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Theatrical jurisprudence and the imaginary lives of law in pre-1945 Australia

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Abstract

If there is anything like an imagined pre-1945 past in Australia, it is one steeped in an Anglophone legal ascendancy. But this is an imaginary past in so many ways. Non-British Europeans came to Australia long before 1945. These earlier Europeans were marked by differences of voice and face, but were eager British subjects, as likely to actively take advantage of law as they were to be subjected to its strictures. By theatricalising their ordinary and extraordinary legal lives through archive and memory, we are reminded that there is more to law of the South than formal accounts which have largely erased their existence, and the fragility of accounts of law beyond living memory.

Keywords

jurisprudence, lives, 1945, law, imaginary, australia, theatrical, pre

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Theatrical jurisprudence and the imaginary lives of law in pre-1945 Australia

Marett Leiboff

If there is anything like an imagined pre-1945 past in Australia, it is one steeped in an Anglophone legal ascendancy. The Australian legal entity is one that is largely imagined as unidimensionally English in origin and spirit. The originating story of law in Australia is English, British at a push, its sense of self and its image of law's subjects confined to those whose origins are found in the nations of the British Isles. This mythical Australian legal identity, grounded in an English common law ascendancy, extends to its conception of those who are subject to and of law's protection and purpose.

In its imagined sense of self, the image of law in Australia was absent other Europeans – practically, figuratively - until after the close of the Second World War. This is law's imagined European – the alien, the displaced person, the person who came after, who came to a law already formed by an ascendant English legality. But this is an imaginary past in so many ways. Non-British Europeans came to Australia long before 1945. These earlier Europeans were marked by differences of voice and face, but were eager British subjects, as likely to actively take advantage of law as they were to be subjected to its strictures. Yet it is discursive twists, forgettings and the sense of closure of events that led to this imagined legal sense was shaped by a series of manoeuvres both strategic and accidental in turn, that hinge around the creation of a new sense of what constituted Australianness as a legal form in post-World War Two Australia. And their assimilation into its legal imaginary was so successful that for law at least they merged into its shadows, recast as British, in a literal, not just a figurative sense.

It has become my project, through the kinds of accidents that become these things, in perhaps a slightly selfish, self-centred way. It was curiosity more than anything that led me down this path, the discovery of things unknown about me, my grandmother, my grandfathers, and the oddity of my name. Our laziness, our assumptions, imagine the existence of narratives, histories, stories behind selves and being. I am constantly narrated as outside, a name beguiling in its oddity, an imagined newness created by nothing other than words. This newness, this imagined newness, its exotic rendering of Mary in Estonian, is an accident of a moment in 1950s Australia, when girl children were given By theatricalising their ordinary and extraordinary legal lives through archive and memory, we are reminded that there is more to law of the South than formal accounts which have largely erased their existence, and the fragility of accounts of law beyond living memory.

Bringing them out of the shadows and reimagining a law that remembers its non-British Europeans is a deeply theatrical process, as a task of theatrical jurisprudence.