

Preface

[T]he peculiar evil of silencing the expression of an opinion is, that it is robbing ... those who dissent from the opinion, still more than those who hold it. If the opinion is right, they are deprived of the opportunity of exchanging error for truth: if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error.

[John Stuart Mill, 'On Liberty' (1859) in John Stuart Mill, *Three Essays* (Oxford University Press, 1975), 5–141 at 24]

We are honoured to guest edit the Special Issue on *Dissent in Insurance Law*. The Special Issue follows a very successful webinar in July 2021 organised by the Corporate and Financial Law Research Group at the University of Glasgow in conjunction with the British Insurance Law Association (BILA).

The thematic idea of *Dissent in Insurance Law* was born of two events. The first was that 2020 marked the centenary when judgment was delivered in *Anderson, Petitioner* which allowed Madge Easton Anderson to become the first woman law agent in the United Kingdom. Although the Sex Disqualification (Removal) Act 1919 was the first step to opening the legal profession to women, the grant of Ms Anderson's petition cemented the position of women in the legal profession. The second event was the passing of U.S Supreme Court Justice Ruth Bader Ginsburg in 2020 who was known for her strong dissenting opinions on issues including social justice, discrimination, and equality.

The Special Issue draws together contributions from established and emerging women scholars in Insurance law across various jurisdictions. The aim of the Special Issue is for each contributor to voice her dissent on a salient area of Insurance law, policy, or practice, and to offer insights for future development. The contributions cover topics on discrimination in insurance, cyber risks, causation, proportionality under Solvency II, artificial intelligence, EU compulsory motor vehicle liability insurance, and insurance for the benefit of third parties.

But what exactly is encapsulated by 'dissent' in this context? Judicial dissents are familiar to lawyers and indeed, the value of judicial dissent can give rise to forceful arguments about democracy, legal development, the role of judges versus the legislature, and jurisdictional differences. On judicial dissent, we are honoured to have had the keynote address delivered by Justice Sarah Derrington, President of the Australian Law Reform Commission and Justice of the Federal Court of Australia. Justice Derrington's contribution entitled 'I Dissent, But Why?' provides valuable insights on the importance of dissent and on the role of dissent in the development of the law.

Notwithstanding the importance of judicial dissent, the focus of the Special Issue has cast a wider net and at the same time taken a more diluted approach to what is meant by 'dissent'. The reasons are two-fold. First, the focus is not solely on *judicial* dissent but rather contributors were free to select any aspect of Insurance law, policy, and/or practice from which they dissent. Secondly, it is more diluted because some contributions cover aspects of insurance that are developing and where outcomes have not yet been settled. In that respect, 'dissentient inclinations' (Neil Duxbury, *The Intricacies of Dicta and Dissent* (CUP 2021) xxiv) are more appropriate – but remain equally important.

The Special Issue features articles that cover topics of contemporary significance and whilst the contributions do not aim to be a catalyst for legal development; they instead make a notable contribution to the process of legal development across these areas of Insurance. Justice Ginsburg exemplified the value of a dissent when she said in relation to judicial dissents:

Dissents speak to a future age....So that dissenter's hope that they are writing not for today, but for tomorrow.

[Interview with Justice Ruth Bader Ginsburg, National Public Radio Interview with, 2nd May 2002]

It is our hope that the array of perspectives offered by the Special Issue encourages insightful discussion of some key themes informing Insurance law.

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