Foreword – Legal History Turns

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This year marks the 800th anniversary of the Magna Carta. Many celebrations have been held and many speeches have been given about that document and not only what it meant to those involved in the events of that time, but also, and perhaps more importantly, what it continues to mean to later generations. An appreciation of its significance is possible only by resort to history.

The interest shown in the Magna Carta confirms the special importance of history to constitutional law. This special importance arises as a necessary consequence of dealing with documents and doctrines that endure through ages. Australian courts have for some time now sought a better understanding of our Constitution by reference to what was said in the Convention Debates about the Constitution's provisions and issues which were current at the time of its adoption. Therefore, in constitutional law, and more generally, legal history provides the context for both statute and judge-made law, which is crucial for their proper understanding.

Legal history is an essential aspect of a system of law which is based upon precedent, and develops its rules and principles over time. Judge-made law does not simply reflect current conceptions about the rules which govern how a matter before the courts will be decided. The origin of a legal rule may lie in a society long forgotten but whose values and ideas explain why the courts took a particular step, why some ideas were accepted and others rejected. When we reach back into the past we see, for example, the influences of moral philosophy and pragmatism on the development of the common law.

Courts (appellate courts in particular) are often required to trace developments in the law in the recent and the distant past. It is through understanding how and why the law developed as it did that the present state of the law is explained and its future direction seen more clearly. This should make obvious the benefit to all concerned of lawyers being able to present arguments based on legal history.

It is therefore surprising that legal history is now rarely taught in Australian law schools and students are seldom still enriched by knowledge of the story of the common law. That story is not just about the courts and the customs of England of days gone by. Many have argued,

convincingly, for the recognition of a separate field of Australian legal history¹ to help place our laws in their own unique context.

The papers which are published in this book were prepared for the Legal History Seminar Series which was conducted by the Griffith University Law School between December 2011 and December 2012. The series was conceived of as a response to the demise of the teaching of legal history. The idea for it arose from discussions between the then Dean of the Griffith Law School, Professor Paula Baron, and Judge Fleur Kingham of the District Court of Queensland. Professor Bill MacNeil took over arrangements for the series when he became Dean and Dr Karen Schultz was a driving force in their organisation. The seven public lectures covered a diverse range of topics focusing on particular directions taken in legal history. They were well received. It is to be hoped that these papers, and further contributions of this kind, may reinvigorate interest in this important subject.

1 For example, Professor Horst Lücke, 'Legal History in Australia: The Development of Australian Legal/Historical Scholarship' (2010) 34 *Australian Bar Review* 109.