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FOREWORD

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It is a remarkable achievement for anyone to be celebrating their 100th birthday, and the Cambridge Law Journal must be one of the few legal journals anywhere to have done so. In this, its 100th year of publication, the Journal continues to enjoy a global reputation, and every congratulation must go to all the editors and contributors over the period of its publication, not to forget the publishers.

Particular thanks go to the editors and contributors for designing and producing this special Centenary Issue. The editors have taken the unusual course of selecting several articles published in the Journal by leading scholars in the Cambridge Law Faculty over the last 100 years and inviting current senior members of the Faculty each to write a further article explaining the significance of the original contribution and assessing its resonance today. And all this work has been done during the lockdown, which makes it all the more a cause for congratulation.

Readers will find the articles highly informative. Certainly, all the contributions added to my knowledge, and some even made me smile. They provide an insight into the work of Cambridge law scholars over the past 50 years or more.

I am particularly delighted to have been asked to write a Foreword because many of those who authored the original articles were in Cambridge when I was an undergraduate. This Issue evokes memories of these distinguished gentlemen (and they were all gentlemen then – not now) doing their research in the dark-panelled Squire Law Library in the Old Schools, emerging from their rooms in the Library to take the next book and then disappearing again. I recall that there were many other members of the Faculty who were also great legal scholars and contributed to the Journal. Even though their work is not included in this Issue, we owe them much too.

There is a second reason for my delight in writing this Foreword. Such history as I have found about the Journal leads me to believe, to my surprise, that the Cambridge University Law Society, of which I was the secretary during a part of my Cambridge career (1965–69), played a major role in its early life. From 1921 to 1953 the Journal was published for the Society under the auspices of the Law Faculty. Moreover, when the

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Journal was first published in 1921, all but one of the editors were students of the Law School. No doubt it still serves as a useful educational tool for undergraduates, especially in relation to the case notes.

It says much for the collegiality of the Faculty that its members have contributed regularly to the Journal, although past contributors have not by any means been limited to the Faculty. There have been academics from other institutions, and sometimes judges.

Judges have much more access to legal journals these days than in the past, mostly via databases kept by the court. It was much more difficult and time-consuming when the judge had to bespeak a hard copy. Even today, not all courts can afford to subscribe to the relevant databases, but in the higher courts there is usually good access to law journals, and they are often read by the judges. Since we all depend on databases these days, some way has to be found of cataloguing the particular perspective of articles accurately: not something which the original editors in 1921 would need to have worried about.

The range of articles covered by this Issue is immense: tort, criminal law, public law, trust law, legal history, comparative law and public international law. The reader obtains insights both into the legal topics, and into the conversations and concerns of the legal community in Cambridge at the time the articles were written. To my mind, the sheer range of topics is one of the chief advantages of a law journal.

The articles raised many questions in my mind. For instance, did I fully understand the relationship between the French concept of solidarity and the comparatively generous compensation under the Code Civil before I read Professor John Bell's pellucid account of the debates in 1972–73 between Professor André Tunc from Paris and Professor C.J. Hamson, whom I fondly remember from my undergraduate days? Certainly not. From then on, it was a case Open Sesame! I found that this Centenary Issue was the legal journal equivalent of Ali Baba's legendary cave full of many treasures.

As Professor Sarah Worthington explains, Professor Len Sealy's extensive study of fiduciaries, so penetratingly described in three articles between 1962 and 1967, was groundbreaking in distinguishing their characteristics and consequences. Professor Sealy's articles have made me appreciate that some articles in law journals are genuinely timeless, and it pays to reread them to see how the ideas expressed in them have become generally accepted. In this way it may be said that law journal articles constitute a form of secondary law.

I was fascinated by Dr. Surabhi Ranganathan's assessment of "the English school" in public international law. She bases this on her close examination of the 1972 articles of Sir Robert Jennings and Sir Derek Bowett on the law of the sea. It is remarkable how the work of public international lawyers constantly changes in accordance with the needs of states.

Dr. Ranganathan brings many perspectives, including that of Deputy Director of the Lauterpacht Centre for International Law in Cambridge. Sir Robert and Sir Derek are two of the members of the Cambridge Law Faculty who have made a transformative contribution to the development of public international law, which has such an important role in shaping and underpinning the world order and in whose development the UK plays, and has for many decades played, a leading role.

Even after 28 years on the Bench, I still think it is impossible to understand our rich inheritance of judge-made law without constant refreshers in legal history. In terms of external influences, our common law has always been willing to adopt ideas that it admires from other systems. As Lord Mansfield (when Solicitor General) famously observed, the common law "works itself pure".[1] Borrowing from other systems is one of the ways it achieves that.

In 1985 Professor (now Sir) John Baker wrote his remarkable account in his Journal article on *England and the Renaissance*, explaining what was happening in the UK legal system following the Renaissance in the rest of Europe, and while England did not follow Roman law to the full extent that Continental European countries did, it made remarkable advances of its own.

Professor David Ibbetson brings out the originality of Professor Baker's article. Professor Baker's interpretation of the rise in judicial law-making, that is, the vitally important process of extracting through pleading and argument rules of law, and its implications are illuminating. So is the role of the diligent law reporter and the Inns of Court. There was clearly an advance in judicial expertise and judge craft in the 16th century ("how and why and who were the main actors?" I want to ask), which enabled the courts to lay down rules.

This development, we learn, meant that people turned to the judges to settle their disputes. I would like to have participated in the vigorous debates between judges as to what the rules should be. (The tradition of the dissenting judgment seems to have started very early.) Those rules became the backbone of our legal system, now buried too deep for us to uncover without the help of legal history. We have been building on them ever since, and future generations will do the same. We are their heirs, and we have a magnificent inheritance.

Particularly to be cherished is the personal reflection that Professor Ibbetson adds to his assessment, pointing out Professor Baker's work may lead to further epoch-making interpretations of the role of Roman law in English legal history.

[1] *Omychund v Barker* (1744) 26 E.R. 15, 23.

Criminal law has not featured greatly in my own legal career, but as Chair of the Law Commission I studied and admired that great institution's draft *Criminal Code and Commentary*.[2] It was therefore with pleasure and admiration that I read Dr. Antje du Bois Pedain's contribution to this Issue on explaining in a modern context Professor Glanville Williams's 1989 article.

In principle Professor Glanville Williams gave his support to the *Criminal Code*, but in this article, which he memorably entitled "*Finis* for *Novus Actus*" he lucidly criticised its approach to intervening cause. I was particularly reminded of Professor Glanville Williams' ruthless logic and acumen and the difficulty in finding solutions in the criminal law that are free from controversy. Dr. Pedain usefully brings the whole debate up to date and describes her own compelling approach.

Public law has been the *leitmotif* of a significant proportion of the case law produced by the civil courts in the twenty-first century, and Professor Alison Young's analysis of the very difficult problems of legitimate expectations, initially explored by Professor Christopher Forsyth in this Journal in 1988, deserves a wide audience. As her article begins, "A lot has happened since 1988". The subject continues to develop, and her arguments will provide much food for thought as further cases come before the courts.

Last, not least, I found Mr. McBride's original approach to the enigmatic wisdom of the case notes written for the Journal by Tony Weir, who taught me contract and tort law, both persuasive and illuminating.

Musing on the changes that might take place in the Journal in the next 100 years, I wonder whether there would be a shift to more jointly authored articles, or debates between different scholars. In recent times, we have come to appreciate more fully the benefits of a diversity of ideas. The legal topics discussed in the Journal are often too complex for any single scholar to be the sole source of wisdom.

I wish the Journal well for the next century, and I trust that it will continue to publish articles, case notes and book reviews of the highest standard. Let us remember that it is the responsibility of all who teach or practise law, both domestic and international, to understand its strengths and weaknesses and to appreciate the important place that academic scholarship occupies in our legal community.

[2] (1989) Law Com. No. 177.