CRITIQUE AND COMMENT

# THE ACADEMY AND THE COURTS: WHAT DO THEY MEAN TO EACH OTHER TODAY?

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*Academic writing on the law can be a valuable resource for judges. This piece considers the relationship between the academy and the courts, asking questions such as: to what extent does the judiciary look to the academy for the purposes of its decision-making? What constraints inhere in the judicial role that academics need to appreciate in order to write helpfully for judges? How have the academy and the courts communicated with each other in different times and places? What, if any, changes have taken place which affect the possibility of this communication?*

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## I INTRODUCTION

The Australian Academy of Law ('AAL') was launched in July 2007 at Government House in Brisbane.[1] I was there for the launch and was honoured to be one of its Foundation Fellows. As at April 2020, there were 349 Fellows, 8 Life Fellows (these two categories of fellows presently include the Foundation

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1 Australian Law Reform Commission, *Annual Report 2007–08* (Report No 109, October 2008) 2, 8, 58–9.

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Patron and 32 Foundation Fellows) and 15 Overseas Fellows.[2] As was anticipated, the Fellows are academic lawyers, judges and legal practitioners.

At the launch, much was said about the benefits that could be gained from the development of a closer relationship between the academy, the judiciary and the legal profession. This is not to suggest that there has not always been something of a relationship between them, but rather that it was seen to be important that this relationship be maintained and, if possible, improved. After all, one of the stated purposes for which the AAL was founded was '[t]o provide a forum for cooperation, collaboration, constructive debate and the effective interchange of views amongst all branches of the legal community',[3] which include the academy and the courts. Consistently with that purpose, there have been many occasions since the launch for discussion between members of the AAL.

My focus here is upon a particular dialogue: academic writing which is directed to judges, to the profession and on occasion to the public. Materials of the former kind are a valuable resource for judges. Their use confirms our shared concern with the correct and coherent development of the law.

Academic lawyers are well placed to provide commentary both in terms of their focus on particular topics and the time available to them. Judges are under special constraints and therefore appreciate academic literature which is on point and useful.[4] Whether such writings are useful depends largely upon the understanding of an academic author of the role of a judge and how judge-made law is developed.

Today, there are pressures on the academy which may have the effect of limiting the kind of research and writing which is useful to judges and professional lawyers. Funding may divert academic resources away from doctrinal law.[5]

It would be a great pity if judge-directed academic writing were substantially to decline. I say that not only from the point of view of judges, but also from that of the academy, and in particular young academics who may never experience what can be a kind of collaboration with the courts. It is my purpose here to encourage the continuance of that collaboration.

[2] 'Fellows', *Australian Academy of Law* (Web Page, 2019) <https://academyoflaw.org.au/AALFellows>, archived at <https://perma.cc/59BR-STX3>; *Constitution*, Australian Academy of Law (at 18 June 2019) sch 1 ('*AAL Constitution*').

[3] *AAL Constitution* (n 2) cl 4.1(g).

[4] See, eg, Justice Gerard V La Forest, 'Who Is Listening to Whom? The Discourse between the Canadian Judiciary and Academics' in Basil S Markesinis (ed), *Law Making, Law Finding and Law Shaping: The Diverse Influences* (Oxford University Press, 1997) vol 2 69, 69–70, 89–90.

[5] See Terry Hutchinson, 'Legal Research in the Fourth Industrial Revolution' (2017) 43(2) *Monash University Law Review* 567, 573–4.

## II A Comparative Survey

Common law courts have a different relationship with legal academics than do the courts of civilian jurisdictions. But even amongst common law courts the experience may be different. Many of these differences are attributable to our respective cultural and political histories.

In France, for example, a stricter separation of powers, applied since the Revolution, gives the courts a particular role. They must be seen only to be enforcing the law, not expounding it. Citations of any secondary materials are excluded from the text of judgments, even if the judges have read and considered academic writings in forming their opinions, as undoubtedly they must often do.[6]

On the other hand, the use by German courts of secondary authority is legendary. Professor Hein Kötz said that '[r]eactions by foreign lawyers [to the extent of this practice] have vacillated between amazement, envy, and amusement'.[7] Choosing a 1985 volume at random, he found that academic texts and articles are cited on average 13 times per federal civil case.[8] He compares this with British courts. A spot check of the whole of Volume 1 of the 1985 *All England Law Reports* disclosed just 0.77 citations to secondary authority on average per case.[9]

It is understandable that German courts differ in their use of academic materials. Historically, the law professors have held a higher status than judges, who are usually appointed immediately following university. The judges all undertake lengthy studies, which may influence their approach to academic opinion. Further, it has been German law professors who, over many centuries, have shaped the ideas behind German law and were responsible for drafting the civil codes.[10]

In more modern times, this extensive citation from academic writings has been criticised, including by academics. It has been suggested that the effect of heavy citation, seemingly after every clause or even sentence, is 'to submerge

[6] Hein Kötz, 'Scholarship and the Courts: A Comparative Survey' in David S Clark (ed), *Comparative and Private International Law: Essays in Honor of John Henry Merryman on His Seventieth Birthday* (Duncker & Humblot, 1990) 183, 186.

[7] Ibid 193.

[8] Ibid.

[9] Ibid 188.

[10] See, eg, William Twining et al, 'The Role of Academics in the Legal System' in Mark Tushnet and Peter Cane (eds), *The Oxford Handbook of Legal Studies* (Oxford University Press, 2005) 920, 936, 939.

the court's judgment'.[11] In any legal system, judgments of this kind may not give the appearance of 'a clear and authoritative statement of the court's own view of the law'.[12] In England and Australia, overuse of citation is not the norm.[13] Such a practice might be thought to convey that the judge lacks confidence in his or her own opinion, or in recent judgments of the courts, where the ratio is clear.

This problem is readily resolved in Italy. Like their French colleagues, Italian judges do not refer to academic writings in their judgments. But for them there is no ability to do so even if they were minded to. Statute forbids the practice.[14]

It cannot really be said that the common law has a long tradition in the use of academic writing. In England and Australia, it only flourished in the late-20th-century. This may in large part be explained by the fact that the law faculties in Oxford and Cambridge were not established until the 1870s.[15] By the mid-20th-century, teaching was still primarily undergraduate and, as a result, there was less emphasis on academic writing and research.[16] It is therefore only relatively recently that such writing came to be produced in significant quantity.

Even amongst common law courts, the relationship with the academy may differ and reflect historical influences. The history of the United States may account for the law professors having greater influence. Understandably, it was considered preferable to rely on authors who, whilst drawing upon common law and civilian sources, emphasised the American character of the law rather than English case law. The law professors grew in prestige as a result.[17]

[11] Lord Rodger, 'Judges and Academics in the United Kingdom' (2010) 29(1) *University of Queensland Law Journal* 29, 32.

[12] Ibid.

[13] See, eg, ibid 29–30; Chief Justice Robert French, 'Judges and Academics: Dialogue of the Hard of Hearing' (2013) 87(2) *Australian Law Journal* 96, 103–4.

[14] See Rodger (n 11) 32; Alexandra Braun, 'Professors and Judges in Italy: It Takes Two to Tango' (2006) 26(4) *Oxford Journal of Legal Studies* 665, 674–5.

[15] Lord Neuberger MR, 'Judges and Professors: Ships Passing in the Night?' (Speech, Max Planck Institute, 9 July 2012) 11 [21]–[22] <https://www.judiciary.uk/announcements/mr-speech-hamburg-lecture-09072012/>, archived at <https://perma.cc/2CQG-82DG>; Neil Duxbury, *Jurists and Judges: An Essay on Influence* (Hart Publishing, 2001) 71.

[16] Twining et al (n 10) 922.

[17] Kötz (n 6) 190–1.

In 1931, Chief Judge Cardozo observed that 'leadership in the march of legal thought' appeared to be passing from the courts of the US to the professors.[18] Professor Kötz is somewhat sceptical of such statements which, he said, are usually made in speeches to law faculties or in the foreword to academic legal publications.[19] These days, some judges, including the current Chief Justice of the Supreme Court of the United States ('US Supreme Court'), regard the relationship between the courts and the academy as somewhat estranged compared with some decades ago.[20] Judge Posner has suggested that this is in large part because academics are now more involved in theory and write for each other rather than for judges or practitioners.[21] Curiously though, a significant number of the members of the US Supreme Court are former law professors.[22]

## III The Extent of the Use of Secondary Materials in Australia

For some time, English and Australian courts were subject to a self-imposed restraint concerning the use of academic writings. When I came to the Bar in 1975, the 'living author' rule was still enforced by some of the older judges. This convention prevented counsel or judges citing living authors as authoritative. This was also known as the 'better read when dead' approach.[23] In one case in the late-19th-century, counsel's attempt to refer to Fry LJ's book on specific performance was rejected on this account.[24] The rule was applied by Lord

[18] Chief Judge Benjamin N Cardozo, 'Introduction' in Association of American Law Schools (ed), *Selected Readings on the Law of Contracts from American and English Legal Periodicals* (Macmillan, 1931) vii, ix.

[19] Kötz (n 6) 191.

[20] See Twining et al (n 10) 929; Lee Petherbridge and David L Schwartz, 'An Empirical Assessment of the Supreme Court's Use of Legal Scholarship' (2012) 106(3) *Northwestern University Law Review* 995, 996–7.

[21] Judge Richard A Posner, 'The Judiciary and the Academy: A Fraught Relationship' (2010) 29(1) *University of Queensland Law Journal* 13, 15.

[22] 'Current Members', *Supreme Court of the United States* (Web Page) <https://www.supremecourt.gov/about/biographies.aspx>, archived at <https://perma.cc/NMK2-XC33>. See also Posner (n 21) 13.

[23] See, eg, Neuberger (n 15) 3 [4], citing Duxbury (n 15) 78.

[24] *Union Bank v Munster* (1887) 37 Ch D 51, 54 (Kekewich J).

Buckmaster in *Donoghue v Stevenson*.[25] In that same case, Lord Atkin was influenced by the *Bible*.[26] The rule had no application to its authors.

In his paper 'Concerning Judicial Method', Sir Owen Dixon suggested that textbooks and periodicals were often used by judges of the High Court.[27] On another occasion, he commented that the use by the judges of academic writing was 'very great indeed' — although he added that 'the Court has always administered the law as a living instrument and not as an abstract study',[28] thereby identifying a judicial aversion to pure theory.

It has been observed that while members of the Dixon Court may have used academic writing, they actually did not refer to it very often in their judgments, at least by comparison with modern rates of citation.[29] This may, in part, be attributable to the aforementioned 'living author' rule and also to the relatively small number of legal academics in Australia at the time.[30]

More generally, it has been said that judges have often written by reference to legal academic material, but without acknowledgement. This has been referred to in the United Kingdom as the 'well-established tradition of "licensed plagiarism" by both Bar and Bench'.[31] I would like to think that this is a practice of the past and that these days acknowledgement is given where it is due.

In a study conducted in Australia, it was found that there was a 'steady rise in the [High] Court's use of secondary authority between 1960 and 1990, and then a significant increase between 1990 and 1996'.[32] Legal texts were cited most often, but legal periodicals were cited more over time.[33]

The High Court's own Library recently conducted a small review, limited to books and articles, by comparing three years of High Court decisions — 1963, 2016 and 2018. Of the 67 cases decided in 1963, there were 88 citations of such materials; of the 50 cases in 2016, there were 277; and of the 60 cases in 2018,

[25] [1932] AC 562, 567.

[26] Ibid 580.

[27] Sir Owen Dixon, 'Concerning Judicial Method' (1956) 29(9) *Australian Law Journal* 468, 470.

[28] Sir Owen Dixon, 'Address on First Presiding as Chief Justice at Melbourne' in Susan Crennan and William Gummow (eds), *Jesting Pilate: And Other Papers and Addresses* (Federation Press, 3rd ed, 2019) 292, 293.

[29] John Gava, 'Law Reviews: Good for Judges, Bad for Law Schools?' (2002) 26(3) *Melbourne University Law Review* 560, 561–3, discussing Russell Smyth, 'Other than "Accepted Sources of Law"?: A Quantitative Study of Secondary Source Citations in the High Court' (1999) 22(1) *University of New South Wales Law Journal* 19.

[30] Gava (n 29) 563.

[31] Twining et al (n 10) 929. See also Duxbury (n 15) 64–5; Neuberger (n 15) 16 [31], 21 [40].

[32] Smyth (n 29) 29.

[33] Ibid 32–3.

there were 399. I would not like to contemplate that this more recent figure suggests something of the German approach.

## IV More Recent Acknowledgements

If a judge is quoting directly from academic writing, or expressing the opinion of an academic lawyer, there can be no doubt that acknowledgement should be given. It may be less clear where texts or journal articles have had some influence on a judge's thinking, where they may confirm a contrary view or otherwise shape the judge's thinking. Judgments may not be thought to lend themselves to general acknowledgements. Nevertheless, in more recent times, they have been made in some important cases.

In 1983, in the course of delivering a lecture, Lord Goff expressed the view that 'the work of the judges has become more and more influenced by the teaching and writing of jurists' and that this was 'likely to continue to increase.'[34] It is just possible that his Lordship had in mind the growing influence at that time in the UK of the law of restitution, in which growth he was involved.

The statement also presaged his declaration in a postscript in 1986 in *Spiliada Maritime Corporation v Cansulex Ltd*, which was in these terms: 'I feel that I cannot conclude without paying tribute to the writings of jurists which have assisted me in the preparation of this opinion.'[35] He singled out two articles in particular and named the authors.[36] He said that even where he disagreed with them, he had 'found their work to be of assistance', and added: 'For jurists are pilgrims with us on the endless road to unattainable perfection; and we have it on the excellent authority of Geoffrey Chaucer that conversations among pilgrims can be most rewarding.'[37]

More recently in the UK, in the judgment of the majority of the Supreme Court in the first Brexit case, it was said: 'We have … been much assisted by a number of illuminating articles written by academics following the handing

[34] Lord Robert Goff, 'Appendix: The Search for Principle' in William Swadling and Gareth Jones (eds), *The Search for Principle: Essays in Honour of Lord Goff of Chieveley* (Oxford University Press, 1999) 313, 325.

[35] [1987] 1 AC 460, 488 ('*Spiliada*').

[36] Ibid, citing Adrian Briggs, 'Forum non Conveniens: Now We Are Ten?' (1983) 3(1) *Legal Studies* 74; Rhona Schuz, 'Controlling Forum-Shopping: The Impact of *MacShannon v Rockware Glass Ltd*' (1986) 35(2) *International and Comparative Law Quarterly* 374.

[37] *Spiliada* (n 35) 488.

down of the judgment of the Divisional Court.'[38] As a result, it was said, the arguments presented to the Supreme Court were 'more refined'.[39]

In Australia, the joint judgment of Deane and Gaudron JJ in *Mabo v Queensland [No 2]* contains similar expressions of gratitude.[40] Their Honours said:

> [I]n the writing of this judgment, we have been assisted not only by the material placed before us by the parties but by the researches of the many scholars who have written in the areas into which this judgment has necessarily ventured. We acknowledge our indebtedness to their writings and the fact that our own research has been largely directed to sources which they had already identified.[41]

## V Why Academic Writings Are Useful

Citation of commentary on constitutional law continues to be more extensive than that of commentary on most other areas of the law.[42] The contribution of academic law professors, such as Professor Leslie Zines, has been significant in its development. There can be little doubt that, if he has not shaped some opinions, he has at least required judges to think harder about some topics. His influence continues — and not only through the work of Professor Stellios, who has built on Zines' text.[43] I recently attended a symposium held in honour of Professor Zines, where leading constitutional lawyers (both academic and practising), together with judges, exchanged views on many topics of interest and of difficulty.

The contribution of academic lawyers is not limited to constitutional law. Recently, the High Court decided a case involving contract law where the debate was started by academic lawyers.[44] The question it raised was whether the law had taken a wrong turn and, if so, whether it should be corrected. A few years ago, an article written on the origin of common law spousal immunity

[38] *R (Miller) v Secretary of State for Exiting the European Union* [2018] AC 61, 131 [11] (Lord Neuberger PSC, Baroness Hale DPSC, Lords Mance, Kerr, Clarke, Wilson, Sumption and Hodge JJSC).

[39] Ibid.

[40] (1992) 175 CLR 1.

[41] Ibid 120 (Deane and Gaudron JJ).

[42] See, eg, Smyth (n 29) 33, 42.

[43] James Stellios, *Zines's The High Court and the Constitution* (Federation Press, 6th ed, 2015).

[44] *Mann v Paterson Constructions Pty Ltd* (2019) 93 ALJR 1164.

from giving evidence[45] raised questions which were finally answered by the High Court.[46] The courts are particularly beholden to legal historians, as well we should be, given the difficulties and dangers that an incorrect understanding of history presents. Judges in this country are almost entirely reliant upon comparative law texts and articles for assistance in understanding how issues such as causation and damage are approached in different jurisdictions.[47]

It should be apparent that from all perspectives — of advocates, judges and the proper maintenance and development of a coherent body of the law — that academic opinion is a valuable resource. (I would add that in novel cases, so too would the opinions of intermediate appellate courts be useful).[48]

Lord Dyson has spoken of the 'symbiotic co-existence' of judges and scholars.[49] His Lordship has said that '[t]he influence of academic writings on judicial decision-making is considerable'.[50] He gave as an example the criticism made by Glanville Williams[51] and another professor[52] of a decision relating to criminal law, which resulted in the House of Lords overturning an earlier decision.[53]

A good example of academic legal writing shining a light on complex legal issues is Professor Jane Stapleton's writings on causation, which are directed to practitioners and judges. They have often been referred to and cited. In the first of the Clarendon Law Lectures delivered in 2018,[54] Professor Stapleton said that a dialogue may not only absorb legal developments signalled by the courts, but can also prompt them, for example, by influencing them 'to confront tensions in judicial reasoning and doctrinal outcomes, to re-structure precedents and

[45] David Lusty, 'Is There a Common Law Privilege against Spouse-Incrimination?' (2004) 27(1) *University of New South Wales Law Journal* 1, 6.

[46] *Australian Crime Commission v Stoddart* (2011) 244 CLR 554.

[47] See, eg, *Tabet v Gett* (2010) 240 CLR 537, 582 [125] nn 186–90 (Kiefel J).

[48] But see *Farah Constructions Pty Ltd v Say-Dee Pty Ltd* (2007) 230 CLR 89, 151 [135] (Gleeson CJ, Gummow, Callinan, Heydon and Crennan JJ).

[49] Lord Dyson, *Justice: Continuity and Change* (Hart Publishing, 2018) 35.

[50] Ibid 37.

[51] Ibid, quoting Glanville Williams, 'The Lords and Impossible Attempts, or *Quis Custodiet Ipsos Custodes*?' (1986) 45(1) *Cambridge Law Journal* 33, 38.

[52] Dyson (n 49) 37, quoting JC Smith, 'Case and Comment: *Anderton v Ryan*' [1985] *Criminal Law Review* 502, 504–5. See also JC Smith, 'Attempts, Impossibility and the Test of Rational Motivation' in LCB Gower et al (eds), *Auckland Law School Centenary Lectures* (1983) 25.

[53] *Anderton v Ryan* [1985] AC 560, overruled by *R v Shivpuri* [1987] 1 AC 1.

[54] Jane Stapleton, 'Taking the Judges Seriously' (Clarendon Law Lectures, University of Oxford, 30 April 2018).

reassess terminology'.[55] She describes this process as 'reflexive tort scholarship'.[56] By the adjective 'reflexive' she means a 'conversation between legal academics and the Bench' (rather than one just between academics).[57]

It should be clear enough why judges value good legal scholarship. In the first place, judges carry out their work under the pressure of time. Even with the research assistance that judges have from their associates, they are not able to devote a lot of time to study a particular area relevant to the case at hand. Academic lawyers, to a larger extent, are able to refine their opinions and to delay their publication to that end. They tend to be specialists and have a fund of knowledge in their field which they may deploy. Judges, particularly at appellate level, are required to determine cases across a broad spectrum of the law.[58]

In order for academic writing to be useful, the writer must have an appreciation of the other major constraint a judge is under. A judge is not free to change the law as he or she sees fit. The development of the common law does not, like civilian law, proceed from theory to resolution. The common law judicial method recognises that the law is developed incrementally to the point where a rule or principle might emerge. And it proceeds incrementally not the least because it does so from the resolution of the case at hand, limited as it is by the issues arising from the pleadings, the evidence adduced by the parties and how the case is argued.[59]

It may be as well at this point to clarify the difference in the roles of judges and of academic lawyers.

Judges decide cases. They resolve controversies. True it is that they also develop the law, but they do so in a way which is clear and certain, especially where guidance is necessary to lower courts. It is no part of their role to create ambiguity by identifying especially fine distinctions or points of difference, let alone attempting new classifications. This kind of thinking may properly be deployed by academics in critical analysis, but rarely is it of real assistance to the resolution of a case.

Nor, generally speaking, is it part of the judicial function to expound grand theories or aspirational ideas. I say generally speaking because, of course, history shows that there have been exceptions. But it is academic lawyers who are best placed to put a question in a broader context, identify the larger ideas

[55] Ibid 0:03:37–0:03:55.

[56] Ibid 0:03:55–0:03:58.

[57] Ibid 0:03:55–0:04:12.

[58] See, eg, French (n 13) 99; La Forest (n 4) 69, 89.

[59] See, eg, Justice Susan Glazebrook, 'Academics and the Supreme Court' (2017) 48(2) *Victoria University of Wellington Law Review* 237, 246–7; French (n 13) 102.

involved around decided cases and suggest alternative means of resolution than those thus far employed.

There is another point of clarification which should perhaps be made. The dialogue of which I have spoken is in reality more one-way. It is in the first place addressed by the academy to the courts. It is then either taken up by practitioners and raised with the court in submissions or it is noticed by the judges and taken up in the course of argument so that the lawyers have an opportunity of addressing it. The judiciary participates in the dialogue when they take up the idea of an academic lawyer and use it to resolve the case at hand. Needless to say, its purpose is not to further the development of academic theory or to elicit commentary from the academy.

Professor Kötz says that 'the weight to be given [to] a view expressed by a legal writer depends on the cogency of the argument, the reputation of the author, and the honesty of [the] scholarship'.[60] I would agree. But I think we have moved on from the days where an academic had to have the status of Bracton or Glanville Williams to qualify. Certainly, the established reputation of some academics will lend weight to their opinion. But I believe judges these days are more open to views of less-established academic writers where they are cogent and persuasive.

## VI Pressures Affecting Academic Writings

Of course, there are factors which work against academic writing being directed to judges. Principal amongst them is funding for research. At a workshop on research impact conducted by the Council of Australian Law Deans in 2016, it was observed by some participants that citation of legal academic work in judgments shows that it has an impact, yet this does not appear to be adequately taken into account by the Australian Research Council.[61] A law professor observed that legal research often clarifies, reframes and develops new ways of identifying matters. But the question is: how is this to be measured when a criterion for grants is a measurable benefit to society? Echoing what I have said earlier, a judge present at the workshop said that everything a judge reads has an impact on his or her work, even if it is not always cited. Engagement between academics and judges is essential, he said.

[60] Kötz (n 6) 189.

[61] 'Research Impact Principles and Framework', *Australian Research Council* (Web Page, 27 March 2019) <https://www.arc.gov.au/policies-strategies/strategy/research-impact-principles-framework>, archived at <https://perma.cc/3CHK-REL8>.

A criterion such as a measurable benefit to society is likely to produce bigger picture research than useful doctrinal writings. The result can be greater collaboration between the disciplines, but at the expense of careful, refined analysis of the law. The conversation becomes one as between academics alone, where the courts do not matter.[62]

## VII Media Commentary

There is another area where academic commentary may serve a useful purpose and indirectly assist the courts. In these days where commentary is freely given in the media, including on social media, legal academics can have an important part to play. The information that they can provide to journalists, and through them to the public, can be of real utility. The courts are appreciative of articles or commentary which further explain a decision in a way with which the court's reasons cannot grapple. They are less appreciative where commentators (not always legal academics, I hasten to add) raise fears or concerns about the effects of a decision. By way of example, it is not especially helpful to suggest that a decision relating to a sperm donor who was recognised under the applicable statute law as being a father has 'sent panic' through some circles.[63] It is sometimes useful to reporting to read the judgment or even the case summary which the court provides. But examples of this kind are few. Most commentary is reliable and useful.

## VIII Conclusion

In conclusion, I would like to return to what Professor Stapleton said in her Clarendon Lecture about the style of scholarship which is directed to judges. She said that it accepts the 'nature of judicial decision-making and the constitutional basis of what judges do when they are identifying the common law'.[64] It is, she said, 'a style of scholarship that is well placed to assist judges, and indeed to collaborate with them in that process'.[65] In Professor Stapleton's opinion: 'this is quite a thrilling prospect for any young legal scholar'.[66] I hope that this is so.

[62] See, eg, Twining et al (n 10) 931; Rodger (n 11) 34–5; Hutchinson (n 5) 573–4.

[63] Jenna Price, 'Parenting and the Rights of a Child', *The Canberra Times* (Canberra, 21 June 2019) 20.

[64] Stapleton, 'Taking the Judges Seriously' (n 54) 0:48:25–0:48:40.

[65] Ibid 0:48:40–0:48:48.

[66] Ibid 0:48:49–0:48:54.