

EDITORS' NOTE – CUSTOMS IN COMMON: LAW, CULTURE, MEMORY

KATHERINE BIBER* AND NICOLE GRAHAM**

It should be the chief aim of a university professor to exhibit himself in his own true character – that is, as an ignorant man thinking, actively utilizing his small share of knowledge.¹

This volume of *Macquarie Law Journal* was motivated by a seminar series that the editors convened at Macquarie University in 2005. Titled 'Customs in Common: Law, Culture, Memory',² it was a year-long dialogue about what – if anything – law has in common with the humanities and social sciences. Our intention for the series was to explore the meaning of the term 'interdisciplinary' as it might be deployed in legal scholarship. Frequently, law schools and legal scholars describe themselves as interdisciplinary, as practising law in context, law in society, law and literature; we wanted to see firstly, whether we could give value to these terms, and secondly, what law looks like to people who study it from the outside: historians, philosophers, anthropologists, geographers. As we were both new recruits to Macquarie, convening the series in this way was also an opportunity for us to cross the campus, meet colleagues in other departments and buildings, and to bring them into our own seminar room where we could explore whether we had any interests or customs in common.

The result was heartening and inspiring. Scholars from across the university spared the time and shared their ideas, coming together in a bustling huddle each Thursday at lunchtime. The papers presented were eclectic and accessible, the debate that followed was fascinating, and surprised all of us by how much we had to talk about, and how much we had to learn from each other. The seminars produced a sense of collegiality and collaboration that lingers. From across the campus, people are

* BA (Hons), LLB (Hons) MCrim by research (Hons) PhD (Syd). Lecturer in Law at Macquarie University, Sydney.

** BA (Hons), LLB (Hons) (Macq) PhD (Syd). Lecturer in Law at Macquarie University, Sydney.

¹ Alfred North Whitehead, *The Aims of Education and Other Essays* (1929) 37.

² Our series refers to and reminds its contributors and participants of the scholarship of E P Thompson whose influential work continues to provide a valuable source of debate in classrooms of law, history, sociology and politics. Thompson valued and studied culture in an unconventional way that illuminated the dynamic and antagonistic production of cultural institutions and cultural discourse.

proposing to run courses together, conduct research together, and persist with the kind of scholarly friendships that make our jobs in universities worthwhile.

One aim of this volume was to try and capture some of the spirit of the seminars and the discussion that followed. Some papers provoked and disturbed some listeners, arousing debate and controversy. Some of them are still talked about in corridors and offices, with people continuing to think through the consequences of various approaches. Many of the papers, we discovered, were directed at the same theme from different perspectives, and in this volume we were able to bring together a range of papers from the series that address aspects of native title and indigenous culture, as examined through the disciplines of law, history, anthropology, cultural studies and human geography. This theme was beautifully captured on the poster that we stuck up around the campus, featuring an 1854 portrait of a young Aboriginal man, Nannultera, by J M Crossland. Nannultera, dressed neatly in white trousers and a red jumper, holds aloft a cricket bat and stares intently at the viewer. The painting represents precisely the exchange of customs that we wanted to explore, testing whether that exchange transacts beneficence, information, or violence.

We asked ourselves a series of questions that we hoped the series would address, and put these questions to our participants. What is the distinction between law and custom and (why) does the distinction matter? How do we distinguish between fact and fiction, truth and myth? Whose knowledge and whose memory is privileged? Whose is prohibited?

Despite the very diverse themes presented in the series, these questions remained a key focus for speakers and their audiences, ensuring that a coherent conversation continued through the year. As the theme unfolded, the gaps and divides between scholars – in interest, experience and focus – were clearly illuminated. Therefore, the collection of essays in this volume does not indicate a consensus; far from it, it reflects how animated, heated and disturbing research on this theme can be. Some of the angst and antagonism in the series, which we hope is represented here in this volume, relates to the relationship between our research as scholars and the impact of that research on society and within communities. In other words, the dissonance of the series reflects the tensions between academia and action, between thought and strategy. For some, what scholars say and do is all but immaterial to the ‘real world’ in which decisions are required and taken. Yet for others, scholars bear a crucial responsibility in everything we say and do, precisely because of our very real engagement with, and impact on, their world. This question is a constant source of reflection and debate for and between practitioners and scholars of law.

This volume highlights the tensions and unresolved questions about scholarship, particularly as it relates and feeds into law and legal decisions in the context of the enduring debate about competing approaches to the burdens of colonisation, and

indigenous law and justice.³ Such context is but a small part of a broader debate about the role of academic research in Australia generally. Take for example, the heated debate about the validity and value of academic research about climate change; stem-cell research and education itself. The intention of our seminar series and this volume is to acknowledge and raise for question the uneasy place of scholarship in Australian society and environment; and, to invite our readers to think about this broader question through this collection of papers each with quite different approaches to one of the most important areas of research in Australia today. What is the value each of these contributions to the field of scholarship, and what does the field itself offer in terms of action or inertia; solutions and impasses? We hope that these exchanges inspire action, whether through doubt, insight, critique, alternatives or strategies. Academic research and debate can not be a sedate conversational affair and we hope that this volume demonstrates the vitality and importance of ongoing debate between disciplines, and importantly, a debate about the purpose of the academy itself.

³ See for example, Moira Gatens, 'Conflicting Imaginaries in Australian Multiculturalism: Women's Rights, Group Rights and Aboriginal Customary Law' in G Brahm-Levey (ed), *Political Theory and Australian Multiculturalism* (2007).