

## EDITORIAL

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What is social justice, and to what extent can the law claim to satisfy the demands that flow from it? Our capacity to answer the one question plainly depends upon our having a ready answer to the other. And yet social justice, though extensively deployed, is a concept the content of which is more often assumed than explained. The danger in this is clear: used loosely, the idea of social justice becomes ever more nebulous, until eventually, as Brendan Edgeworth warns in his contribution to this edition, it 'shift[s] from being a potent ideological slogan to one item in a list of generally endorsed public values'.<sup>1</sup> Whatever is gained in palatability and widespread acceptance is lost in critical trenchancy.

Our primarily goal for this Thematic Issue was to contribute in some small way to the revitalisation of social justice as a critical concept, by provoking debate and discussion as to its meaning; its utility as a framework for thinking about the law; and the degree to which the law does, can and should realise its promise. It is fitting that the contributions to this edition are preoccupied either with overturning intuitive assumptions about these kinds of issues, or with finding them at play in unexpected places. If there is a thread running through and unifying the whole, it may be, as Desmond Manderson suggests in his perceptive (and, consistent with the spirit in which this collection is offered, *critical*) foreword,<sup>2</sup> that to avoid losing sight of what social justice *is*, we must keep our gaze fixed on that which it manifestly *is not*.

A secondary goal was to draw attention to the ways in which conceptually or theoretically grounded approaches to legal scholarship can call forth links between apparently disparate areas of the law, particularly those that are often (perhaps out of practical necessity) sequestered from each other in the context of legal pedagogy. It was heartening, therefore, to receive contributions on such a diverse range of topics in both public and private law, including compulsory income management,<sup>3</sup> the law of tort(s),<sup>4</sup> criminal sentencing,<sup>5</sup> taxation,<sup>6</sup> the

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1 Brendan Edgeworth, 'From Plato to NATO: Law and Justice in Historical Context' (2012) 35 *University of New South Wales Law Journal* 417, 418.

2 Desmond Manderson, 'Foreword: Social Injustice' (2012) 35 *University of New South Wales Law Journal* 408.

3 Shelley Bielefeld, 'Compulsory Income Management and Indigenous Australians: Delivering Social Justice or Furthering Colonial Domination?' (2012) 35 *University of New South Wales Law Journal* 522.

conceptualisation of collective responsibility,<sup>7</sup> and consumer credit regulation.<sup>8</sup> At the same time, it is telling (if depressingly unsurprising) that no fewer than three of the seven articles included here are concerned with issues of systemic Indigenous deprivation, disadvantage and injustice.<sup>9</sup>

As always, due attention must be given to the proper apportionment of thanks. Our debt in this regard is substantial.

Credit for the conception of this edition's theme must go to Dr Lucas Lixinski and Dr Ben Golder. It was Lucas who suggested that a theory-oriented special issue of the *Journal* might be long overdue, and Ben who proposed the focus on social justice (a subject that holds particular institutional relevance for the UNSW Faculty of Law, which has always prided itself on its commitment to those values intrinsic to the concept). Both were unfailingly generous in giving of their time and considerable expertise, and we are grateful for having had the benefit of their insight and guidance.

Our sincerest thanks also to the anonymous referees for their invaluable advice in relation to each of the articles included here. 'Peer reviewing', as Joseph Weiler describes it in his editorial to a recent issue of the *International Journal of Constitutional Law*, 'is a selfless task ... an act of academic citizenship that demands sacrifice in time and mental energy'.<sup>10</sup> The benefits of participation are diffuse and collective; by definition, individual referees cannot be singled out for recognition. And yet across the board, the comments provided to us were thoughtful and detailed, engaging and engaged. Obviously, this makes the task of editorial evaluation that much simpler, and as a student-run publication we depend on the integrity of peer review perhaps more than is typical. But more importantly, it sustains peer review as a truly *constructive* process, one that is enriching for all participants regardless of its outcome.

Although I am writing here on behalf of the Editorial Board, thanking its other members from behind the plural personal pronoun would require contortions of self-reflexivity that I am ill-equipped to handle, physically or existentially. So I offer them my heartfelt personal thanks. I would like to call particular attention to the superlative work of our Executive Editor, Evelyn Douek. Production of the *Journal* is a fundamentally collective enterprise. But such enterprises need to be coordinated by someone, and in fulfilling this role,

4 Emmanuel Voyiakis, 'Rights, Social Justice and Responsibility in the Law of Tort' (2012) 35 *University of New South Wales Law Journal* 449.

5 Thalia Anthony, 'Is There Social Justice in Sentencing Indigenous Offenders?' (2012) 35 *University of New South Wales Law Journal* 563.

6 Binh Tran-Nam and Michael Walpole, 'Independent Tax Dispute Resolution and Social Justice in Australia' (2012) 35 *University of New South Wales Law Journal* 470.

7 Honni van Rijswijk, 'Stories of the Nation's Continuing Past: Responsibility for Historical Injuries in Australian Law and Alexis Wright's *Carpentaria*' (2012) 35 *University of New South Wales Law Journal* 598.

8 Therese Wilson, 'Consumer Credit Regulation and Rights-based Social Justice: Addressing Financial Exclusion and Meeting the Credit Needs of Low-Income Australians' (2012) 35 *University of New South Wales Law Journal* 501.

9 Bielefeld, above n 3; Anthony, above n 5; van Rijswijk, above n 7.

10 J H H Weiler, 'Editorial' (2012) 10 *International Journal of Constitutional Law* 1, 4.

the Executive Editor is uniquely required to be conscious at all times of both the big picture and the small. Crucial though her contribution may be, it tends to go largely unacknowledged, since it is the edition Editor who liaises directly with authors, peer reviewers, and others with a direct stake in the game. Indefatigable perhaps to a fault, Evelyn has consistently carried out her functions with clarity of vision and seriousness of purpose, and the *Journal* has benefitted immensely from her stewardship.

Our final and deepest thanks go to the authors themselves for their penetrating and wide-ranging contributions to the topic. The significance of their achievements is self-evident. Working on each of these articles has been a singular pleasure.