

**MONASH UNIVERSITY FACULTY OF LAW**

**VALEDICTORY DINNER 29 NOVEMBER 2000**

**RETIREMENT OF PROFESSOR LOUIS WALLER AO**

**SIR LEO CUSSEN PROFESSOR OF LAW, MONASH UNIVERSITY**

**The Hon Justice Michael Kirby AC CMG\***

I

ORIGINS

The retirement of a Foundation Professor of one of the nation's leading law schools, is a notable event for the law. The retirement of Professor Louis Peter Waller marks a watershed in legal education in Australia. We should therefore remember his many notable achievements and contributions. These are recorded in the minute of appreciation adopted by the Faculty Board in a handsome tribute recording his work as a scholar and teacher from

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\* Justice of the High Court of Australia. Text for a speech to the Valedictory Dinner of the Monash Law School, Melbourne, 29 November 2000 to honour Professor Louis Waller.

1956 to the dawn of a new century<sup>1</sup>. As that minute, composed by Professor Richard Fox, records<sup>2</sup>:

"He is the most senior of the Professors of Monash University, having been appointed on 1 June 1965. This represents over thirty-five years of service to the Faculty and the University. ... For over three decades Professor Waller has served this Faculty with distinction and enhanced its reputation. ... [T]his Minute records the Faculty's gratitude to him, our personal affection for him, and the high regard in which he will always be held by generations of his students".

Although all of these tributes are deserved, the gratitude clearly travels beyond Monash University, its law faculty and students. For Louis Waller's service was to an even larger cause - that of law and justice and of humanity.

How did this come about? To answer that question, it is necessary to go back to the beginning. The story began long before his appointment to Monash in 1965. Indeed it was long before he commenced his academic career in the University of Melbourne in 1959. Come back with me to Siedlce in Poland, on 10 February 1935 when the young Peter Louis Waller was born to his parents, Jack and Hilda. It was an extremely dangerous time to bring into the world a Jewish boy. It was specially dangerous in Poland, soon

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<sup>1</sup> Monash University, Faculty of Law, Minute of Appreciation, Faculty Board Meeting 3/2000, 16 October 2000.

<sup>2</sup> *Ibid.*

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to be engulfed by occupation and a fearsome barbarity. Siedlce is 100 kilometres east of Warsaw. As the crow flies, it is about a 150 kilometres from Lodz. Closer still, and to the north-east, was a sleepy vacation spot known as Treblinka. Within five years of the young boy's birth, these names, and the names of other Polish towns, would be written indelibly, in blood, on human history.

Happily for Australia, for scholarship, for the law and for humanity, Jack and Hilda Waller were able to escape from the advancing peril. In 1938, the year of the Anschluss, they left Poland. They came to Australia. Most of Louis Waller's family, who stayed behind, perished in the Holocaust. Reflecting on his gifts, of nature and of spirit, we must remind ourselves of the catastrophic loss to humanity that occurred to those who did not escape and to us. I do not doubt that this thought has weighed on Louis Waller, as it should on us. The thought should encourage those who are lawyers, especially, to dedicate their lives (as Louis Waller had done) to the rule of law, to constitutionalism, to fundamental human rights and the defence of the vulnerable.

When I visited Europe earlier this year I went to the Netherlands. There, four years after Louis Waller, my partner, Johan, was born. Like any child of those times, he too is haunted by the memories of the Occupation, oppression and deprivation. In Amsterdam I visited the Jewish Museum. It has been rebuilt on the site of two Synagogues, vandalised during the war. In it are

collected the humble memorabilia of centuries of the peaceful lives of Jewish families who sheltered in the Netherlands under protective laws dating back to the Dutch Republic. As they usually do, my footsteps took me to the Ann Frank Huis on the Prinsengracht. There are found the reminders of a family on the side of Europe opposite to Siedlce, who nearly escaped but were betrayed in the closing days of the Occupation. It is impossible to visit that place without tears. On the wall is a photograph of the President of the Constitutional Council of the Netherlands at the time the German Occupation began, Mr Visser. He was removed from office because he was a Jew. Under that a photograph of a scene, near the Central Station, to round up Jews, is a salutary instruction:

"People of the Netherlands. This was not done only by the Germans, by foreigners. It was done by Netherlands policemen, farmers, storekeepers. We must look into ourselves for the explanation and not only blame others".

A book at the exit of the Huis records the names of 105,000 Jews of the Netherlands who did, after the War, not come back to that peaceful and tolerant kingdom. For curiosity, I looked to the name "Waller". There were two by that name recorded in the seemingly endless lists - each name a microcosm of a whole world of personality, experiences, feelings and suffering. It is a book that records evil that later generations must not forget.

Tyrants and sadly not only tyrants, hate difference. Their hatred has often been turned on Jews. But, as Hitler's tyranny showed, it can also be targeted at other minorities: communists, gipsies, homosexuals, religious dissidents, the physically impaired, in short those vulnerable to populist campaigns amongst the fearful. Sadly, some of these attitudes persist even to our own time. We must be alert to them. We should never forget the lessons of the oppression. Lawyers, especially, have a duty to stand up and to align themselves with justice and fundamental human rights defended by law. That gives nobility to our calling.

In November 2000 I set out for Quito in Ecuador. My function was to participate in a meeting of the International Bioethics Committee of UNESCO. It was a meeting whose subjects were, I know, of the greatest fascination for Louis Waller. The ethical acceptability of research on embryonic stem cells. The limitations necessary upon intellectual property protection of undifferentiated gene sequences. The rights of people with genetic "disabilities" in the age of the Human Genome Project. Public education about the intricate and sensitive issues presented by genomic discoveries.

As I left Sydney, Johan pressed into my hands a book he had just acquired. He urged me to read it on the long journey across

the Pacific and across America. It is a book by Christopher Browning, *Nazi Policy, Jewish Workers, German Killers*<sup>3</sup>.

Somewhere over the ocean, after reading again of the Lodz ghetto, of the methodical processes of extermination and the seemingly chaotic chances that made the difference between survival and death, I came upon an arresting passage of this book. It was written to the author by a Jewish survivor, born not far from Louis Waller's birthplace, but ten years earlier. The letter tells the story more powerfully than I can<sup>4</sup>:

"As a fifteen year old Jewish boy, I was sent by the Judenrat as a punishment to my father to do maintenance work in the headquarters of the German Police. The town then called Auschwitz had no running water. I carried water and polished their boots until March 1941 when the whole Jewish population had to leave. The whole police company came from the town of Waldenberg in Silesia. I came across men that in my opinion could not hurt a fly. Walter Stark, Max Maetzig ... and so on. Two of them were willing to make out false papers and send me as a Pole to work in Germany ... As faith wants it, in October 1944 I was taken to the KZ Waldenberg. In January 1945 we were taken to dig so-called ... anti-tank ditches ... on the outskirts of town ... One evening going back to the camp a child was playing on a sidewalk. I recognised him as Horst Maetzig, who I met with his parents in Auschwitz. His father Max Maetzig was one of the policemen. Of course, you know we were guarded by SS. I could not help it as we lined up with the boy, I exclaimed Horst. He took a look and ran away. The next day he was standing there with his mother Elisabeth, and [she] just nodded with her head. I

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<sup>3</sup> Cambridge University Press, Cambridge, 2000.

<sup>4</sup> *Ibid*, at pp 145-146.

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appreciated that now very much. For the next two months, she and the boy stood there, it was a tremendous boost for my morale. I will never forget it".

As we remember Louis Waller's origins, and the frightful suffering and his most fortunate escape, we should also remember Horst and Elisabeth. The duty which morality requires, and the law at its best protects, is standing up. Of being brave when it is painful and even dangerous. Of just being there to show human solidarity and respect. In a life, such as Louis Waller has lived, it is not enough to begin with his academic laurels. To understand him, and the wellsprings of his humanity, it is essential to journey back to Siedlce.

## II

### ACADEME

Louis Waller is another product of the famous University High School in Melbourne. Australians should not undervalue their public schools. Often, as in my own case, they are the medium that ensures true equal opportunity, on intellectual merit, of children of parents with modest means.

In the 1950s Louis Waller attended the University of Melbourne where he graduated in 1956 and repaired to Oxford University where, in 1958, he took his honours degree in law. He returned to Melbourne and became that most lowly of academics, a tutor. By the end of the 1950s he had risen to senior lecturer in law

at the Melbourne law school. Justice Kenneth Hayne was one of a class of 120 law students who in 1962 enjoyed the stimulus of this gifted teacher. His subject was introduction to legal method. He taught the subject with texts and cases after a methodology introduced in that law school by Professor Zelman Cowen. He would wander around the classroom as he lectured and contemplated which hapless student victim he could tax with his next question. Watching Justice Hayne at work during a hearing in the High Court, I have sometimes wondered where his technique of interrogation originated. I need wonder no further.

At the time Louis Waller was teaching the fledgling Kenneth Hayne, Gareth Evans and other charges at the Melbourne law school, a new University was being established in Melbourne. It was named after General Sir John Monash, a Jewish Australian, a gifted soldier and a graduate in arts, engineering and law of Melbourne University<sup>5</sup>. Following adoption of the idea in 1958, the new campus was formed in the rural suburb of Clayton, named suitably enough (for lawyers anyway) after John Hughes Clayton, an English solicitor who set up his plate in Melbourne in the middle of the nineteenth century. The story of those early days is told in

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<sup>5</sup> P Balmford, "The Foundation of Monash Law School" (1989) 15 *Monash Law Review* 139.



Peter Balmford's essay on the foundation of the Monash Law School<sup>6</sup>.

Because of his strong friendship with Professor David Derham, foundation dean, it was unsurprising that the young law teacher should have been invited to move with Derham to Monash and to help create the new school. According to Justice Hayne, Louis Waller was an "electric" law teacher. His students speak of his remarkable capacity to inspire, stimulate and fascinate the mind about the quandaries of law. But he was also a considerable writer. He designed, wrote and refined texts and case materials<sup>7</sup>. With Professor Peter Brett at Melbourne University he published the first Australian casebook for teaching of criminal law. It was an antidote to "the more expository and dull English texts which were then in general use"<sup>8</sup>. It drew on interdisciplinary sources. It explored United States as well as Australian and United Kingdom authority. Criminal law in Australia would never be the same.

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<sup>6</sup> *Ibid*, at pp 145ff.

<sup>7</sup> L Waller, *An Introduction to Law - Derham, Maher and Waller* (LBC, Sydney, 2000) (8th ed); L Waller and C Williams, *Criminal Law - Texts and Cases* (Butterworths, Sydney, 2000) (9th ed).

<sup>8</sup> Minute of Appreciation, above n 1.

In an essay written years later<sup>9</sup>, examining the puzzles of biotechnology and law, Louis Waller was to reflect on the advantage which he had enjoyed in participating in the resolution of the early problems of biotechnology<sup>10</sup>:

"When Alfonso the Wise, King of Castile, studied the Ptolemaic system, seven hundred years ago, he commented: 'Had I been present at the Creation, I would have given some useful hints for the better ordering of the Universe'. Alfonso spoke with the arrogance of hindsight. We now are 'present at the Creation' and upon us rests, unequivocally, the obligation to effect the best ordering of this new universe".

In terms of the Monash Law School, Louis Waller, like King Alfonso, was present at the Creation. He showed no arrogance; but much wisdom. Above all, he elevated study of the discipline of criminal law to the high standing which it should enjoy in law teaching. In the past, criminal law had often been denigrated, especially in some parts of the practising legal profession and judiciary. Doubtless this was because criminal cases could not usually command the best and most fashionable talent of the Bar. Such talent was commonly conserved for the large commercial disputes which, all too often, represent little more than complicated debt recovery.

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<sup>9</sup> P L Waller, "New Law for Laboratory Life" (1986) 14 *Law, Medicine and Health Care* at 120.

<sup>10</sup> *Ibid*, at 122.

It is not often that I feel confident to speak for a unanimous High Court of Australia. But for Louis Waller's consistent and sustained contribution to the teaching and analysis of criminal law, I consider that all Justices would express thanks to him. It is perhaps a measure of his legacy, in this regard, that one sees the growth in the consideration by the High Court of criminal law, procedure and sentencing in recent years. Anyone in doubt of this should contrast the number of cases concerned with those subjects in the previous consolidated index to the *Commonwealth Law Reports*, and those in more recent editions. Citizens of Australia undoubtedly consider that criminal law is one of the most important tasks assigned to practising judges and lawyers. In this respect, citizens are rarely wrong. The criminal law defines the kind of community we live in. It distinguishes our form of society with that of oppressive and autocratic lands where the state, in the name of suppressing crime, suppresses much liberty as well.

It was Louis Waller who brought this point home to me twenty years ago, soon after we first met in law reform. He will not recall this incident; but it had a profound corrective effect on my thinking. Although I was never, like Justice Hayne, formally his pupil, Professor Waller taught me a lesson fundamental to the criminal law which is still with me.

In about 1980 I was invited to record on video film, for a purpose that I cannot now remember, a model charge to a jury in a criminal case. I fear that I was chosen for my familiarity with cameras and television lights rather than with the basic principles of criminal law. I read my script with suitable gravitas. But I did so uncritically. In the script, I was required, at one point, to tell the jury: "It is for you to decide whether the accused is guilty or innocent". Wrong. Louis Waller saw the film. Gently, but insistently, he wrote to correct my error. It is *not* the jury's function to decide the guilt or innocence of the accused. Their function is to decide whether the Crown has proved the accused guilty, and done so beyond reasonable doubt<sup>11</sup>. This is the very essence of our accusatorial system. It is central to our liberties. It defines the kind of society we are. It keeps the power of the state in check. It is often misunderstood. But it should not be misunderstood by lawyers, still less by judges.

Since that exchange, I have never forgotten this vital lesson. Our criminal justice system is accusatorial. Its search is not, as such, for guilt or innocence. It is for whether the prosecution has proved the accused to be guilty. If it has not, the accused may be guilty or innocent in fact. But the jury must return the verdict of not

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<sup>11</sup> My error was one very common, even by great judges: *Polyukhovich v The Commonwealth (War Crimes Act Case)* (1991) 172 CLR 501 at 607 per Deane J.

guilty which, conventionally, is treated as a holding of innocence. In recent decisions in the High Court, I have had occasion to participate in decisions expressing the correct doctrine<sup>12</sup>. I hope that I have repaired my egregious default.

Meanwhile, at the Monash law school, Louis Waller began to reach out to international projects. His fame spread. He was much in demand as a Visiting Professor in overseas faculties or as a scholar in residence - as he was between 1972 and 1974 with the Law Reform Commission of Canada. But soon, the boundaries of his scholarship were to be stretched in a direction that could not have been contemplated, even at the time when he assumed his chair in law at Monash University<sup>13</sup>.

### III

#### BIOETHICS

In 1982, Professor Waller's reputation as a jurist led to his appointment as Law Reform Commissioner of Victoria. He filled that post with distinction. When, in 1984, the Parliament of Victoria

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<sup>12</sup> *RPS v The Queen* (2000) 74 ALJR 449 at 454-456 [22]-[28] ["In a criminal trial, not only is an accused person not bound to give evidence, it is for the prosecution to prove its case beyond reasonable doubt"].

<sup>13</sup> For further notes on Professor Waller's career see (1982) 56 *ALJ* 205; [1982] *Reform* at 40; [1985] *Reform* at 41.

established a Law Reform Commission for the State, it was natural that Professor Waller should be invited, as he was, to chair the Commission. It contained lawyers of considerable distinction, including Justice Gobbo, future judges Frank Vincent QC and Anthony Smith, Jocelyne Scutt, Mr Leigh Masel and other distinguished members<sup>14</sup>. The Attorney-General of the day, Mr Jim Kennan, said that he was considering giving the new Commission a standing reference on the impact of science on the law. This indication was a tribute to the special reputation which Professor Waller had already earned, as Law Reform Commissioner, by his participation in a Committee established by the Victorian Government in April 1982, known formally as the In Vitro Fertilisation Committee and informally as the Waller Committee<sup>15</sup>.

It happened that the leading research in Australia on in vitro fertilisation (IVF) was taking place in Victoria. Indeed, it was occurring at Monash University under the leadership of two academics of high distinction, Professor Carl Wood and Dr Alan Trounson. There were calls for a moratorium on the use of donor sperm and eggs in Victoria's IVF programmes. The sensitive task of designing the law that should govern this new technique was entrusted to Professor Waller and his colleagues<sup>16</sup>. Acting with

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<sup>14</sup> [1985] *Reform* at 41.

<sup>15</sup> (1982) 56 ALJR 439.

<sup>16</sup> [1983] *Reform* at 125.

remarkable speed, the Waller Committee, within six months, released a summary of its views on the use of donor gametes. Later, the Government lifted its moratorium on the use of donor sperm and eggs<sup>17</sup>. Such was the confidence in the recommendations of the Committee that the Attorney-General told hospitals and others, involved in IVF techniques, to follow the Waller proposals pending the adoption of legislation which, it was expected would become the model for the entire nation by endorsement of the Standing Committee of Federal and State Attorneys-General<sup>18</sup>.

Predicably enough, the recommendations of the Waller Committee attracted praise<sup>19</sup> and criticism<sup>20</sup>. Professor Waller had entered a field of strong emotions, deeply held beliefs and sharp differences. The field of bioethics demanded leadership of rare delicacy that would seek out and take into account, so far as possible, the points of view of all sections of the community. Professor Waller was to discover (as many have done since) that reconciling the irreconcilable opinions on such topics is difficult and often impossible.

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<sup>17</sup> [1984] *Reform* at 38.

<sup>18</sup> [1984] *Reform* at 38.

<sup>19</sup> *The Age*, 14 December 1983, cited [1984] *Reform* at 38.

<sup>20</sup> *The Australian*, 15 December 1983 cited [1984] *Reform* at 38.

In Ecuador, the International Bioethics Committee of UNESCO rediscovered this lesson in November 2000. Recent scientific research suggests that the peculiar utility of the earliest cells of human life are to be found in the human embryo, often superfluous to IVF use. Such cells, known as "stem cells" are pluripotent, and thus, it is hoped, prone to adaptation to take over the task of damaged or diseased cells that have deteriorated or been destroyed. The potential of this discovery for the treatment of diseased heart muscles of those who have suffered myocardial infarction is thought to be significant. The potential for the use of such stem cells in the treatment of Parkinson's Disease and diabetes, as well as a host of other conditions, is under current scientific investigation. Yet some religions teach that the embryonic cells represent a human life in potential. If this is so, should the law forbid such experiments out of respect for human life<sup>21</sup>? Does the earliest human embryonic cell warrant legal protection?

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<sup>21</sup> M. Revel, "Some Religious Views on Moral Status and Potentialities of Human Embryos as Related to Stem Cell Research and Therapeutical Cloning", unpublished paper presented to UNESCO, International Bioethics Committee, meeting Quito, Ecuador, November 2000 for consideration in conjunction with the *Draft Report of the Working Group on Ethical Aspects of Human Embryonic Stem Cell Research, the Use of Embryonic Stem Cells in Therapeutic Research* (Bio-7/00/GT-1-2).



Studies of religious doctrine on such topics shows a great disparity of opinion. Whereas Roman Catholic and Orthodox branches of the Christian religion generally adhere to the notion that human life begins at the moment of conception, Jewish Biblical and Talmudic law is commonly taken to consider that human status is only acquired progressively during foetal development and not at fertilisation of the ovum by sperm. Genetic materials outside the uterus have no legal status in Jewish law, for they are not even part of a human being until implanted in the womb. Even then, during the first forty days, their status is not that of a formed human being.

Islamic teaching reflects a similar view that the embryonic journey to personhood is a developmental process. Ensoulment, that demands religious and legal protection, does not take place until after three periods of forty days, ie at 120 days or at the turn of the first trimester. Still other religious views pick different times on the journey of embryonic cells, including the moment when the "primitive streak" first appears, in the earliest outline of the spinal column, 14 or 15 days after the original moment of conception<sup>22</sup>. Some humanists take a view that extra uterine cells are available without limitation for experimentation and use - being no more than microscopic bodily fluids and part of nature's profligate

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<sup>22</sup> N B Ford, *When did I begin?* Cambridge Uni Press, Cambridge, 1991, 170-182.

creation of life. They are thus available to science for the reduction of human pain and premature death<sup>23</sup>. To say the least, finding a path through these differing views of belief and non-belief is a mighty challenge for morality and for law in the future.

By his work in public committees, Louis Waller contributed, in highly practical ways, to innovative and humane legislation which, for a time, led the world and has become a model for many other jurisdictions<sup>24</sup>. He wrote with diligence and patience for specialist bodies and to promote lay understanding of the issues at stake<sup>25</sup>. His work in this area attracted great interest and much commentary within the legal profession<sup>26</sup> and beyond. In a way that he would certainly not have anticipated at the beginning of his life's journey,

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<sup>23</sup> Revel, *Ibid*, at 3.

<sup>24</sup> The report of the Committee resulted in the *Infertility (Medical Procedures) Act* 1984 (Vic). This legislation was later updated in the *Infertility Treatment Act* 1995 (Vic).

<sup>25</sup> See eg L Waller, "Speech - Opening of a Two Day Workshop on Forensic Psychiatry at the Melbourne Townhouse" (1983) 57 *Law Institute Journal* 717; L Waller, "Human Experimentation" in A Tay (ed) *Australian Law and Legal Thinking Between the Decades* (1990) at p 429; L Waller, "Birth Technologies and Statutory Regulation" (1998) 10 *Legal Data* 1; L Waller, "Regulating Birth Technology" (1998) 7 *Res Publica* 18; L Waller, "The Costs of Treating Infertility" (1999) 7 *Journal of Law and Medicine* 183.

<sup>26</sup> K Andrews, "IVF after Waller" (1985) 3 *Lawyer* (Victorian Young Lawyers) at 12; "Invitro Veritas? Institute says Waller Committee's recommendation needs more study" (1984) 58 *Law Institute Journal* at 468.

Louis Waller became a most respected leader in an innovative and most difficult area of legal discourse.

He never lost his interest in other topics of legal concern. The quandaries of criminal law frequently attracted his enquiring mind<sup>27</sup>. But so did other issues of public law relevant to the maintenance of the rule of law in a democratic and rights-respecting society<sup>28</sup>.

Louis Waller writes as he lectured. Words are not wasted. His skills of communication are signalled by a deft pen that can express an arresting thought in economic language that demands

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<sup>27</sup> L Waller, "Reforming the Law of Homicide in Victoria" in P Fitzgerald (ed) *Crime, Justice and Codification - Essays in Commemoration of Jacques Fortin* (Carswell, Toronto, 1986, at p 73). L Waller, "Compensating Victims of Crime in Australia and New Zealand" in D Chappel and P Wilson (eds) *The Australian Criminal Justice System* (2nd ed, 1977, 426), L Waller, "Victims of Crime: Some Australian Developments" in H Schneider (ed) *The Victim in International Perspective - Papers and Essays Given at the Third International Symposium on Victimology* (De Gruyter, New York, 1982), p 279, A number of reports of criminal law were produced during Professor Waller's service as Victorian Law Reform Commissioner: see Report No 1, *The Law of Homicide in Victoria - The Sentence for Murder* (1985); Report No 2, *Unsworn Statements in Criminal Trials* (1985), Background Paper No 1, "The Role of the Jury in Criminal Trials" (1985), see Notes [1986] *Reform* at 5; [1986] *Reform* at 45; [1986] *Reform* at 98.

<sup>28</sup> L Waller, "The Police, the Premier and Parliament: Governmental Control of the Police" (1990) 6 *Monash University Law Review* at 249.

that the reader read on. Take, for example, the opening of an essay describing the law and in vitro fertilisation<sup>29</sup>:

"What has Lewis Carroll called 'the love-gift of a fairytale' in common with Article 16 of the *Universal Declaration on Human Rights*? Both, I suggest, refer to an ideal and a value we still cherish in our society. Fairytale, properly so called, end in the golden haze where hero and heroine 'live happy ever after'. Those who read or hear them conjure up from that irreplaceable expression an idyllic prospect of wedded bliss and family life. The *Universal Declaration* employs language apparently more precise ... [but] I suggest that what is really embodied therein is an ideal and a prohibition".

Or take this essay on victims of crime<sup>30</sup>:

"It is a mark of this age to mark the ages. Generations, decades, and even smaller periods of time are readily labelled. There is a temptation to follow the fashion and describe our age as the age of the victims of crime ..."

Or consider this opening to an essay on another sensitive subject<sup>31</sup>:

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<sup>29</sup> "Borne for Another" (1984) 10 *Monash University Law Review* 113. (footnotes omitted).

<sup>30</sup> "Victims of Crime: Some Australian Developments", above n 23, p 279.

<sup>31</sup> L Waller, "Any Reasonable Creature in Being" (1987) 13 *Monash University Law Review* at 37.

"My subject is abortion and the law: the law in the books, and the law in action. It is abortion *de lege lata* and abortion *de lege ferenda* - the law today, as laid down, and what tomorrow may bring. ... A study of the law relating to abortion will remind us of the well known antiphony in the Interment Service in the *Book of Common Prayer*.

In the midst of life we are in death'

A contemporary graffito employed the same thought: 'Life is a terminal disease - sexually transmitted'".

The boy from Siedlce in Poland is the master of the English language. He deploys it with graphic skill. And that skill extends from the lecture hall to the printed page. We are the beneficiaries.

#### IV

#### FUTURE

Professor Waller, in his early days as an academic, wrote many splendid books in collaboration with a much loved colleague, Frank Maher. Sadly, Frank Maher died not long ago. In an ambulance, according to report, his son whispered to him: "You are going to hospital. And you are going to have a lot of things out". Remembering the words of Sir Leo Cussen, Frank Maher reportedly responded: "It is better to be a semicolon than a fullstop".

Louis Waller, who has proudly born the name of the Sir Leo Cussen professor, after one of the greatest of Australia's judges, is no fullstop. Nor is he a semicolon. He is a questionmark. An

exclamation mark. A couple of brackets. And many books and pages yet to be filled.

He continues to serve as Chairman of the Infertility Treatment Authority of Victoria, a post he has held since 1995. He has also, since 1997, been Chairman of the Appeals Committee of the Royal Australasian College of Surgeons. Lately, he has assumed the important role of Chairman of the Advisory Committee of the Australian Centre for Jewish Civilisation within Monash University. This body will promote an understanding in Australia of this country's huge debt to its Jewish citizens.

He is an example of the best of legal scholarship and teaching in Australia. As a Justice of the High Court, as a fellow citizen, and as a lawyer, I do him honour. And I also honour his wife and life's companion, Wendy Waller. Important work lies ahead - for the challenges of law and the puzzles of biotechnology and the eager faces of another generation of expectant law students, thirst for his leadership. I have no doubt that he will respond. I feel a sure conviction that, whenever he is needed, like Horst and Elisabeth, he will be there.

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**LOUIS WALLER - AUSTRALIAN LAW TEACHER & BIOETHICS  
PIONEER**

**The Hon Justice Michael Kirby AC CMG**