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Beyond the bounds

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Beyond the Bounds

Richard Mohr

The contributions to this edition of *Law Text Culture* arose from a series of workshops and seminars which Luke McNamara and I organised through the Legal Intersections Research Centre at the University of Wollongong during 2001 and 2002. Having recently formed a research group focusing on the social and disciplinary intersections of law, we set out to explore these intersections with the help of colleagues working in law, humanities and social sciences in Australia, North America and Europe. Some of their contributions to this exploration are collected here.

In the last edition of *Law Text Culture* (5.2), David Delaney wrote that a generation of assaults by critical legal studies had made a shambles of the 'traditional constitutive boundaries, such as those separating law from politics, morality, economics or society' (2001: 84). Our focus here is on the epistemological and methodological dimensions of those boundaries or, since these are in a shambles, those intersections.

When we invited participants to workshops, our brief to them was to reflect on their research practices. Initially we focused on research methodologies: what are the options for interdisciplinary legal researchers? How does the law present raw materials for researchers, and how may we approach those? The contributors to this collection have applied their research efforts to wills, town plans and courthouse architecture, media and police representations of crime, court management, corporate regulation, literature, and science-law interactions. Rather than presenting the results of that research here, they have taken a step back, to consider what they do when they do research, and to reflect on the related issues of epistemology, theory and values. As the project developed we became increasingly aware of the how methods are illuminated by theory and that theory is informed by the orientation and purposes of the researcher, and by the concerns and interests of those communities researchers represent.

Work discussed here has been informed or sponsored by various settings including universities, the family of a victim of crime, and the World Bank. The scholars represented here are conscious of their social positioning as white, Indigenous or feminist. Whether carrying out research as Australians in the Philippines or as white academics in the contested colonial spaces of Australia itself, each of these positionings highlights social and political contexts and contests. Knowledge and law are recast in the social practices of inquiry and advocacy.

Theories of knowledge have problematised the world that we seek to know. To talk of the raw materials of research in terms of documents, such as wills or town plans, or practices, such as representation or corporate regulation, is to focus on the outwardly-directed gaze of the researcher. Margaret Davies directs our attention back inward, from what we know, to who we are, who know. In the world of intersectional legal research there will always be authors and intentional will behind the texts or practices we study. To know means to share understanding, to participate in the object of our knowledge, in Davies' words. She emphasises a plural subject over objective thought, and celebrates the epistemological advantages of the margin, from which we can appreciate both sides of a boundary.

While our text contributions turn their attention to the gaze of the researcher, we have selected

pictures which represent the gaze in other ways. Viewing a painting, etching or photograph invites us to participate in the gaze of the artist. The artists collected here are exploring related issues of justice, land and space from various perspectives. We are invited to see the courthouse through the eyes of Terry Naughton, a lawyer and judge. His sensitive images of old courthouses project the dignity of the common law and its power in some remote areas of New South Wales. Law is often viewed by Indigenous artists from the other side. Ricky Maynard's prison portraits and Patrick Butcher's *Yarwur Saying Goodbye* both take prison custody as their theme: Yarwur is saying goodbye to people who are being flown to a distant prison. We contrast Diane Jones' and Gordon Hookey's views of themselves and their relationship to land and ancestry. Gordon Hookey depicts Indigenous people who were stolen accompanied by images of the white person's land and law. Adaptation and survival in the face of this dispossession is illustrated in Diane Jones's family self portrait superimposed on a typical 19th century Australian landscape. These settler paintings assimilated a foreign land to a familiar aesthetics, rendering invisible the Indigenous inhabitants and their relationship to the land (Thompson 2002). The Joneses have re-occupied this landscape, re-assimilating the gaze of the coloniser.

Self-reflexive and pluralistic theories of knowledge have become so familiar in philosophy and cultural theory that law's day-to-day understanding of knowledge comes as a shock in Kerry Carrington's and David Mercer's contributions. In this epistemological context, the naive positivism of counsel's cross examination of Carrington shocked me more than the adversarial practices by which she was denigrated as a witness. Mercer's analysis of the interactions of law and science illuminate this discourse from the viewpoint of a sociology of scientific knowledge. He gives examples of the adversarial perspective imported into epistemology itself, where the label 'junk science' has been applied to scientific evidence. How much more courageous was Carrington's evidence when she attempted to refute the positivist paradigm from the witness stand! Both Mercer and Carrington highlight the law's conceit that it can, in the latter's words, 'produce singular infallible truths'.

This exploration of the epistemological underpinnings of our research practices leads right back into the law itself. Understanding the ways law treats knowledge suggests new dimensions in the problems of intersectional legal research. Driven by law's perennial efforts to define boundaries, knowledge *in* law is constantly pushed into categories of true or false; of junk science or real science.

Within the law, the margin from which Davies tries to view the world is an uncomfortable place. This leads to the need for a further exploration of those boundaries which Davies wants to cross and which law wants to establish. Law is founded on the business of drawing boundaries, as Russell Hogg points out, between the permissible and the impermissible: in this it enlists those other boundaries between true and false, self and other, knower and known. Hogg sees a Foucauldian discipline behind the objectivising and universalising technologies of timetables and clocks, of maps and grids. Law's boundaries are part of a symbolic practice which actualises codes of conduct. Conduct is legislated and codified but it is conduct nonetheless. Australian colonisation is the stark example on which Hogg draws and which is addressed in Barbara Nicholson's poem. The texts of law are inscribed on the land in grids of ownership. They are formally applied in places of law, 'heterotopias' outside the space of everyday life. These boundaries set by lines drawn on a map, or enclosed by the walls of a courthouse, set limits around law and set law's limits on conduct.

Law is not neutral behind these technologies of power. Nicholson tells of the 'sacred life force'

inhering in Indigenous relationships to land which were sucked from it by the laws of the colonisers. The time and place for learning an older law was subsumed under the grids and texts of the new. Horrie Saunders' quoted remarks (page 29) on the importance of time and place to this learning are illustrated by Roy Kennedy's *How Soon They Forget (or My Seven Rivers)*.

David Wishart unmasks the ethical choices lurking behind the apparent innocence of law's and economics' pursuit of technical efficiency. As a technology of power, law is an instrument of that power. In the project of making ethical choices appear as the result of a process of 'simplification' or 'economic reform', positive law draws a boundary around itself. Questions of ethics are beyond these boundaries, out of bounds.

The boundaries between permissible and impermissible; mine and yours; law and not-law; truth and falsity; self and other; are etched into modern law and modern studies of law. To cross these boundaries is to subvert the legal and epistemological project of the Enlightenment. To see them as intersections rather than boundaries is to recognise a terrain to explore rather than an interdiction to respect. This volume sets out to explore that terrain.

References

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