RESEARCH ONLINE

Law Text Culture

Volume 15 *Under the Eye of the Law: Mobile Peoples in the Pacific*

Article 1

2011

Introduction, contents and contributors LTC15

Nan Seuffert
University of Waikato, New Zealand, nseuffer@uow.edu.au

Tahu Kukutai
University of Waikato, New Zealand

Follow this and additional works at: http://ro.uow.edu.au/ltc

Recommended Citation
Seuffert, Nan and Kukutai, Tahu, Introduction, contents and contributors LTC15, *Law Text Culture*, 15, 2011, 1-7.
Available at:http://ro.uow.edu.au/ltc/vol15/iss1/1

Research Online is the open access institutional repository for the University of Wollongong. For further information contact the UOW Library: research-pubs@uow.edu.au

RESEARCH ONLINE

Introduction, contents and contributors LTC15

Abstract
This issue of Law Text Culture has its genesis in a research project on Mobile Peoples Under the Eye of the Law which was originally proposed by Associate Professor Cathy Coleborne at the University of Waikato. The project was supported with a grant for a one day symposium, held in December 2010, from the University of Waikato Contrestable Research Trust Fund, for which we are grateful. As guest editors we invited contributions of postcolonial analyses that investigated mobile peoples, in Australia, New Zealand and the Pacific, both historically and in the present. We were especially interested in the ways in which regulation and surveillance in all of its forms — legal, policy, administrative and so forth — produced and constructed mobile peoples, and how categories of gender and sexuality were shaped in relation to mobile peoples in and through these regimes.

This journal article is available in Law Text Culture: http://ro.uow.edu.au/ltc/vol15/iss1/1

Law • Text • Culture

volume fifteen

Under the Eye of the Law: Mobile Peoples in the Pacific

edited by

Nan Seuffert and Tahu Kukutai

This issue may be cited as
(2011) 15 LTC

It should be catalogued as *Law Text Culture* with no punctuation.

ISSN 1332-9060

© **Law Text Culture** and contributors

Front cover image: Brett Graham

Copy editor: Annee Lawrence
Printed by Print & Distribution Services University of Wollongong

Law Text Culture is an interdisciplinary peer reviewed journal published by the Legal Intersections Research Centre at the University of Wollongong in Australia.

Law Text Culture aims to produce fresh insights and knowledges along three axes of inquiry:

Politics: engaging the relationship of force and resistance;
Aesthetics: eliciting the relationship of judgment and expression;
Ethics: exploring the relationship of self and other.

For information on submission of manuscripts, calls for papers and proposals for special editions, including style guide, go to: www.uow.edu.au/law/LIRC/LTC

In Australia and Europe, subscription enquiries should be directed to major distributors or to Law Text Culture through the website given above.

In North America, subscription enquiries should be directed to:

Gaunt Inc., Gaunt Building
3011 Gulf Drive
Holmes Beach
Florida 34217-2199 USA

info@gaunt.com

All back issues of **Law Text Culture** from volume 1 (1994) to date are now available in pdf online at http://ro.uow.edu.au/ltc

Legal Intersections Research Centre

Contents

1 Introduction
Nan Seuffert and Tahu Kukutai

Part I: Disciplinary and Conceptual Eyes on Mobility in the Pacific

8 Poem: time to write
Alice Te Punga Somerville

10 Civilisation, Settlers and Wanderers: Law, Politics and Mobility in Nineteenth Century New Zealand and Australia
Nan Seuffert

45 Regulating 'Mobility' and Masculinity through Institutions in Colonial Victoria, 1870s-90s
Catharine Coleborne

72 Beyond the Pale: Measures of Mobility in Post-colonial Australia
John Taylor

Part II: Indigeneity, Identity and Mobility

100 Poem: The measure of a man's worth
Alice Te Punga Somerville

102 Containing Aboriginal Mobility in the Northern Territory: From 'Protectionism' to 'Interventionism'
Deirdre Howard-Wagner and Ben Kelly

135 'Natives', 'Immigrants' and '*libérés*': The Colonial Regulation of Mobility in New Caledonia
Adrian Muckle

162 'The vacillating manners and sentiments of these people': Mobility, Civilisation and Dispossession in the Work of William Thomas with the Port Phillip Aboriginal Protectorate
Rachel Standfield

Part III: Crossing Boundaries

185 Poem: a new generation of historians on flight NZ449
Alice Te Punga Somerville

187 Sex Trafficking and Global Governance in the Context of Pacific Mobility
Sally Engle Merry

209 Spectre of Jurisdiction: Supreme Court of New South Wales and the British Subject in Aotearoa/New Zealand 1823-41
Wayne Rumbles

233 'The main thing is to shut them out' The Deployment of Law and the Arrival of Russians in Australia, 1913-25: An histoire
Marett Leiboff

269 Contributors

Introduction

This issue of *Law Text Culture* has its genesis in a research project on Mobile Peoples Under the Eye of the Law which was originally proposed by Associate Professor Cathy Coleborne at the University of Waikato. The project was supported with a grant for a one day symposium, held in December 2010, from the University of Waikato Contrestable Research Trust Fund, for which we are grateful. As guest editors we invited contributions of postcolonial analyses that investigated mobile peoples, in Australia, New Zealand and the Pacific, both historically and in the present. We were especially interested in the ways in which regulation and surveillance in all of its forms — legal, policy, administrative and so forth — produced and constructed mobile peoples, and how categories of gender and sexuality were shaped in relation to mobile peoples in and through these regimes.

Postcolonial theory is a fitting lens through which to view mobility and regulation. While the reference to linear time implied by the term 'postcolonial' and the apparent presumption of a period after colonisation have been critiqued elsewhere, we see it as useful for engaging with the imprints and effects of colonisation. Postcolonial theory arises with the fall of grand theory and the destabilisation of history 'as it actually was' or chronological 'facts', creating space for a dynamic theorisation of colonisation and the construction of nations, peoples, 'race', ethnicity, gender and sexuality. An integral part of postcolonial inquiry is writing against the colonial, and making visible the persistence of the colonial in the concrete and material conditions of everyday life. Foregrounding the histories of colonisation highlights shifting geographical centres and margins in the process of mapping, shaping and tracing mobile peoples.

Interdisciplinarity is a strength in the study of mobility and the regulatory regimes used to define and constrain movement across different times and places. The first part of this special issue reflects this ethos with contributions that explore some of the diverse conceptualisations of mobility, control and modernity from the disciplines of law, history and demography. It begins with Nan Seuffert's article 'Civilisation, Settlers and Wanderers: Law, Politics and Mobility in Nineteenth Century New Zealand and Australia', which provides an important theoretical orientation on mobility as an organising concept in law and policy. Seuffert shows how 19th century conceptions of mobility were embedded in concepts such as civilisation, savage, settler and wanderer, as well as in broader notions of progress and modernity that were fundamental to colonisation in both contexts. She tracks the articulation of mobility in three areas of law and policy — New Zealand's wasteland policy, laws on Chinese immigration, and aspects of Australia's laws related to the Pacific Labour Trade — showing how the dynamics of settler colonialism often transcended simple binaries such as those of settler coloniser and colonised indigene. Seuffert's comprehensive analysis underscores a key feature of this special issue: that different renderings of mobility and the means used to regulate mobile peoples often have unique properties and manifestations, but systematic power inequalities are recurrent throughout time and place.

In 'Regulating "Mobility" and Masculinity through Institutions in Colonial Victoria, 1870s-1890s', Coleborne shows how masculinity was shaped by movement within and between institutional spaces. Mobility was central to settler identities, and movement was an integral part of settled life. Specific class, gender and ethnic characteristics dialogically shaped settler identity and mobility. Coleborne explores the policing of undesirable mobility and mobile people in urban spaces, as well as the dynamics of 'failed' masculinity and mobility in her analysis of the institutionalisation of poor white male immigrants. Her innovative focus on mobility between health and welfare institutions in the context of the regulation of mobility reveals webs of welfarist institutions, policies and policing in colonial states' responses to failed immigration.

John Taylor's adroit discussion of the politics of mobility in demographic analysis implicitly and explicitly draws on colonial conceptions of indigeneity, identity and mobility. In 'Beyond the Pale: Measures of Mobility in Postcolonial Australia', Taylor persuasively argues that 'postcolonial demography' — the applied demographic practices and categories employed in Australia to quantify and respond to Indigenous Australians — is ill-equipped to capture key aspects of Indigenous sociality. This mismatch, he argues, is readily apparent in efforts to quantify Indigenous spatial behaviour. By comparing data from the census and official surveys — instruments routinely used to capture Indigenous mobility — with findings from ethnographic research, Taylor shows that Indigenous people can, and often do, move literally beyond the 'eye of the law'. That Indigenous mobility proceeds largely unrecorded in administrative systems of capture and control, he argues, both reflects the persistence of colonial constructions of mobility and indigeneity, and raises questions about the efficacy and robustness of the resulting statistical 'evidence'. Taylor sees these issues as increasingly important in light of the increasing demand by Indigenous organisations for accurate and relevant statistical information about themselves to support their self-determining and development goals.

The second part of the issue shifts from different disciplinary renderings of mobility and forms of state regulation, to consider indigenous mobility and regulation in specific spatial and historical contexts. In 'Containing Aboriginal Mobility in the Northern Territory: from "Protectionism" to "Interventionism"', Deirdre Howard-Wagner and Ben Kelly offer a postcolonial critique of the legal and disciplinary effects of recent policies of 'interventionism' on Aboriginal homelands and 20th century policies of 'protectionism'. They draw parallels between the different mechanisms used to displace and regulate Aboriginal peoples in the Northern Territory, showing how a pervasive settler colonial rationality — with its presumption of white racial superiority and desire to erase Indigenous deviation from white modernity — operated to refashion mobility. While their analysis emphasises the centrality of the twin logics of 'elimination' and 'progress' in two different eras of federal indigenous law and policy,

it also calls attention to distinctive features of contemporary settler colonialism, notably the neoliberal demand for Indigenous citizens and their lands to be incorporated into the market economy. Echoing Taylor, they also show how official statistics have provided an important government apparatus for constructing and problematising Indigenous peoples in ways that reinforce mainstream critiques and judgments on matters of culture, norms and what constitutes an acceptable way of life.

In Adrian Muckle's analysis of colonial New Caledonia, the regulation of indigenous mobility is considered alongside the separate but often overlapping regimes designed to police or control *libérés* (freed convicts) and indentured ('immigrant') labourers. In '"Natives", "Immigrants" and "*libérés*": The Colonial Regulation of Mobility in New Caledonia', Muckle refines the dominant histories of the curtailment of indigenous mobility under colonial rule by sketching the forms of mobility and circulation that were sanctioned and regulated by colonial authorities. Highlighting the diverse groups subject to regulation, Muckle provides a way of thinking about these experiences in relational terms, also drawing attention to the gendered dimensions of colonial mobility. He argues that no single institution and no one piece of legislation defined the colonial experience; Kanak experiences of colonial rule are best analysed in relation to these other groups.

Rachel Stanfield's article, '"The Vacillating Manners and Sentiments of These People": mobility, civilization and dispossession in the work of William Thomas with the Port Phillip Aboriginal Protectorate', shifts the lens back to colonial Australia. Drawing extensively on the journals of 'protector' William Thomas, Standfield traces how the humanitarian principles that guided the early work of protectorates were gradually eroded by complex tensions arising from settler violence and greed, the complicity of colonial officials whose interests were closely meshed with those of settlers, and the ongoing resistance of Aboriginal communities to increasingly coercive measures to curb their mobility. Like other contributors, Stanfield explores how representations of Aboriginal peoples as erratic wanderers without sovereignty over land were central to the colonial project of conquering

space, and also looks beyond the Port Phillip protectorate to consider the importance of indigenous mobility to imperial and colonial spaces in South Africa and North America.

The final part of this special issue expands on ideas of crossing, transgressing and shaping boundaries often implicit in discourses about mobility. Sally Engle Merry's article, 'Sex Trafficking and Global Governance in the Context of Pacific Mobility', crosses the boundary of the dominant humanitarian interpretation of the movement of sex workers by providing a more nuanced analysis, and places the mobility of sex workers in historical context. Merry contends that legal immigration regimes are central to the formation of both immigrant experience and societies. Her comparison of the mobile populations of migrants to Fiji and Hawaii historically, and the legal statuses shaping their opportunities and lifestyles, provides a revealing frame for her analysis of contemporary travel for sex work. Both the historical migrants and contemporary travellers are motivated by complex matrixes of coercion and desire: coercion of poverty, demands for labour, or capture, and desire for adventure, opportunity and escape.

Today, legal scholars in 'western' democracies often take for granted the idea that jurisdictional boundaries shape regulatory regimes by providing for the application of certain laws within a specified territory. Wayne Rumbles' article 'Spectre of Jurisdiction: Supreme Court of New South Wales and the British Subject in Aotearoa/New Zealand 1823-1841' investigates the extension and shaping of boundaries in the colonial expansion of jurisdiction over British people on the islands known as Aotearoa New Zealand today with the declaration in 1814 that New Zealand was a dependency of New South Wales. The assertion of jurisdiction was sometimes justified on the basis of the need to control the mobile and lawless British; Rumbles argues that it operated to create an imagined community of homogenous British out of the widely dispersed and rag-tag contingent of British moving through the islands during the period prior to the Treaty of Waitangi 1840.

Marett Leiboff concludes the collection with an article that is both story and history — an *histoire* — of immigration from Russia to

Brisbane. In '"The Main Thing Is To Shut Them Out": The Deployment of Law and the Arrival of Russians in Australia, 1913-1925: An histoire', Leiboff combines an 'imperfect archive of memory' with excerpts from her grandfather's file in the National Archive of Australia. Crossing numerous metaphorical, literal and legal boundaries in his journey to Brisbane, her grandfather, Morris Leiboff's movement once he reached Queensland was subject to a detailed bureaucratic surveillance regime that produced his National Archive file. Leiboff reads this file against the policies, legal regimes, and context of a political climate that condoned attacks by returned World War I servicemen on Brisbane's Russian neighbourhood, to reveal a life truly lived 'under the eye of the law'.

A poem by Alice Te Punga Somerville precedes each of the three parts of this special issue. From ocean-going ancestors to complimentary happy hour on flight NZ449, Somerville draws on her multidisciplinary background in English, Pacific and Indigenous studies to critically explore the nexus of mobility, identity and nation-building.

Finally, we would like to express our thanks to all of the contributors to this special issue who responded to our call for papers so enthusiastically and who have collectively bought to life the kernel of an idea that will continue to grow and take shape through future scholarship. The critical and often extensive comments of those who agreed to review the manuscripts were invaluable for helping authors to sharpen and clarify their articles and we are grateful for their generosity. We would also like to thank artist Brett Graham (Ngāti Koroki Kahukura) whose work 'Mihaia', which is described by Graham below, features on the cover and explores several of the key themes that animate this special issue.

Mihaia' is the Maori word for 'Messiah', the one who would deliver salvation to the Israelites in the Bible. 'Mihaia' itself is an almost life size version of a BRDM-2 Russian scout car that has been used in conflicts all over the world, on both sides of the Middle East conflict and, more recently, was seen on our televisions being used in North Pakistan against Moslem extremists. Although Maori actually possess

no such weapons the tank has been 'Maorified' as a reminder of how Maori in the past 'appropriated' power symbols from the British Militia to gain some kind of spiritual ascendancy over their invaders, to seek deliverance. 'Mihaia' ties Maori to the peoples of the Middle East, the events of last century in Aotearoa to world events today, and suggests how our pasts and futures, coloniser and colonised are inextricably linked.

Nan Seuffert

Tahu Kukutai

Contributors

Catharine Coleborne

Catharine Coleborne is Associate Professor of History at the University of Waikato. She has published two sole-authored books, including *Madness in the Family* (Palgrave 2010) and is the co-editor of three books. She is currently producing a new book for Manchester University Press, *Insanity, Identity and Empire,* for the Studies in Imperialism Series. Her new co-edited book for Angela McCarthy, *Migration, Ethnicity and Mental Health: International Perspectives,* will appear with Routledge in 2012.

Deirdre Howard-Wagner

Dr Deirdre Howard-Wagner, a sociologist and socio-legal scholar, is a Lecturer in Socio-Legal studies within the Department of Sociology and Social Policy at the University of Sydney. Her work has made a significant contribution to the study of Indigenous social and legal justice. She has published a broad range of articles and book chapters on Indigenous rights, ranging from publications relating to her ethnographic study of the struggle for Indigenous rights in Newcastle through to publications providing a critical analysis of the many dimensions of what is commonly referred to in Australia as the 'Northern Territory Intervention'. Her recent publications on the Northern Territory Intervention include: 'From State of Denial to State of Emergency: Governing Australian Indigenous communities through the exception', in D Fassin and M Pandolfi (eds.) *Contemporary States of Emergency: The Politics of Military and Humanitarian Interventions* (2010) and 'The state's intervention in Indigenous affairs in the Northern Territory: governing the Indigenous population through violence, abuse and neglect', in C Browne and J McGill (eds.) *Violence and the Post-Colonial Welfare State in France and Australia (2010).*

Ben Kelly

Ben Kelly has lectured in Indigenous Studies with Nura Gili at UNSW since 2007 and teaches in the areas of Indigenous political history and whiteness.

Tahu Kukutai

Tahu Kukutai (Waikato-Tainui, Ngāti Maniapoto, Te Aupōuri) is a Senior Research Fellow at the National Institute of Demographic and Economic Analysis (NIDEA) at the University of Waikato. Tahu has studied Māori population dynamics for much of her academic career. Her research spans multiple levels, from action-based research in rural Māori communities, to comparative projects examining indigenous demographic change and well-being in multiple countries. She is a former Fulbright recipient and serves on numerous committees representing Māori and academic interests. She holds a PhD in Sociology from Stanford University and a Masters in Demography from the University of Waikato.

Marett Leiboff

Marett Leiboff is Associate Professor in the Faculty of Law, University of Wollongong Australia where she is a member of the Legal Intersections Research Centre working in the Law and Popular Cultures group. Her current scholarship centres around the theatrical as a cultural legal studies device through which to interrogate law through the externalities of human existence. In 2010, she co-edited *Law Text Culture Volume 14: Law's Theatrical Presence,* and is now working on the development of a monograph on theatrical jurisprudence.

Sally Engle Merry

Sally Engle Merry is Professor of Anthropology at New York University and President-elect of the American Ethnological Society. Her recent books include *Colonizing Hawai'i* (Princeton, 2000), *Human Rights and Gender Violence* (Chicago, 2006), *Gender Violence: A Cultural Perspective*

(Blackwells, 2009) *and The Practice of Human Rights,* (co-edited with Mark Goodale; Cambridge, 2007). She received the Hurst Prize for Colonizing Hawai'i in 2002, the Kalven Prize for scholarly contributions to sociolegal scholarship in 2007, and the JI Staley Prize for *Human Rights and Gender Violence in 2010.* She is currently writing a book on indicators as a technology of knowledge used for human rights monitoring and global governance.

Adrian Muckle

Adrian Muckle lectures in the History Programme at Victoria University of Wellington, New Zealand. His main research areas are nineteenth- and twentieth-century Pacific history; colonialism and colonial societies; violence; and race relations. Adrian has a special interest in New Caledonia and has published on the themes of fear, rumor, and violence in the colonial setting, chiefly authority under colonial rule, Kanak experiences of the Great War, and recent political developments. He is the author of *Specters of Violence in a Colonial Context: New Caledonia, 1917* (University of Hawai'i Press, forthcoming 2012), an associate member of the CNRS Research Group on New Caledonia (Nouvelle-Calédonie: Enjeux Sociaux Contemporains) and currently serves on the editorial board of the *Journal of Pacific History.*

Wayne Rumbles

Wayne Rumbles is a Senior Lecturer at Te Piringa: Faculty of Law, University of Waikato. He spent three years working in community law and worked for Te Matahauariki Research Institute for 10 years on the Laws and Institutions for Aotearoa/New Zealand project. Wayne teaches and researches in the areas of Cyberlaw, New Technologies and the Law, Criminal Law and early New Zealand Legal History. He has recently edited the book *Cultural Cyborgs: Life at the Interface* (Interdisciplinary Press, Oxford, 2011).

Nan Seuffert

Professor Nan Seuffert teaches and researches in the areas of critical legal theory, law and history, race, gender sexuality and the law, and securities regulation. She has published in refereed law journals and book collections in England, the United States, Canada, Australia and New Zealand. Recent publications include 'Time to Tame the Wild Beast in the Wild West?: The Regulation of Disclosure of Equity Derivatives in New Zealand' (2011) 29(1) *Company & Securities Law Journal* 5-29 and 'Reproducing Empire in Same Sex Relationship Recognition and Immigration Law Reform' in Kim Brookes and Robert Leckey (eds) Queer Theory: Law, Culture, Empire (New York: Routledge, 2010). Nan has been a resident fellow at the University of California Humanities Research Institute, a visitor at the University of Kent Centre for Law, Gender and Sexuality, and a member of a number of international research projects that analyse gender, race, sexuality and the law, including workshops funded by the Onati International Institute for the Sociology of Law and the Social Sciences and Humanities Research Council of Canada. She is on the editorial and advisory boards of *Law and Literature* (University of California Press), *Law Text Culture* (University of Wollongong), Laws of the Postcolonial: Ethics and Economy (Routledge, London Series, 2011), and Sexualis Lex (Federation Press, Australia). She is also on the Advisory Board of the Centre for Feminist Legal Studies at the University of British Columbia.

Rachel Standfield

Rachel Standfield is a lecturer in the Centre for Indigenous Studies at Charles Sturt University. Her work investigates indigenous histories of Australia and New Zealand and the development of racial thought in the region. This paper is based on research completed as the 2010 CH Currey memorial fellow at the State Library of New South Wales, where Rachel investigated the papers of William Thomas. She would like to thank the State Library for their generous support.

John Taylor

John Taylor is Professor and Director of the Centre for Aboriginal Economic Policy Research at the Australian National University. For the past 25 years he has conducted research on demographic, social and economic change among Indigenous Australians and has published widely on these issues in Australian and international books and journals. He is a member of the Australian Bureau of Statistics Advisory Group on Aboriginal and Torres Strait Islander Statistics, a Board member of the Federal government's Closing the Gap Clearinghouse and a panel member of the Sustainable Population Advisory Group advising the Minster for Sustainable Population. He has been prominent in demonstrating the application and importance of demographic analysis to Indigenous policy.

Law • Text • Culture

Special Editors

Nan Seuffert, University of Waikato, New Zealand

Tahu Kukutai, University of Waikato, New Zealand

Managing Editors

Luke McNamara, University of Wollongong, Australia

Julia Quilter, University of Wollongong, Australia

Editorial board

Massimo Leone, University of Torino, Italy

Desmond Manderson, McGill University, Montréal, Canada

Luke McNamara, University of Wollongong, Australia

Shaun McVeigh, University of Melbourne, Australia

Richard Mohr, Social Research, Policy & Planning Pty Ltd, Australia

Juliet Rogers, University of Melbourne, Australia

Nan Seuffert, University of Waikato, New Zealand

Mariana Valverde, University of Toronto, Canada

Terry Threadgold, Cardiff University, Wales