FOREWORD

RICHARD SUTTON*

This issue of the Otago Law Review is a special tribute to Peter Sim, Emeritus Professor, who retired at the beginning of this year. The Faculty's appreciation of his work as Dean has already been recorded in these pages;[1] what follows is a wider tribute, consisting of articles offered by those who were Peter Sim's colleagues or students while he was a member of two Faculties of Law, at Auckland (1955-1968) and Otago (1968-1983). It is my privilege to introduce these essays which attest, far more eloquently than could any words of mine, the affection and regard in which Peter Sim is held by those who have worked and studied with him.

I would first refer to his address as Guest Memorial Lecturer, and Dean-elect of the Faculty, in 1968.[2] Assessing contemporary trends in jurisprudence, he made a forceful plea that lawyers should not neglect the wider cultural origins of their heritage. Close attention to the way in which legal language works is valuable, not for its own sake, but as a means of bringing law more closely to life, and of finding better and more just solutions to legal problems. The texture of law, if loosened from rigid doctrines of legal precedent, would then admit important and diverse social values, which owe their validity to the ordinary commonsense of plain folk. This theme, with its strong jurisprudential undertones, comes to me vividly as I read the essays in this issue.

Peter Burns, in his own Guest Lecture, addresses one of the cornerstones of New Zealand's system of precedent, the right of appeal to the Privy Council, and urges that its continued existence will "frustrate the creation of a New Zealand judicial culture". I wonder whether there is such a thing as a "judicial culture"; would it be out of place to speak in broader terms of a "legal culture", including the legislative and law reform processes, and also the scholarly contributions (of which his essay is an example) that illuminate the paths politicians and judges tread? It seems to me that there was, in Peter Sim's time as a law teacher, something of a "coming of age" in these areas, with law reform committees and law reviews beginning to flourish in the 1960s and coming to their own in the following decade. It is of course a pleasure to find his name on the lists of members of law reform bodies and law review boards of that time; in that capacity, he would have found his own jurisprudential assessment amply justified.

The contribution of the academic lawyer to this culture has become extremely diverse, and extends well beyond the painstaking examination of threads of precedent to detect a flaw or unexpected tangle. Careful legal analysis is of course an essential preliminary to any scholarly undertaking involving legal material, but it can lead in many directions. With Craig

* Dean of the Faculty of Law, University of Otago.

1 (1981) 5 Otago L R, No 1.

2 (1969) 2 Otago L R 1.

Brown's article on Liability Insurance, we are invited to re-evaluate the function of the concept of "accidental loss"; as a legal classification it has become a hindrance rather than a help, and obscures a strong social need to allocate the risks of accidental damage fairly and quickly. Craig Elliffe, in his essay on "Fringe Benefits", uses his analysis to drive a wedge between a natural and purposive interpretation of the relevant taxing provision, and the much more restrained "legislative philosophy" which emerges from the judicial decisions. In my own legislative note, I try to show that an apparently unassuming alteration to a section in the District Court's Act 1947, dealing with judgment execution, may harbinger far-reaching changes in the philosophy and practical effects of debt enforcement in New Zealand.

Public law issues are of increasing concern to ordinary people. Three of the essays return to problems which have troubled academics throughout the past three decades, and which have now become matters of immediate practical or political consequence. J A Smillie discusses a recent decision where the Court of Appeal reconsidered the conceptual basis of the court's inherent jurisdiction to review decisions of administrative tribunals. B V Harris, inspired by the present Government's proposal to enact a Bill of Rights, examines the current law-making powers of the New Zealand Parliament and suggests the establishment of not only a Bill of Rights, but a full entrenched written constitution. F M Brookfield takes up the same topic but in a different way, drawing on theoretical and jurisprudential writings and suggesting that the present law-making powers of Parliament are already circumscribed (albeit modestly) by legal principles. Very aptly to our general theme, he argues that there is no good reason to disappoint people's general belief in the continuity of their legal system, merely because of a theoretical need to explain what happens when changes are made to the electoral or legislative process by Act of Parliament.

One of the difficulties of admitting "values" or "commonsense" into the law is that it may require the lawyer to concede ground to other disciplines or principles which are uncongenial to his way of thought. Two of the essays sternly resist this concession. Geoff Hall, dealing with "Appeals against Sentence", argues that despite the apparently wide discretion courts have in sentencing a criminal offender, there are defined legal goals and limitations. Stephen Guest, in his article on "Utilitarianism, Economics and the Law", explores the recent trend in American academic thinking, which gives economic considerations primacy in resolving legal issues. In his terse style he propounds the attractions and disadvantages of this approach to decision-making. A third article, N J Jamieson's "The One and the Many" is a polar opposite in both style and content. It invites us to consider whether robust commonsense is enough when we want to talk about law. By way of paradox and gentle diversion, it draws us into ancient literature about the nature of thought. The author reminds us that legal thought is human thought, and we must not be surprised if some of its known infirmities reappear in legal form. We thus return to the jurisprudential depths from whence our theme came.

These essays, in their different ways, affirm the vision of law and jurisprudence which Peter Sim put before us during nearly thirty years of teaching and encouragement of scholarship. We hope they will be a fitting tribute, both to the man and to the vision.