which the latter are adapted to perpetuate.<sup>2</sup>

Another appeal of this topic is that this year marks the centenary of the High Court of Australia. There is an inclination to focus on the constitutional decisions of the High Court, given their often considerable political ramifications. No less important, though, is the High Court's status as the highest common law court in the land. To the publications celebrating its centenary, this Thematic Issue hopes to add a collection that reflects this side of the High Court and its legal system.

---

\* Editor, Thematic Issue 26(2).

1 Julian Pinder, 'Editor's Foreword' (2001) 24 *University of New South Wales Law Journal* 603.

2 William Blackstone, *Commentaries on the Laws of England* (1765–69) Introduction, 5.

I am greatly indebted to Professor George Winterton and to Robert Shelly for their advice and counsel in the formation of this issue. To the contributors, of course, I am extremely grateful for their work, for their expertise and for their patience. I would also like to extend my deep thanks to the Editorial Board and especially to my fellow Editors for their support and assistance.